



Legislation Text

File #: 2019-0442, **Version:** 1

DATE: December 10, 2019

SUBJECT:

ORDINANCE REGARDING HOTEL WORKER RETENTION ON DISTRICT PROPERTY

EXECUTIVE SUMMARY:

At the October 8, 2019 Board of Port Commissioners (Board) meeting, the Board discussed the issue retention of hotel workers when a hotel on District property changes ownership, and directed staff to draft an ordinance protecting hotel workers by requiring a 90-day retention period upon such a change in ownership or control. The Board further directed staff to do outreach to all interested stakeholders and return to the Board in December 2019 with an ordinance for the Board's consideration. Staff has followed Board direction and this agenda presents such an ordinance.

The District has approximately 18 leases for operation of hotels on District property. Many public agencies have passed laws or others forms of regulation addressing the retention of hotel workers when a hotel changes owners or operators. Those jurisdictions have stated that changes in ownership, control, or operation of hotels occur frequently in the hotel industry and can trigger mass layoffs of hotel workers and displace employees who are skilled, knowledgeable, and experienced in providing a safe, clean, and enjoyable experience for visitors.

Since the October 2019 Board meeting, staff prepared a draft ordinance very similar to ordinances passed by other jurisdictions but tailored to the specific direction received from the Board. On October 24, 2019, a discussion draft ordinance was posted to the District's website along with an email address for stakeholders to send comments. Stakeholders who had already asked to be informed, including the San Diego Port Tenants Association (SDPTA), were contacted individually and directed to the District website, as were all District hotel tenants. Staff received comments on the discussion draft through the email address, had an in-person meeting and several follow up calls and communications with representatives of the SDPTA, and had other communications with interested stakeholders.

The proposed Ordinance attempts to balance protection of hotel workers and the operational logistics of District hotels. Based on discussions with the stakeholders who provided feedback, staff believes the proposed Ordinance addressed all issues raised by each stakeholder.

RECOMMENDATION:

Adopt an Ordinance regarding hotel worker retention on District property.

FISCAL IMPACT:

The Ordinance does not have a financial impact on the District.

COMPASS STRATEGIC GOALS:

This agenda item supports the following Strategic Goal(s).

- A vibrant waterfront destination where residents and visitors converge.
- A Port that is a safe place to visit, work and play.
- A financially sustainable Port that drives job creation and regional economic vitality.

DISCUSSION:

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 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. The Port Act grants authority to the District to lease real property owned by the District for a term not exceeding 66 years.

The District currently has granted approximately 18 leases for operation of hotels on District property. Such hotel leases promote commerce and recreation in the District by providing accommodations and other amenities in the District for the public, and also supports the District's proprietary interests of generating revenue for the District through rent which is used by the District to fund its operations in support of its Public Trust mission.

The hotels in the District provide accommodations and other amenities to the public. In Fiscal Year 2018-2019, the District generated almost \$57 million from its hotel leases. This accounted for approximately 25% of the District's total operating and non-operating revenue. District hotels also support the other available activities and amenities in the District.

Many public agencies have passed laws or others forms of regulation addressing the retention of hotel workers when a hotel changes owners or operators, and some have also applied similar requirements related to other types of employees under similar transitions. Those jurisdictions have stated that changes in ownership, control, or operation of hotels occur frequently in the hotel industry and can trigger mass layoffs of hotel workers and displace employees who are skilled, knowledgeable, and experienced in providing a safe, clean, and enjoyable experience for visitors. Examples include:

- The City of San Diego adopted service worker retention provisions in 1998 (amended in 2005) requiring a 90-day transition period for employees of contractors retained to provide services at City facilities when the service contract ends and/or a new service provider is chosen by the City (San Diego Administrative Code, Section 22.2801, et seq. - Attachment A). The City of San Diego stated:

Incumbent workers may have invaluable knowledge and experience with the work schedules, practices, patrons or clients that are particular to the City Facility or the

location where the services are rendered. Replacing these workers could decrease efficiency and result in a disservice to the City, the City Facility and its citizens. Retaining existing service workers could avoid such problems, enhance continuity of service to citizens, and reduce the likelihood of labor disruptions or disputes at the City Facility or the location where the services are rendered.

- In 2004, the City of Oakland adopted an ordinance establishing a 120-day retention period for hotel workers when a hotel in the City changes ownership or operators. (City of Oakland, Code of Ordinances 2.36.010, et seq., "Oakland Ordinance" - Attachment B.)
- In 2006, the City of Los Angeles adopted a Hotel Worker Retention Ordinance (Los Angeles Municipal Code Section 183.00, et seq., "LA Hotel Ordinance" - Attachment C). The LA Hotel Ordinance applies to hotels in the area surrounding the Los Angeles International Airport (LAX) which is operated by the City of Los Angeles, and required new operators of hotels to retain the employees of the previous operator for a 90-day transition period. One stated purpose of the LA Ordinance was to ensure a stable hotel workforce in the LAX area.
- Similarly, in 1999 and again in 2019, the Port of Los Angeles adopted the provisions of City of Los Angeles relating to service contractor worker retention (Los Angeles Harbor Department Resolution 19-8420, dated January 24, 2019; City of Los Angeles Ordinance No. 185356, December 5, 2017) - Attachment D). These provisions of the City ordinance require a 90-day transition period for employees of contractors retained to provide services to the City when the service contract ends and/or a new service provider is chosen by the City. Part of the stated purpose of such provisions was as follows:

The success or failure of City operations may turn on the success or failure of these firms, and the City has a genuine stake in how the public perceives the services rendered by these firms. Replacement of existing employees can adversely impact the performance by these firms and thereby hinders the opportunity for success of City operations.

Incumbent workers have invaluable existing knowledge and experience with the work schedules, practices and clients. Replacing these workers with workers without these experiences decreases efficiency and results in a disservice to the City and City financed or assisted projects.

Retaining existing workers when a change in firm occurs reduces the likelihood of labor disputes and disruptions. The reduction of the likelihood of labor disputes and disruptions results in the assured continuity of services to City constituents and visitors who receive services provided by the City, the City's lessees or licensees, or by City financed or assisted projects.

- The City of Berkeley is a trustee of State tidelands similar to the District. In 2006 the city adopted the Berkeley Marina Zone Worker Retention Ordinance (Berkeley Municipal Code, Section 13.25.010, et seq., "Berkeley Ordinance" - Attachment E) which required any employer who takes over a business operated within the marina zone to continue to employ the workers of the previous operator for 90 days unless an employee is terminated for just cause. One purpose

stated by the Berkeley Ordinance referred to ensuring public access to amenities operated by socially responsible businesses.

At the October 8, 2019 Board of Port Commissioners (Board) meeting, the Board discussed the issue retention of hotel workers when a hotel on District property changes ownership, and directed staff to draft an ordinance protecting hotel workers by requiring a 90-day retention period upon such a change in ownership or control. The Board further directed staff to do outreach to all interested stakeholders and return to the Board in December 2019 with an ordinance for the Board's consideration. Staff has followed Board direction and this agenda presents such an ordinance.

Since the October 2019 Board meeting, staff prepared a draft ordinance very similar to ordinances passed by other jurisdictions but tailored to the specific direction received from the Board. On October 24, 2019, a discussion draft ordinance was posted to the District's website along with an email address for stakeholders to send comments. Stakeholders who had already asked to be informed, including the SDPTA, were contacted individually and directed to the District website, as were all District hotel tenants. Staff received comments on the discussion draft through the email address, had an in-person meeting and several follow up calls and communications with representatives of the SDPTA, and had other communications with interested stakeholders.

The proposed Ordinance attempts to balance protection of hotel workers and the operational logistics of District hotels. Based on discussions with the stakeholders who provided feedback, staff believes the proposed Ordinance addressed all issues raised by each stakeholder.

Additionally, the proposed Ordinance addresses the following specific issues raised by the Board at the October meeting:

- Section 1(b)(3) of the proposed Ordinance is designed to address closures of a portion of a hotel for renovations or otherwise by requiring existing hotel workers to be hired for at least 90 days in order of seniority to fill the needed positions, with the other existing workers being hired for at least 90 days upon reopening of the closed portions of the hotel.
- The proposed Ordinance does not affect a hotel's compliance with California law regarding "bulk sales" (Commercial Code section 6101, et seq.), which deal the sale of *inventory or equipment* in order to afford the creditors of a business that is being sold an opportunity to satisfy their claims before the business can transfer its assets. This law does not deal with employees. One court found bulk sale law did not apply to hotels.

General Counsel's Comments:

The Office of the General Counsel has reviewed and approved this agenda sheet and proposed Ordinance, as presented, as to form and legality.

Environmental Review:

The proposed Board action, including without limitation, an ordinance regarding hotel worker retention upon change of ownership or operation of hotels on tidelands and direction to staff, does not constitute a "project" under the definition set forth in California Environmental Quality Act (CEQA) Guidelines Section 15378 because it would not have the potential to result in a direct or indirect

physical change in the environment and is, therefore, not subject to CEQA. No further action under CEQA is required.

The proposed Board action complies with Sections 21 and 35 of the Port Act, which allow the Board to pass ordinances and to do all acts necessary and convenient for the exercise of its powers. The Port Act was enacted by the California Legislature and is consistent with the Public Trust Doctrine. Consequently, the proposed Board action is consistent with the Public Trust Doctrine.

The proposed Board action does not allow for “development,” as defined in Section 30106 of the California Coastal Act, or “new development,” pursuant to Section 1.a. of the District’s Coastal Development Permit Regulations. Therefore, issuance of a Coastal Development Permit or exclusion is not required.

Equal Opportunity Program:

Not Applicable.

PREPARED BY:

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Attachment(s):

Attachment A: San Diego Administrative Code, Section 22.2801, et seq.

Attachment B: Oakland Ordinance

Attachment C: LA Hotel Ordinance

Attachment D: Los Angeles Harbor Department Resolution 19-8420, dated January 24, 2019;
City of Los Angeles Ordinance No. 185356, December 5, 2017)

Attachment E: Berkeley Ordinance