

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF SANTA CLARA, CALIFORNIA, TO ADD CHAPTER 9.60 (“FOOD AND BUILDING SERVICE WORKER RETENTION”) TO TITLE 9 (“PUBLIC PEACE, MORALS AND WELFARE”) OF “THE CODE OF THE CITY OF SANTA CLARA, CALIFORNIA” TO REQUIRE RETENTION OF FOOD AND BUILDING SERVICE EMPLOYEES UNDER CERTAIN CIRCUMSTANCES

BE IT ORDAINED BY THE CITY OF SANTA CLARA AS FOLLOWS:

WHEREAS, Labor Code Section 1064 allows local jurisdictions to enact greater standards than, or establish additional enforcement provisions to the standards and provisions of the Displaced Janitor Opportunity Act.

NOW THEREFORE, BE IT FURTHER ORDAINED BY THE CITY OF SANTA CLARA AS FOLLOWS:

SECTION 1: That Chapter 9.60 (entitled “Food and Building Service Worker Retention”) is added to Title 9 (entitled “Public Peace, Morals and Welfare”) of “The Code of the City of Santa Clara, California” (“SCCC”) to read as follows:

“Chapter 9.60

FOOD AND BEVERAGE SERVICE WORKER RETENTION

Sections:

- 9.60.010 Definitions.
- 9.60.020 Notification and retention.
- 9.60.030 Remedies.
- 9.60.040 Exemption.

9.60.010 Definitions.

For purposes of this section, the following terms shall have the following meanings:

(a) “Building service” means work performed in connection with the care or maintenance of an existing building and includes, but is not limited to, work performed by guards and janitors.

(b) “Building service contract” means a contract let by any covered entity for the furnishing of building services, and includes any subcontracts for such services.

(c) “Building service contractor” means any person who enters into a building service contract, including any subcontractor.

(d) “Building service employee” means any person employed as a building service employee by a building services contractor or covered entity who has been regularly assigned to an office or entertainment/convention venue on a full or part-time basis for at least ninety (90) days immediately preceding any transition in employment subject to this section except for persons who are managerial, supervisory or confidential employees, and persons regularly scheduled to work fewer than eight (8) hours per week at a building.

(e) “Business” means any commercial, industrial, institutional or mixed-use business facility owned or managed by a covered entity in a single building or in contiguous buildings under common ownership or management.

(f) “Covered entity” means any person who hires or retains a food service contractor for the provision of food services at a business facility or entertainment/convention venue within the City, or the City if it hires or retains a food service contractor for an entertainment/convention venue, or any person who hires or retains a building service contractor for the provision of building services at a business facility or entertainment/convention venue within the City.

(g) “Entertainment/convention venue” means a stadium, concert hall, club, convention center, or like venue with a total capacity of at least 8,000 that hosts concerts, shows, conventions, or sporting events on a non-continuous basis.

(h) “Food service” means the on-site preparation, serving and clean-up of food or beverages to persons.

(i) “Food service contract” means a contract for the furnishing of food services, and includes any subcontracts for such services.

(j) “Food service contractor” means any person who hires or retains at least ten (10) food service employees in order to provide food services to a covered entity pursuant to a food service contract, including any subcontractor.

(k) "Food service employee" means any person who has been regularly assigned by a food service contractor to provide on-site food services to a covered entity on a full or part-time basis for at least 90 days immediately preceding any transition in employment subject to this section, except for persons who are managerial, supervisory, or confidential employees, and persons regularly scheduled to work fewer than eight hours per week.

(l) "Person" means any individual, proprietorship, partnership, joint venture, corporation, limited liability company, trust, association, or other entity, that may employ persons or enter into service contracts, but it does not include a county, school district, community college district, the State of California, and the federal government or any other governmental entity except the City of Santa Clara, the Stadium Authority, the Sports and Open Space Authority and the City of Santa Clara Housing Authority.

(m) "Subcontractor" means any person who is not an employee who enters into a contract with a food service or building service contractor to assist the contractor in performing a food service or building service contract.

(n) "Successor contractor" means (1) any person that has entered into a food service contract or building service contract to provide services to a covered entity that are substantially similar to those provided by such covered entity prior to contracting out the services or those provided to such covered entity under a terminated food service or building service contract, or (2) a covered entity, if the covered entity provides such services following the termination of a food service or building service contract.

9.60.020 Notification and retention.

(a) No less than fifteen (15) calendar days before terminating any food service or building service contract, or contracting out services previously performed by the covered entity, a covered entity shall request, and the current food service or building service contractor or the covered entity if it provides the services, shall provide to the successor contractor, if one has been named, and the covered entity if different, a full and accurate list containing the name,

home address and telephone number, date of hire, and job category of each food service worker or building service employee employed by the current food service or building service contractor or by covered entity at the site or sites covered by the food service or building service contract that will be terminated or let, as applicable.

(b) The successor contractor shall retain for a 90-day transition employment period all food service or building service employees that were employed by the terminated food service or building service contractor, or by the covered entity if the covered entity has contracted out the services. During the 90-day transition period, the successor contractor shall not substantially change a food service or building service employee's work shift or work location.

(c) The successor contractor shall ensure that a notice to food service or building service employees is posted setting forth the rights provided under this section and which includes a copy of any list provided pursuant to paragraph (a) of this subdivision with the home addresses and phone numbers redacted, and that such notice is also provided to the food service or building service employees' collective bargaining representative, if any. The notice and list shall be posted in the same location and manner that other statutorily required notices to employees are posted at the affected sites.

(d) If at any time the successor contractor determines that fewer food service or building service employees are required to perform services than had been performing such services under the terminated food service or building services contract, the successor contractor shall retain the food service or building service employees by seniority within job classification; provided, that during such 90-day transition period, the successor contractor shall maintain a preferential hiring list of those food service or building service employees not retained at the sites who shall be given a right of first refusal to any jobs within their classifications that become available during that period.

(e) Except as provided in subsection (d) of this section, during such 90-day period, the successor contractor shall not discharge without cause a food service or building service employee retained pursuant to this section.

(f) At the end of the 90-day transition period, the successor contractor shall complete a written performance evaluation for each food service or building service employee retained pursuant to this section. If a food service or building service employee's performance during such 90-day period is satisfactory, the successor contractor shall offer such food service or building service employee continued employment under the terms and conditions established by the successor contractor.

9.60.030 Remedies.

(a) A food service or building service employee who has been discharged or not retained in violation of this section, or the collective bargaining agent of the employee, may bring an action in any superior court of the State of California having jurisdiction over the successor contractor. Upon finding a violation of this chapter, the court shall award back pay, including the value of benefits, for each day during which the violation occurred and continues to occur. If the court determines that the successor contractor's violations were willful, it shall order treble back pay and reinstatement. The amount of back pay shall be calculated as the greater of either of the following:

(1) The average regular rate of pay received by the employee during the last three years of the employee's employment in the same occupation classification multiplied by the average hours worked during the last three years of the employee's employment.

(2) The final regular rate of pay received by the employee at the time of termination of the predecessor food service or building service contract multiplied by the number of hours usually worked by the employee.

(3) The court may order a preliminary or permanent injunction to stop the continued violation of this chapter.

(4) If the employee is the prevailing party in the legal action, the court shall award the employee or collective bargaining agent reasonable attorney's fees and costs as part of the costs recoverable.

9.60.040 Exemption.

The provisions of this chapter may be waived in whole or in part in a *bona fide* collective bargaining agreement, provided that such waiver is set forth in writing in clear and unmistakable terms.

SECTION 2: Savings clause. The changes provided for in this ordinance shall not affect any offense or act committed or done or any penalty or forfeiture incurred or any right established or accruing before the effective date of this ordinance; nor shall it affect any prosecution, suit or proceeding pending or any judgment rendered prior to the effective date of this ordinance. All fee schedules shall remain in force until superseded by the fee schedules adopted by the City Council.

SECTION 3: Constitutionality, severability. If any section, subsection, sentence, clause, phrase, or word of this ordinance is for any reason held by a court of competent jurisdiction to be unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of the ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more section(s), subsection(s), sentence(s), clause(s), phrase(s), or word(s) be declared invalid.

SECTION 4: Effective date. This ordinance shall take effect thirty (30) days after its final adoption; however, prior to its final adoption it shall be published in accordance with the requirements of Section 808 and 812 of “The Charter of the City of Santa Clara, California.”

PASSED FOR THE PURPOSE OF PUBLICATION this ____ day of _____, 2017, by the following vote:

AYES: COUNCILORS:

NOES: COUNCILORS:

ABSENT: COUNCILORS:

ABSTAINED: COUNCILORS:

ATTEST:

ROD DIRIDON, JR.
CITY CLERK
CITY OF SANTA CLARA

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