

HOTEL WORKER PROTECTION, RETENTION, AND MINIMUM WAGE ORDINANCE

The people of the City of Buena Park do ordain as follows:

Section 1: Chapter 8.64 is added to Title 8 of the City of Buena Park Municipal Code to read as follows:

Title 8—Health, Safety and Welfare

Chapter 8.64—HOTEL WORKER PROTECTION, RETENTION, AND MINIMUM WAGE

§ 8.64.010 Purpose and Intent.

The purpose of the Hotel Worker Protection, Retention, and Minimum Wage Ordinance (the “Ordinance”) is to improve and protect the welfare of employees at hotels in the City of Buena Park.

Hotel workers who work by themselves in guest rooms are vulnerable to crimes and other threatening behavior, including sexual assault. Ensuring that hotel workers are equipped with personal security devices and supported in their ability to report criminal and threatening behavior to the proper authorities will promote their personal safety from criminal threats and improve public safety overall.

Hotel workers who clean guest rooms are also sometimes assigned overly burdensome room cleaning quotas and may be disciplined for failing to meet these quotas. Overly burdensome room cleaning quotas undermine the public interest in ensuring that hotel room cleaners are able to perform their work in a manner that adequately protects public health and are treated with respect and dignity. This chapter includes provisions to assure that workers receive fair compensation through a wage premium when their workload assignments exceed defined limits. Ensuring that hotel workers receive fair compensation for their work assignments will promote the public interest and enable hotel workers to receive fair pay for honest work.

Currently, hotel workers are commonly assigned unexpected and mandatory overtime, which limits hotel workers’ ability to meet family and personal commitments and interferes with their ability to schedule in advance for those commitments. This chapter prohibits hotel employers, absent an emergency, from assigning a worker mandatory overtime work when the worker’s shift exceeds ten (10) hours in a day unless the worker has provided informed consent.

Moreover, hotel workers employed through labor contractors are uniquely vulnerable to abusive employment practices. Temporary workers also tend to have less experience and training and are less well-positioned to protect against the spread of disease through effective cleaning methods or to identify circumstances indicating human trafficking or preparations for acts of terrorism. With certain exceptions, the chapter prohibits hotel employers from entering into new, amended, or extended contracts with labor contractors to supply hotel workers to clean rooms.

Often, when corporate ownership or management of a hotel changes, the new operator closes the hotel for renovations and reopens with a new workforce; very few, if any, of the hotel's former workers are retained, and hundreds of workers are displaced. A transitional retention period upon change of ownership, control, or operation ensures employment stabilization for a segment of the community. It also alleviates the demands for social services provided by the City and other local governments due to any worker displacement and resulting unemployment. Through this Ordinance, the City seeks to maintain the welfare and stability of the Buena Park hotel workforce.

Wages paid to workers at hotels are often economically restrictive and can prevent hotel workers from exercising purchasing power at local businesses, which takes a toll on the local economy. Moreover, these workers, who often live paycheck to paycheck, are frequently forced to work two or three jobs to provide food and shelter for their families. They also rely on the public sector as a provider of social support services and, therefore, the City has an interest in promoting an employment environment that protects government resources. In requiring the payment of a higher minimum wage for hotel workers, this chapter benefits that interest.

Income equality is one of the most pressing economic and social issues facing Buena Park. By requiring a higher minimum wage, the City seeks to promote the health, safety and welfare of thousands of hotel workers by ensuring they receive fair compensation for the work they perform. The City also seeks to improve the welfare of hotel workers by mandating that a hotel employer pay service charges to its workers. When a service charge is listed on a customer's bill, there is often a reduction in the gratuity to the hotel worker on the assumption that the service charge is automatically paid to the worker. This Ordinance guarantees that a hotel worker gets paid for any service charge a customer reasonably would believe is intended for the worker who actually performed the service.

Because hotels receive benefits from City assets and investments and because the City and its tourist industry benefit from hotels with experienced and respected workers with low turnover, it is fair and reasonable to require hotels pay their workers a fair wage. Doing so will benefit the local economy as well as the City's visitors, residents, and businesses.

§ 8.64.020 Definitions.

The following definitions shall apply to this chapter:

“Additional-bed room” means a guest room with two (2) or more beds, including a guest room with an additional bed or beds other than those regularly within the guest room, such as a cot or rollaway bed.

“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 compensation, reduce work hours, alter established work schedules, increase workload, impose fees or charges, or change duties of a hotel worker.

“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 a discrete portion of the hotel, that continues in operation as a hotel; (2) any sale, assignment, transfer,

contribution, or other disposition of a controlling interest (including by consolidation, merger, or reorganization) of an incumbent employer or any person who controls an incumbent employer; or (3) any other event or sequence of events (including a purchase, sale, lease, or termination of a management contract or lease) that causes the identity of the incumbent employer at a hotel to change. For purposes of this chapter, a change in control shall be defined to occur on the date of execution of the document effectuating the change in control, or, if there are multiple such documents, the earliest of the dates of execution of those documents.

“Checkout room” means a guest room to be cleaned by a hotel worker due to the departure of the guest assigned to that room.

“City” means the City of Buena Park.

“City Attorney” means the City Attorney of the City of Buena Park.

“City Manager” means the City Manager of the City of Buena Park.

“Client hotel employer” means a hotel employer that obtains or is provided hotel workers to perform labor within its usual course of business from a labor contractor.

“Clear and conspicuous” means in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or set off from the surrounding text of the same size by symbols or other marks, in a manner that is clearly visible in context and clearly calls attention to the language.

“Eligible worker” means any individual (1) whose primary place of employment is at a hotel subject to a change in control, (2) who is employed directly by the incumbent employer, or by a person who has contracted with the incumbent employer to provide services at the hotel subject to a change in control, and (3) who has worked for the incumbent employer for at least one (1) month prior to the execution of the transfer document.

“Emergency” means an immediate threat to public safety or a substantial risk of property loss or destruction.

“Guest” means a registered guest of a hotel, a person occupying a guest room with a registered guest, or a visitor invited to a guest room by a registered guest or other person occupying a guest room.

“Guest room” means any room, suite of rooms, dwelling unit, cottage, or bungalow intended to be used by a guest of a hotel for transient sleeping purposes.

“Hotel” includes a residential building or transient occupancy residential structure that provides temporary lodging for payment in the form of overnight accommodations in guest rooms to transient patrons for periods of thirty consecutive calendar days or less, 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 hotels, motor lodges, motels, apartment hotels, transient occupancy residential structures and extended-stay hotels that rent units (including units with kitchens) for fewer than thirty (30) days, private residential clubs, tourist

courts, and hostels that contain both dormitory-style accommodations and private guest rooms that may be reserved, meeting the definition set forth above. “Hotel” also includes any contracted, leased, or sublet premises that is connected to, located within, directly accessible from, operated in conjunction with, or providing services at a hotel or hotel building, including but not limited to retail or food service outlets. “Hotel” does not include hostels that contain only dormitory-style accommodations, shared bathrooms, and reservations of beds rather than rooms. “Hotel” also does not include short-term residential rental units (including residential dwelling units, guest rooms, accessory living quarters, or other residential structures thereof) which are rented in whole or in part, to any person(s) for transient use of 30 consecutive days or less.

“Hotel employer” means any person who owns, controls, or operates a hotel in the City, and includes any person or contractor who, in a managerial, supervisory, or confidential capacity, employs workers to provide services at a hotel in conjunction with the hotel’s purpose.

“Hotel worker” includes 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.

“Incumbent employer” means the person who owns, controls, and/or operates a hotel subject to a change in control prior to the change in control.

“Labor” shall have the same meaning provided by section 200 of the California Labor Code.

“Labor contractor” includes an individual or entity that supplies, either with or without a contract, a client hotel employer with hotel workers to perform labor, as defined herein, within the client hotel employer’s usual course of business. “Labor contractor” does not include either of the following: (A) a bona fide nonprofit organization that provides services to workers; or (B) a bona fide labor organization, as defined in 29 U.S.C. § 152, or an apprenticeship program, training program, or hiring hall operated pursuant to a labor-management agreement.

“Person” means an individual, corporation, partnership, limited partnership, limited liability partnership, limited liability company, organization, business trust, estate, trust, association, joint venture, agency, instrumentality, or any other legal or commercial entity, whether domestic or foreign.

“Personal security device” means a portable electronic emergency contact device, including but not limited to a panic button, that signals the hotel worker’s location and that provides direct contact between a hotel worker and a hotel security guard or responsible manager or supervisor designated by a hotel employer to respond to violent or threatening conduct. A personal security device does not include a whistle, noise-maker, alarm bell, or similar device that does not provide direct contact between the hotel worker and the designated security officer.

“Room attendant” means a hotel worker whose principal duties are to clean and put in order guest rooms in a hotel.

“Room cleaning” means the performance of services or tasks that are required to maintain the cleanliness of a physical hotel room before, during, or after a guest’s stay. Room cleaning does not include time spent maintaining or organizing inventory (e.g., mini-bar, toiletries, towels, linens) or time spent delivering such inventory to a guest room when not accompanied by other room cleaning tasks. Room cleaning does not include turndown service or tasks associated with preparing already-made beds for sleep when not accompanied by other room cleaning tasks. Room cleaning does not include preventative or as needed maintenance activities such as repair, replacement, and general maintenance of appliances, electronics, furniture, doors, windows, carpets, walls, plumbing, and other fixtures.

“Service charge” means any separately-designated amount charged and collected by a hotel employer from customers, that is for service by hotel workers, or is described in such a way that customers might reasonably believe that the amount is for those services or is otherwise to be paid or payable directly to workers or is used to pay for labor or worker protections, including those charges designated on receipts, invoices, or billing statements under the term “service charge,” “table charge,” “portage charge,” “automatic gratuity charge,” “healthcare surcharge,” “benefits surcharge,” “worker protection fee,” or similar language. Service charge does not include a tip or gratuity as defined under state or federal law.

“Special-attention room” means a checkout room or a guest room for which the occupant declined daily room cleaning on the immediately preceding day.

“Successor employer” means the person who owns, controls, and/or operates a hotel subject to a change in control after the change in control.

“Transfer document” means the purchase agreement or other document(s) creating a binding agreement to effect the change in control.

“Unforeseen emergency” means an emergency or unforeseen contingency, including an unforeseen increase in demand, that: (a) could not be planned for; (b) is not the result of mismanagement, malfeasance, or willful neglect on the part of the hotel employer; and (c) could not have been prevented by prudent action by the hotel employer.

“Usual course of business” means the regular and customary work of a business, performed within or upon the premises or worksite of the client hotel employer.

“Violent or threatening conduct” means (1) any conduct that involves the use of physical violence or that would reasonably be interpreted as conveying a threat of the use of physical violence, and includes but is not limited to rape, assault (including sexual assault), and battery (including sexual battery), as defined by the California Penal Code, as well as any threat or attempt to commit such an act; or (2) any sexual conduct, or solicitation to engage in sexual conduct, directed by a guest at a hotel worker without the consent of the hotel worker and includes, but is not limited to, indecent exposure as defined by the California Penal Code.

“Workday” means any consecutive twenty-four (24) hour period commencing at the same time each calendar day.

“Worker retention period” means the period beginning upon the change in control and continuing for six (6) months after the hotel is open to the public under the successor employer.

§ 8.64.030 Measures to protect hotel workers from violent or threatening conduct.

A. A hotel employer shall provide a personal security device to each hotel worker assigned to work in a guest room or restroom facility where other hotel workers are not assigned to be present. The personal security device shall be provided at no cost to the hotel worker and shall be maintained in good working order by the hotel employer.

B. A hotel worker may activate a personal security device whenever a hotel worker reasonably believes that violent or threatening conduct or an emergency is occurring in the hotel worker’s presence. Immediately prior to or upon activating the device, the hotel worker may cease work and leave the immediate area of danger to await assistance. No hotel worker shall be subject to an adverse employment action for activating a personal security device or for ceasing work to await assistance absent clear and convincing evidence that the hotel worker knowingly and intentionally made a false claim of emergency.

C. A hotel employer shall at all times have a designated and assigned security guard who can receive alerts from personal security devices and can provide immediate on-scene assistance in the event that a personal security device is activated. Hotels with fewer than sixty (60) guest rooms may utilize a hotel supervisor or manager to fulfill the requirement of this subsection. For all such designated security guards, hotel supervisors, and managers, the hotel employer shall provide no fewer than three (3) hours of training on (a) the requirements of this section; (b) instruction on the proper functioning and maintenance of the hotel’s personal security devices; and (c) the protocols for responding to an activated personal security device. Such training shall be conducted at least annually, and the hotel employer shall maintain accurate records demonstrating attendance at such trainings.

D. A hotel worker who brings to the attention of a hotel employer violent or threatening conduct by a hotel guest shall be afforded the following rights:

1. A hotel employer shall immediately allow a hotel worker sufficient paid time to report the violent or threatening conduct to a law enforcement agency and to consult with a counselor or advisor of the hotel worker’s choice.
2. A hotel employer shall not prevent, or attempt to prevent, a hotel worker from reporting violent or threatening conduct to a law enforcement agency.
3. A hotel employer shall not take or threaten to take any adverse employment action against a hotel worker based on the hotel worker’s decision to report or not to report violent or threatening conduct to a law enforcement agency.
4. Upon request by a hotel worker, a hotel employer shall provide reasonable accommodations to a hotel worker who has been subjected to violent or threatening conduct. Reasonable accommodations may include, but are not limited to, a modified work schedule, reassignment to a vacant position, or other reasonable adjustment to job

structure, workplace facility, or work requirements.

E. A hotel employer shall place on the back of the entrance door to each guest room and restroom facility in a hotel a sign written in a font size of no less than eighteen (18) points, that includes the heading “The Law Protects Hotel Workers From Threatening Behavior,” provides a citation to this chapter of the Buena Park Municipal Code, and notifies guests that the hotel employer provides personal security devices to its employees.

F. A hotel employer shall provide annual training to its hotel workers regarding how to use and maintain a personal security device, the hotel employer’s protocol for responding to activation of a personal security device, and the rights of hotel workers and obligations of the hotel employer as set forth in this section. Such training shall be provided to hotel workers by the later of thirty (30) days after the effective date of this chapter or within one (1) month of the hotel worker’s date of hire. For hotels having sixty (60) or more guest rooms, the hotel employer shall provide the training in each language spoken as the primary language of at least ten percent (10%) of the hotel’s workforce. The hotel employer shall maintain accurate records demonstrating attendance at such trainings.

§ 8.64.040 Measures to provide fair compensation for workload.

A. For hotels with fewer than forty (40) guest rooms, a hotel employer shall not require a room attendant to perform room cleaning amounting to a total of more than three thousand five hundred (3,500) square feet of floor space in any eight-hour workday, unless the hotel employer pays the room attendant twice the room attendant’s regular rate of pay for each and every hour worked during that workday. For hotels with forty (40) or more guest rooms, a hotel employer shall not require a room attendant to perform room cleaning amounting to a total of more than three thousand (3,000) square feet of floor space in any eight-hour workday, unless the hotel employer pays the room attendant twice the room attendant’s regular rate of pay for each and every hour worked during the workday. If a room attendant during a workday of eight (8) or more hours is assigned to clean any combination of six (6) or more special-attention rooms or additional-bed rooms, the total amount of square footage that will entitle a room attendant to premium pay under this section, referred to herein as the workload limitation, shall be reduced by five hundred (500) square feet for each such special-attention room or additional-bed room over five (5). If a room attendant is required to clean floor space in more than one (1) hotel building during a workday, the total workload limitation under this subsection shall be reduced by five hundred (500) square feet for each additional hotel building. If a room attendant is required to clean floor space on more than one (1) floor of a hotel building, the total workload limitation under this subsection shall be reduced by five hundred (500) square feet for each additional floor. The workload limitations contained in this section apply to any combination of spaces, including guest rooms, meeting rooms, and other rooms within the hotel, and apply regardless of the furniture, equipment, or amenities in such rooms. The hotel employer shall state the actual square footage of each room in any written assignment of rooms that it provides to room attendants.

B. The maximum floor space set forth in subsection A shall be reduced on a prorated basis if a room attendant works less than eight (8) hours in a workday, or is assigned to perform room cleaning for less than eight (8) hours in a workday, and shall be increased on a prorated basis for each hour of overtime that a room attendant works in excess of eight (8) hours in a workday, and

shall be calculated on a prorated basis by room attendant if a room attendant is assigned to clean rooms jointly with one (1) or more other room attendants.

C. A hotel employer shall not require or permit a hotel worker to work more than ten (10) hours in a workday unless the hotel worker consents in writing to do so. A hotel worker's consent shall not be valid unless the hotel employer has advised the hotel worker in writing prior to the hotel worker's consent that the hotel worker may decline to work more than ten (10) hours in a workday and that the hotel employer will not subject the hotel worker to any adverse employment action for declining to work more than ten (10) hours in a workday. This subsection shall not apply in the event of an emergency.

D. A hotel shall not implement any program or policy whereby guest rooms are not cleaned after each and every night that they are occupied, including a program under which guests receive a financial incentive to not have their guest room cleaned on a daily basis. This subsection does not prevent a hotel from continuing, modifying or establishing a sustainable environmental program, such as a "green program," under which guests are encouraged to re-use linens, bath towels or similar items, nor does it require a hotel to have any guest room cleaned when the occupant has opted-out of such service without solicitation by the hotel or when the occupant informs the hotel that they do not wish to be disturbed.

E. Each hotel employer shall maintain for at least three (3) years a record of each room attendant's name, rate of pay, pay received, identification of rooms cleaned, actual square footage of each room cleaned, number of special-attention rooms, number of additional hotel buildings, number of additional-bed rooms, and total square footage cleaned for each workday, overtime hours worked for each workday, and any written consents provided pursuant to subsection C of this section. A hotel employer shall make these records available for inspection and copying to any hotel worker or hotel worker's designated representative, except that the names and other personally identifying information of individual hotel workers shall be redacted except to the extent that the records identify the hotel worker who is making the request. A hotel employer shall maintain an accurate record of the square footage of each room that room attendants are assigned to clean, a copy of which shall be provided to any hotel worker who requests such record.

§ 8.64.050 Subcontracting of hotel room cleaning.

A. Effective thirty (30) days from the effective date of the Ordinance, a client hotel employer may not enter into any new, amended, or extended contract, oral or written, or any other arrangement under which a labor contractor supplies hotel workers to perform room cleaning, as defined in section 8.64.020.

B. Subsection A of this section shall not apply to a temporary contract between a client hotel employer and a labor contractor that meets the following criteria:

- (1) lasts no more than three (3) consecutive days and is not subject to renewal during the same calendar year;
- (2) addresses an unforeseen emergency; and
- (3) does not displace or reduce the working hours of any hotel employee employed by the client hotel employer who performs room cleaning.

C. A client hotel employer may use one or more labor contractors to perform room cleaning pursuant to one or more temporary contracts under subsection B of this section for no more than fifteen (15) days during any calendar year.

D. Each hotel employer shall maintain for a period of three (3) years records showing any contract or other arrangement with a labor contractor for the provision of hotel workers to provide room cleaning and documentation of any unforeseen emergency or unexpected increase in demand used to justify the use of a temporary contract or arrangement under subsection B of this section.

§ 8.64.060 Notice of change in control.

A. Within five (5) days of a change in control of a hotel, a successor employer shall post written notice of the change in control at the location of the affected hotel. This written notice shall remain posted during any closure of the affected hotel and for six (6) months following the first date on which the affected hotel is open to the public under the successor employer.

B. The written notice provided for in subsection A shall include, but not be limited to, the name and contact information of the incumbent employer, the name and contact information of the successor employer, and the effective date of the change in control.

C. The written notice provided for in subsection A shall be posted in a conspicuous place at the affected hotel and shall be readily visible to all eligible hotel workers, as well as other employees and applicants for employment.

§ 8.64.070 Hotel worker retention.

A. Within fifteen (15) days of a change in control, an incumbent employer shall provide a successor employer with a list of eligible workers. This list shall include the name, date of hire, and job classification of each eligible worker. A successor employer shall be required to maintain and hire from this list during the worker retention period.

B. A successor employer shall, during the worker retention period, offer each eligible worker employment for no less than ninety (90) days, except that:

1. A successor employer shall not be required to offer employment to an eligible worker if the successor employer has reasonable and substantiated cause not to retain that eligible worker based on that eligible worker's individual performance or conduct while employed by the incumbent employer; and
2. If a successor employer determines during the worker retention period that it requires fewer workers than were required by the incumbent employer, the successor employer shall retain eligible workers by seniority within each job classification to the extent that comparable job classifications exist.

C. An eligible worker retained pursuant to this section shall be employed under terms and conditions established by the successor 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 subsection B shall be made in writing and shall remain open for at least ten (10) business days from the date of the offer.

E. A successor employer shall retain written verification of each offer of employment made pursuant to subsection B. This verification shall include the name, address, date of hire, and job classification of the eligible worker to whom the offer was made. A successor employer shall retain the required verification for no less than three (3) years from the date the offer is made.

F. At the end of the worker retention period, a successor employer shall provide each worker retained pursuant to this section with a written performance evaluation. If the worker's performance was satisfactory, the successor employer shall consider offering the worker continued employment under the terms and conditions established by the successor employer and as required by law. A successor employer shall retain the written performance evaluation required under this subsection for no less than three (3) 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 and do not include the right to retain any supervisory or management responsibility.

§ 8.64.080 Hotel minimum wage payment requirements.

A. Hotel employers shall pay hotel workers a wage of no less than the hourly rates set under the authority of this section.

B. Starting thirty (30) days from the effective date of this Ordinance, the minimum wage for each hotel worker, not including gratuities, service charge distributions or bonuses to the hotel worker, shall be twenty-two and 00/100 dollars (\$22.00) per hour.

C. The minimum wage rate required under subsection B of this section this section shall be increased as follows:

1. On July 1, 2025, twenty-four and 00/100 dollars (\$24.00) per hour.
2. On July 1, 2026, twenty-seven and 00/100 dollars (\$27.00) per hour.

D. Starting July 1, 2027, and annually thereafter on July 1, the minimum wage shall be increased by the percentage increase over the preceding year (from January 1 to December 31, inclusive) in the Bureau of Labor Statistics Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) for the Los Angeles metropolitan area (Los Angeles-Riverside-Orange County, California), which is published by the Bureau of Labor Statistics. The City Manager shall announce the adjusted rates on March 1st and publish a bulletin announcing the adjusted rates, which shall take effect on July 1st of each year. Such bulletin will be made available to all hotel employers, and to any other person who has filed with the City Manager a request to receive such notice, but lack of notice shall not excuse noncompliance with this section. The City Manager shall prescribe a poster each year advising hotel workers of their rights under this section and distribute it to all hotel employers. A hotel employer shall post the notice in a prominent place where it will be seen by its hotel workers, as applicable. A hotel employer shall provide written notification of the rate adjustments to each of its hotel workers and make the necessary payroll adjustments by July 1st following the publication of the bulletin.

§ 8.64.090 Service changes.

A. Service charges shall not be retained by a hotel employer but shall be paid in their entirety to the hotel worker(s) who performed services for the customers from whom the service charges are collected. No part of these amounts may be paid to workers whose primary role is supervisory or managerial. No hotel employer or agent thereof shall deduct any amount from wages or other compensation due a hotel worker on account of a service charge, or require a hotel worker to credit the amount of a service charge, in whole or in part, against or as a part of the wages or other compensation due the hotel worker. Amounts collected as service charges shall be paid to hotel workers equitably and according to the services that are or appear to be related to the description of the service charge given by the hotel employer to the customers.

B. Without limitation of the foregoing:

1. Service charge amounts collected for hotel banquets or hotel-catered meetings shall be paid to the hotel workers who actually work at the banquet or catered meeting;
2. Service charge amounts collected for hotel room service shall be paid to the hotel workers who actually deliver food and beverage associated with the charge; and
3. Service charge amounts collected for hotel portage service shall be paid to the hotel workers who actually carry the baggage associated with the charge.

C. All service charges must be disclosed to customers with clear and conspicuous notice prior to the time that the customer makes a purchase or selection, in such a way that customers might easily and reasonably deduce what the service charge is for.

D. The hotel employer shall disclose in writing to each hotel worker its plan of distribution of service charges and shall report to hotel workers on each payroll date the amount of service charges collected and amount distributed to hotel workers for the pay period in question.

E. The amounts shall be paid to the hotel workers no later than the next payroll following collection of the service charge amounts from customers, except that any amounts collected in cash shall be paid to hotel workers at the close of business on the day the amounts are collected.

F. A hotel employer who permits customers to pay service charges by credit card shall pay the hotel workers the full amount of the service charge that the customer indicated on the credit card slip, without any deductions for any credit card payment processing fees or costs that may be charged to the hotel employer by the credit card company.

G. The hotel employer shall keep records showing compliance with the provisions of this section for no less than three years from the date of collection of service charge amounts from the customer.

H. This section does not apply to any tip, gratuity, money, or part of any tip, gratuity, or money that has been paid or given to or left for a hotel worker by customers over and above the actual amount due for services rendered or for goods, food, drink, or articles sold or served to customers.

§ 8.64.100 Limited waiver for certain hotel employers.

A. The City Manager shall grant a waiver from particular requirements of this chapter to any hotel employer who demonstrates, with evidence, that compliance with such requirements would require the employer, in order to avoid bankruptcy or a shutdown of the hotel, to reduce its workforce by more than twenty percent (20%) or curtail its hotel workers' total work hours by more than thirty percent (30%). The City Manager shall grant such a waiver only after reviewing an employer's evidence of its financial condition at the employer's expense. A waiver granted under this section shall be valid for no more than one (1) year. A determination by the City Manager to grant or deny a request for waiver under this section may be appealed by any interested person to the City Council within fourteen (14) days after the date of the City Manager's action. Notwithstanding this section, no waiver shall be granted with respect to the requirements of section 8.64.030 of this chapter.

B. Prior to submitting a waiver application pursuant to this section, a hotel employer shall provide written notice of the waiver application to all hotel workers, as applicable, employed by the employer. Within three (3) days of receiving a waiver determination from the City Manager under this section, a hotel employer shall provide written notice of the determination to all hotel workers employed by the employer.

§ 8.64.110 Notice.

A hotel employer shall provide written notice of the hotel workers' rights set forth in this chapter to each hotel worker, as applicable, at the time of hire or within thirty (30) days of the effective date of this chapter, whichever is later. Such written notice shall be provided in English, Spanish, and any other language known by the hotel employer to be spoken by ten percent (10%) or more of the workers employed by the employer at the relevant hotel.

§ 8.64.120 Retaliatory action prohibited.

No person shall discharge, reduce compensation of, take adverse employment action against, or otherwise discriminate against any hotel worker for opposing any practice proscribed or arguably proscribed by this chapter, for participating in proceedings related to this chapter, for seeking to enforce the worker's rights under this chapter by any lawful means, or for otherwise asserting rights under this chapter. A hotel employer taking any adverse employment action against any hotel worker who is known to have engaged in any of the foregoing activities within one (1) year preceding the adverse employment action shall provide to the worker at or before the time of the adverse employment action a detailed written statement of the reason or reasons for the discharge or other adverse employment action, including all the facts claimed to substantiate the reason or reasons.

§ 8.64.130 Administrative Regulations.

The City Manager is authorized to adopt administrative regulations that are consistent with and in furtherance of the provisions of this chapter. Violations of the administrative regulations adopted pursuant to this section and within the authority of the City Manager shall constitute violations of this chapter and shall subject the violator to the penalties set forth in this chapter.

§ 8.64.140 Joint civil liability.

A. A hotel employer who contracts with another person, including, without limitation, another hotel employer, a temporary staffing agency, employee leasing agency, or professional employer organization, to obtain the services of hotel workers shall share all civil legal responsibility and civil liability for violations of this chapter by that person for hotel workers performing work pursuant to the contract. For the purposes of this section, the term “person” shall not include:

1. A bona fide nonprofit organization that provides services to workers;
2. A bona fide labor organization, as defined in 29 U.S.C. § 152, or an apprenticeship program, training program, or hiring hall operated pursuant to a labor-management agreement.

§ 8.64.150 Supersession by collective bargaining agreement.

The provisions of sections 8.64.040 through 8.64.090 of this chapter, or any part thereof, may be waived pursuant to a bona fide collective bargaining agreement, but only if the waiver is expressly set forth in clear and unambiguous written terms. Neither party to a collective bargaining relationship may waive or supersede any provision of this chapter by means of unilaterally imposed terms and conditions of employment.

§ 8.64.160 Enforcement.

A. A hotel worker claiming violation of this chapter may report such claimed violation to the City Manager, who shall cause such complaint to be investigated. Whether based upon such a complaint or otherwise, where the City Manager or the City Manager’s delegatee has determined that a hotel employer has violated this chapter, the City Manager shall issue a written notice to the hotel employer that the violation is to be corrected within ten (10) days. In the event that the hotel employer has not demonstrated to the City Manager within such period that it has cured such violation, the City Manager may then request the City Attorney to pursue a civil action against the hotel employer under subsection B of this section.

B. In addition, the City or any aggrieved hotel worker may enforce the provisions of this chapter by means of a civil action, regardless of whether a complaint has been filed with the City Manager under subsection A of this section. A hotel worker’s filing of a complaint with the City Manager, or a hotel worker’s failure to file such a complaint with the City Manager, shall in no way alter that worker’s right to bring a civil action under this subsection.

C. Any person who commits an act, proposes to commit an act, or engages in any pattern or practice that violates this chapter may be enjoined therefrom by a court of competent jurisdiction. An action for an injunction under this subsection may be brought by any aggrieved hotel worker, by the City Attorney, or by any person or entity who will fairly and adequately represent the interests of an aggrieved worker or workers.

D. Any person who violates the provisions of this chapter is liable for any actual damages suffered by any aggrieved hotel worker and for statutory damages of one hundred and 00/100 dollars (\$100.00) per aggrieved hotel worker per each day of violation, except that statutory damages for

failure to maintain or provide records shall not exceed one thousand and 00/100 dollars (\$1,000.00) per day for all affected hotel workers. For willful violations, the amount of monies and penalties to be paid under this subsection shall be trebled.

E. In a civil action brought under this section, the court shall award a prevailing plaintiff reasonable attorneys' fees and costs, including expert witness fees.

F. The remedies set forth in this chapter are cumulative. Nothing in this chapter shall be interpreted as restricting, precluding, or otherwise limiting a separate or concurrent criminal prosecution under this Code or state law.

G. Notwithstanding any provision of this Code to the contrary, no criminal penalties shall attach for violation of this chapter.

H. This chapter shall not be construed to limit an aggrieved hotel worker's right to bring legal action for violation of any other federal, state, or local law.

§ 8.64.170 Amendment.

The Ordinance may not be repealed or amended without approval of the voters of the City of Buena Park, except that the City Council is authorized to amend any aspect of this chapter so long as the amendment strengthens or expands upon the protections this chapter provides for hotel workers.

§ 8.64.180 Severability.

If any section, subsection, sentence, clause, phrase, or application of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or applications of this ordinance. The voters of the City of Buena Park hereby declare that they would have passed and adopted this Ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the Ordinance would be subsequently declared invalid or unconstitutional.

Section 2: Conflicting Measures:

This measure is intended to be comprehensive. It is the intent of the people of the City of Buena Park that, should this measure and one or more measures relating to improving and protecting the welfare and/or setting the minimum wage of employees at hotels appear on the same ballot, the provisions of the other measure or measures shall be deemed to conflict with this measure. In the event that this measure receives a greater number of affirmative votes, the provisions of this measure shall prevail in their entirety, and all provisions of the other measure or measures shall be null and void.

Section 3: Effective Date:

If approved by the voters, this Ordinance, shall be deemed adopted upon the date that the vote is declared by the City Council, and shall take effect ten (10) days after that date. If the City Council adopts this Ordinance, it shall take effect on the earliest date allowed by law.

Section 4: Liberal Construction:

This measure is an exercise of the initiative power of the People of the City of Buena Park to implement the hotel worker protections and minimum wage increases set forth in the Ordinance, and it shall be liberally construed to effectuate these purposes.