

# DISCUSSION DRAFT 10-24-19

## SAN DIEGO UNIFIED PORT DISTRICT

### ORDINANCE xxxx

#### ORDINANCE REGARDING HOTEL WORKER RETENTION ON DISTRICT PROPERTY

**WHEREAS**, the San Diego Unified Port District (District) is a public corporation created by the Legislature in 1962 pursuant to Harbors and Navigation Code Appendix I (Port Act); and

**WHEREAS**, the District has the power and responsibility under the Port Act to manage and regulate the District for the promotion of commerce, navigation, fisheries, and recreation within the District, including, without limitation, to pass ordinances for the regulation of the District (e.g., Sections 21, 30); and

**WHEREAS**, Section 87(b) of the Port Act grants authority to the District to lease the tidelands or submerged lands, or parts thereof, for limited periods, not exceeding 66 years, for purposes consistent with the trusts upon which those lands are held, by the State of California, and the District currently has granted approximately 18 leases for operation of hotels on District property;

**WHEREAS**, such hotel leases promote commerce and recreation in the District by providing accommodations and other amenities for the public, and also support the District's proprietary interests in generating rental revenue which the District the uses to fund its operations in support of its Public Trust mission.

**WHEREAS**, changes in ownership, control, or operation of hotels occur frequently in the hotel industry and may result in mass layoffs of hotel workers, which would displace employees who are skilled, knowledgeable, and experienced in providing safe, clean, and enjoyable experiences for the millions of visitors who come to the District each year; and

**WHEREAS**, ensuring that hotel workers have an opportunity to continue working for a hotel upon change in ownership, control, or operation will prevent unnecessary disruption to the labor market and thereby maintain the stability and high level of service in the hospitality and tourism businesses in the District, which supports the District's mission to promote commerce and recreation within the District; and

**WHEREAS**, numerous public agencies have enacted laws, rules, and regulations related to hotel worker retention, including at least one California tidelands trustee.

**NOW THEREFORE**, the Board of Port Commissioners of the San Diego Unified Port District does ordain as follows:

Section 1. Hotel worker retention.

(a) Within 15 days of a Change in Control, an Incumbent Hotel Employer shall provide a Successor Hotel Employer with a list of Eligible Hotel Workers. This list shall include the name, date of hire, and job classification of each Eligible Hotel Worker. A Successor Hotel Employer shall hire Eligible Hotel Workers from this list during the Hotel Worker Retention Period.

(b) A Successor Hotel Employer shall, during the Hotel Worker Retention Period, offer each Eligible Hotel Worker employment for no less than 90 days, subject to any applicable federal, state or local law and regulation relating to eligibility for employment, and except that:

(1) A Successor Hotel Employer shall not be required to offer employment to an Eligible Hotel Worker if the Successor Hotel Employer has documented evidence that the Eligible Hotel Worker was terminated for just cause while employed by the Incumbent Hotel Employer; and

(2) If a Successor Hotel Employer determines during the Hotel Worker Retention Period that it requires fewer Hotel Workers than were required by the Incumbent Hotel Employer, the Successor Hotel Employer shall retain Eligible Hotel Workers by seniority and experience within each job classification to the extent that comparable job classifications exist.

(c) During the Hotel Worker Retention Period, an Eligible Hotel Worker retained pursuant to this section shall be employed under the terms and conditions established by the Successor Hotel Employer as required by law and shall not be discharged except for good cause based on individual performance or conduct.

(d) An offer of employment made pursuant to subdivision (b) shall be made in writing and shall remain open for at least ten business days from the date of the offer.

(e) A Successor Hotel Employer shall retain written verification of each offer of employment made pursuant to subdivision (b). This verification shall include the name, address, date of hire, and job classification of the Eligible Hotel Worker to whom the offer was made. A Successor Hotel Employer shall retain the required verification for no less than three years from the date the offer is made.

(f) At the end of the Hotel Worker Retention Period, a Successor Hotel Employer shall provide each Hotel Worker retained pursuant to this section with a written performance evaluation. If the Hotel Worker's performance was satisfactory, the Successor Hotel Employer shall consider offering the Hotel

Worker continued employment under the terms and conditions established by the Successor Hotel Employer and as required by law. A Successor Hotel Employer shall retain the written performance evaluation required under this subsection for no less than three years from the date it is issued

(g) The rights to retention set forth in this section do not apply to any managerial, supervisory, or confidential employee.

## Section 2. Definitions.

(a) "Adverse Employment Action" means an action that detrimentally and materially affects the terms, conditions, or privileges of employment, including but not limited to any act to discharge, reduce in compensation, reduce work hours, alter established work schedules, increase workload, impose fees or charges, or change duties of a Hotel Worker.

(b) "Affected Hotel" means: (1) in the event of a Change in Control as defined in (c)(1) below, the Hotel or discrete portion of the Hotel that has been the subject of the change in control and remains in operation following the Change in Control; or (2) in the event of a Change in Control as defined in (c)(2) below, the Hotel that remains in operation following the Change in Control of that Hotel.

(c) "Change in Control" means (1) any sale, assignment, transfer, contribution, or other disposition of all or substantially all of the assets used in the operation of a Hotel or of a discrete portion of the Hotel that continues in operation as a Hotel, or of a controlling interest (including by consolidation, merger, or reorganization) of a Hotel Employer or any person who controls a Hotel Employer; or (2) any other event or sequence of events (including a purchase, sale, lease, or termination of a management contract or lease) that causes, within a one-year period, the identity of the Hotel Employer at a Hotel to change. For purposes of this definition, a "Change in Control" shall be defined to occur on the date of execution of the document effectuating the Change in Control.

(d) "Eligible Hotel Worker" means a Hotel Worker employed by an Incumbent Hotel Employer at the time of a change in control and who has been so employed for at least six months prior to the Change in Control.

(e) "Hotel" means an establishment on District property that provides temporary lodging in the form of overnight accommodations in guest rooms to transient patrons, and may provide additional services, such as conference and meeting rooms, restaurants, bars, or recreation facilities available to guests or to the general public. "Hotel" includes motor lodges, motels, apartment hotels, and tourist courts meeting the definition set forth above. "Hotel" also includes any contracted, leased or sublet premises operated in conjunction with a hotel or that is used for the primary purpose of providing services at a hotel. "Hotel" does not include a hostel, which is a lodging facility primarily characterized by dormitory-

style accommodations, shared bathrooms, and reservations of beds rather than rooms. "Hotel" also does not include corporate housing, rooming houses, boarding houses, or private residential clubs, single-room occupancy housing, vacation rentals, or bed and breakfast establishments within a single-unit residence. "Hotel" also does not include an establishment which otherwise meets the definition in this subsection but that is a component of a planned development in which one or more of the District's Member Cities contributes funding for such development.

(f) "Hotel Employer" means any person who owns, controls, or operates a Hotel in the District, and includes any person or contractor acting as an agent of a hotel employer in a managerial, supervisory, or confidential capacity.

(g) "Hotel Worker" means any person who is employed by a hotel employer to provide services at a hotel. "Hotel Worker" does not include a managerial, supervisory or confidential employee.

(h) "Hotel Worker Retention Period" means the period beginning on the date of a change in control and extending to 90 days from the first date that an Affected Hotel is open to the public after a Change in Control.

(i) "Incumbent Hotel Employer" means a Hotel Employer who owns, controls, or operates a Hotel prior to a Change in Control of the Hotel or of a discrete portion of the Hotel that continues to operate as a Hotel after the Change in Control.

(j) "Successor Hotel Employer" means a Hotel Employer who owns, controls, or operates a Hotel after a Change in Control.

(k) "Member City" means any one of the following: City of Chula Vista, City of Coronado, City of Imperial Beach, City of National City, and City of San Diego.

### Section 3. Enforcement.

(a) The District assumes no obligation to enforce the terms of this ordinance, and nothing herein shall be construed as creating a cause of action against the District.

(b) A Hotel Worker who has suffered an Adverse Employment Action by a Successor Hotel Employer in violation of this ordinance may bring a private cause of action in the Superior Court of the State of California against the Successor Hotel Employer and may be awarded:

(i) Back pay for each day during which the violation continues, which shall be calculated at a rate of compensation not less than the higher of: (A) The average regular rate of pay received by the Hotel Worker during

the last three years of the Hotel Worker's employment in the same occupation classification; or (B) The final regular rate received by Hotel Worker from either the Incumbent Hotel Employer or the Successor Hotel Employer.

(ii) Costs of benefits, if any, the Successor Hotel Employer would have incurred for the Hotel Worker under the Successor Hotel Employer's benefit plans.

(iii) If the Hotel Worker is the prevailing party in any suit brought pursuant to this ordinance, the court shall award reasonable attorney's fees and costs of suit, in addition to any other award of damages.

(c) No criminal penalty shall attach for a violation of this Ordinance.

(d) This Ordinance shall not be construed to limit a Hotel Worker's rights against the Incumbent Hotel Employer or the Successor Hotel Employer under other applicable laws, including any right the Hotel Worker may have to bring suit for wrongful termination against the Incumbent Hotel Employer or Successor Hotel Employer.

#### Section 4. Severability.

If any severable provision or provisions of this ordinance, or any application thereof, is held invalid, such invalidity shall not affect other provisions or applications of the ordinance that can be given effect notwithstanding such invalidity.

Section 5. This Ordinance shall take effect on the 31<sup>st</sup> day from its passage by the Board of Port Commissioners.

APPROVED AS TO FORM AND LEGALITY:  
GENERAL COUNSEL

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By: Assistant/Deputy

PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this \_\_\_\_\_ day of \_\_\_\_\_ 2019, by the following vote: