

## **HOTEL WORKER MINIMUM WAGE AND PROTECTION ORDINANCE**

The people of the City of West Hollywood ordain as follows:

### **SECTION 1. TITLE**

This measure shall be known and may be cited as the Hotel Worker Minimum Wage and Protection Ordinance (the "Ordinance").

### **SECTION 2. FINDINGS AND PURPOSE**

The people of the City of West Hollywood hereby find and declare the following:

Income equality is one of the most pressing economic and social issues facing the City of West Hollywood. By reenacting certain hotel worker protections and minimum wages, 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 purpose of this Ordinance is to reenact certain existing hotel worker protections in full through the popular vote. Reenacting these protections through the popular vote is intended to ensure that future city councils cannot repeal or amend these protections without the consent of the voters. Cal. Elec. Code § 9217. This Ordinance provides that a city council can amend the provisions of the Ordinance only to increase or enhance the hotel worker protections or benefits set forth herein. Nothing in this Ordinance shall be construed to prevent or otherwise impair a city council from enacting other measures, separate from the provisions of this Ordinance, that provide additional or different protections or benefits for hotel workers.

### **SECTION 3. REENACTMENT AND AMENDMENT OF WEST HOLLYWOOD MUNICIPAL CODE, CHAPTER 5.127**

Chapter 5.127, titled "Hotel Worker Protection," of Title 5 of the West Hollywood Municipal Code is reenacted in full and amended as follows (new text is shown by underlining and deleted text is shown by ~~strikeout~~):

#### **§ 5.127.010. Definitions.**

As used in this chapter:

"Additional bed room" means 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 in compensation, reduce work hours, alter established work schedules, increase workload, impose fees or charges, or change duties of a hotel worker.

"Affected hotel" means: (A) in the event of a change in control as defined in ~~(4)~~(A) 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 (B) in the event of a change in control as defined in (4)(B) or (4)(C) below, the hotel that remains in operation following the change in control of that hotel. "Affected hotel" does not include portions of a hotel that are leased to third parties, or operated by third parties, for on-site services unaffiliated with the hotel employer's overnight lodging accommodations, including retail stores, spas, restaurants and bars.

"Change in control" means:

- (A) 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;
- (B) any sale, assignment, transfer, contribution, or other disposition of a controlling interest (including by consolidation, merger, or reorganization) of a hotel employer or any person who controls a hotel employer; or
- (C) 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 hotel 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.

"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 West Hollywood.

"City Manager" means the City Manager of West Hollywood, or designee.

"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 two months prior to the change in control.

"Emergency" means an immediate threat to public safety or of 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 or suite of rooms intended to be used by a guest of a hotel for sleeping purposes.

"Hotel" means a commercial facility not approved as a dwelling unit with guest rooms or suites, provided with or without meals or kitchen facilities, rented to the general public for overnight or other lodging generally not intended to be the guest's domicile. Also, may include accessory guest facilities, such as, but not limited to, swimming pools, tennis courts, indoor athletic facilities, accessory retail uses and meeting facilities. This definition includes private clubs with guest rooms available for overnight lodging.

"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 hotel workers to provide services at a hotel in conjunction with the hotel's purpose.

"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.

"Hotel worker retention period" means the period of time beginning on the date of a change in control and extending to ninety days from the first date that an affected hotel is open to the public after a change in control.

"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.

"Laid-off hotel worker" means any individual who, in a particular week, performs at least two hours of work within the geographic boundaries of the city for a hotel employer, has a length of service with the hotel employer of six months or more in the twelve months preceding March 16, 2020, and whose most recent separation from active service, or failure to be scheduled for customary seasonal work, occurred on or after March 16, 2020, and before any termination of the Declaration of Emergency proclaimed by the City Council on March 16, 2020, and was due to a government shutdown order, lack of business, a reduction in force or other, economic, non-disciplinary reason. For purposes of this chapter, a laid-off employee does not include a manager, supervisor, or confidential employee.

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

"Personal security device" means a portable emergency contact device, including, but not limited to, a panic button, that is designed so that a hotel worker can quickly and easily activate such device to summon to the hotel worker's location prompt assistance by a hotel security officer, manager or supervisory hotel staff member designated by a hotel employer.

"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 prepare or maintain the cleanliness of the physical hotel guest room before, during, or after a guest's stay. Room cleaning does not include tasks associated with preparing already-made beds for sleep, maintaining or delivering inventory (e.g. mini-bar, toiletries, towels, extra linens), or inspecting completed room cleaning. 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. Making unmade beds, regardless of whether a change of linen is required, is not an excluded activity.

"Successor hotel employer" means a hotel employer who owns, controls, or operates a hotel

after a change in control.

"Violent or threatening conduct" means: (A) 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 (B) 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 hour period commencing at the same time each calendar day.

**§ 5.127.020. Measures to Protect Hotel Workers from Violent or Threatening Conduct.**

a. *Personal Security Devices.*

1. 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 present in the guest room or restroom facility. The personal security device shall be provided at no cost to the hotel worker.
2. 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.
3. A hotel employer shall assign a security guard, manager, or supervisory hotel staff member to provide immediate on-scene assistance in the event that a personal security device is activated.

b. *Hotel Workers' Rights.* 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 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.
- c. *Notice.* 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 points, that includes the heading "The Law Protects Hotel Workers From Threatening Behavior," provides a citation to this chapter of the West Hollywood Municipal Code, and notifies guests that the hotel employer provides personal security devices to its employees.
- d. *Training.* A hotel employer shall provide 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 on the later of the effective date of this chapter or within one month of the hotel worker's date of hire.
- e. *Records.* A hotel employer shall retain records of incidents where the personal security devices were activated for a period of three years from the incident.

#### **§ 5.127.030. Measures to Provide Fair Compensation for Workload.**

- a. *Workload.* For hotels with fewer than forty guest rooms, a hotel employer shall not require a room attendant to clean rooms amounting to a total of more than four thousand 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. For hotels with forty or more guest rooms, a hotel employer shall not require a room attendant to clean rooms amounting to a total of more than three thousand five hundred 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 is assigned to clean seven or more checkout room or additional bed rooms during any eight-hour workday, each such checkout room or additional bed room shall for purposes of this subsection count as five hundred square feet, regardless of the actual square footage of each room. The limitations contained herein 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.
- b. *Workload Proration.* The workload amount set forth in subsection (a) shall be reduced on a prorated basis if a room attendant works less than eight hours in a workday, shall be increased on a prorated basis for each hour of overtime that a room attendant works in excess of eight 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 or more other room attendants.

- c. *Voluntary Overtime.* A hotel employer shall not require or permit a hotel worker to work more than ten 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 seven days prior to the hotel worker's consent that the hotel worker may decline to work more than ten 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 hours in a workday. This subsection shall not apply in the event of an emergency.
- d. *Preservation of Records.* Each hotel employer shall maintain for at least three years a record of each room attendant's name, rate of pay, pay received, rooms cleaned or total square footage cleaned for each workday, overtime hours worked for each workday, and any written consents provided pursuant to subsection (c) above. A hotel employer shall make these records available for inspection and copying to any hotel worker or hotel worker's employee 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.

#### **§ 5.127.040. Right of Hotel Worker Recall.**

- a. *Notice to Laid-Off Hotel Workers.* A hotel employer must offer its laid-off hotel workers in writing, by mailing to their last known physical address, and by email and text message to the extent the hotel employer possesses such information, all job positions which become available after this chapter's effective date for which the laid-off hotel workers are qualified. A laid-off hotel worker is qualified for a position if the employee:
  - 1. Held the same or similar position at the site of employment at the time of the laid-off hotel employee's most recent separation from active service with the hotel employer; or
  - 2. Is or can be qualified for the position with the same training that would be provided to a new hotel worker hired into that position.
- b. *Preference.* The hotel employer must offer positions to laid-off hotel workers in an order of preference corresponding to categories (1) and (2) in the preceding sentence. Where more than one hotel worker is entitled to preference for a position, the hotel employer must offer the position to the laid-off hotel worker with the greatest length of service for the hotel employer.
- c. *Offer Acceptance or Declination.* A laid-off hotel worker who is offered a position pursuant to this chapter must be given no less than ten business days in which to accept or decline the offer. A hotel employer may make simultaneous, conditional offers of employment to laid-off hotel workers, with the final offer of employment conditioned on application of the priority system set forth in subsection (b) of this section.

- d. *Notice of Non-Selection.* A hotel employer that declines to recall a laid-off hotel worker on the grounds of lack of qualifications and instead hires someone other than the laid-off hotel worker must provide the laid-off hotel worker a written notice of the non-selection within thirty days of the date of hire documenting the reasons for such decision. The written record must be retained for no less than three years and made available to the city or laid-off hotel worker upon request.
- e. *Notice of Rights.* A hotel employer must provide each laid-off hotel worker with a written notice of the date of their lay off and their rights under this chapter. The hotel employer must provide such written notice within thirty days of the effective date of this chapter, if the layoff took place before that date, or at the time of the layoff if the layoff occurs after that date. Such notice shall be provided in person or to the laid-off hotel worker's last known mailing address, and by email to the extent the hotel employer possesses that information.
- f. *Records Retention.* A hotel employer must retain the following records for at least three years regarding each laid-off hotel worker: 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 regarding the layoff provided to the employee. For purpose of this chapter, the three years is measured from the date of the written notice provided under subsection (d), above.
- g. *Effect of Sale or Assignment.* The provisions of this section also apply when the ownership of the hotel employer changes due to a sale, assignment transfer, or other disposition of substantially all assets of the hotel employer, after the laid-off hotel worker separates from employment provided the enterprise is conducting the same or similar operation as before the sale or assignment.
- h. Notwithstanding the definitions in this chapter, the City Council may by resolution apply the terms of this section to future periods of declared local emergency, or other periods of government shut down order, significant economic downturns or other similar events that result in significant economic, non-disciplinary layoffs.

#### **§ 5.127.050. Hotel Worker Retention.**

- a. *Notice of Change in Control.* Within five days of a change in control, a successor hotel 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 months following the first date on which the affected hotel is open to the public under the successor hotel employer. This written notice shall include, but not be limited to, the name and contact information of the incumbent hotel employer, the name and contact information of the successor hotel employer, and the effective date of the change in control. This written notice shall be posted in a conspicuous place at the affected hotel and shall be readily visible to eligible hotel workers, other employees, and applicants for employment.
- b. *Eligible Hotel Worker Recall.* Within fifteen 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 be required to maintain and hire from this list during the hotel worker retention period. A successor hotel employer shall, during the hotel worker retention period, offer each eligible hotel worker employment for no less than ninety days, 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 reasonable and substantiated cause not to retain that eligible hotel worker based on that eligible hotel worker's individual performance or conduct 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 pursuant to the terms of a relevant collective bargaining agreement, if any, or by seniority and experience within each job classification to the extent that comparable job classifications exist.
- c. *Terms and Conditions of Employment.* An eligible hotel worker retained pursuant to this section shall be employed under 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. *Offer.* An offer of employment made pursuant to subsection (b) shall be made in writing and shall remain open for at least ten business days from the date of the offer.
- e. *Verification.* A successor hotel 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 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. *Performance Evaluation.* 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. *Exceptions.* 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 upon recall.



**§ 5.127.060. Public Housekeeping Training.**

- a. *Certification and Designation.* The City Manager shall establish a process whereby the city will certify and designate at least one "Public Housekeeping Training Organization." The certification and designation of the Public Housekeeping Training Organization shall be carried out by the City Manager subject to ratification by the City Council.
- b. *Requirements.* In order to become certified as a designated Public Housekeeping Training Organization, the organization shall meet requirements set forth by the City Manager that shall include, but not be limited to, the following:
  1. The Public Housekeeping Training Organization must have experience providing training to hotel workers or immigrant low-wage workers, utilize interactive teaching strategies that engage across multiple literacy levels, and provide trainers and educators who are culturally competent and fluent in the language or languages that hotel workers understand.
  2. The Public Housekeeping Training Organization shall offer a "Public Housekeeping Training Program" that includes no less than six hours of training, including live and interactive instruction, on the following elements, except that the City Manager may determine that any element below is separately and sufficiently required by state or local law, in which case the element may be eliminated and the total training time reduced accordingly:
    - A. Hotel worker rights and hotel employer responsibilities under this chapter;
    - B. Best practices for identifying and responding to suspected instances of human trafficking, domestic violence, or violent or threatening conduct;
    - C. Best practices for effective cleaning techniques to prevent the spread of disease;
    - D. Best practices for identifying and avoiding insect or vermin infestations; and
    - E. Best practices for identifying and responding to the presence of other potential criminal activity.
  3. The Public Housekeeping Training Organization may coordinate with a hotel employer to ensure that training content aligns where appropriate with the hotel employer's policies and procedures. Ultimate discretion regarding training content shall remain with the Public Housekeeping Training Organization, subject to requirements set forth by the City Manager.
  4. The Public Housekeeping Training Organization shall administer a "Public Housekeeping Examination" to hotel workers who complete its training

program. The Public Housekeeping Examination shall test basic proficiency in the required training elements.

5. The Public Housekeeping Training Organization shall promptly issue a "Public Housekeeping Certificate" to any person who successfully completes its Public Housekeeping Training Program and Public Housekeeping Examination. A Public Housekeeping Certificate shall be valid for a period of five years.
  6. The Public Housekeeping Training Organization shall offer a right of review to an individual who completes the Public Housekeeping Training Program but does not successfully complete the Public Housekeeping Examination.
- c. *Training Program.* A hotel employer shall contract with a certified Public Housekeeping Training Organization to, no less than annually, conduct a Public Housekeeping Training Program, administer a Public Housekeeping Examination, and issue a Public Housekeeping Certificate to each person who has successfully completed the Public Housekeeping Training Program and Public Housekeeping Examination. A hotel employer shall document compliance with the training requirement set forth in this section by completing and signing a form as required by the city to certify that the training was conducted. The Public Housekeeping Training Organization that provides such a training shall submit a report to the city within five days of the training to document the date on which the training was held and the names of all hotel workers who received Public Housekeeping Certificates.
  - d. *Certificate.* No hotel employer shall employ a hotel worker to work as a room attendant for more than one hundred twenty days unless the hotel worker presents the hotel employer with a valid Public Housekeeping Certificate.
  - e. *Records.* Each hotel employer shall retain records sufficient to demonstrate compliance with this section, including a copy of a valid Public Housekeeping Certificate for each hotel worker then assigned to work as a room attendant.

**§ 5.127.070. Limited Waiver for Certain Hotel Employers.**

- a. *Waiver Application.* The City Manager shall grant a waiver from the requirements of this chapter to any hotel employer who demonstrates that compliance with this chapter would require the hotel employer, in order to avoid bankruptcy or a shutdown of the hotel employer's hotel, to reduce its workforce by more than twenty percent or curtail its hotel workers' total hours by more than thirty percent. The City Manager shall grant such a waiver only after reviewing a hotel employer's financial condition at the hotel employer's expense. A waiver granted under this section shall be valid for no more than one year. A determination by the City Manager to grant or deny a request for waiver under this section may be appealed to a hearing examiner in accordance with established city practices for hearing examiner review.
- b. *Notice of Waiver Application.* 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 employed by the hotel employer. Within three 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 hotel employer.

**§ 5.127.080. Notice.**

A hotel employer shall provide written notice of the hotel workers' rights set forth in this chapter to each hotel worker at the time of hire or on the effective date of this chapter, whichever is later. Such written notice shall be provided in English, Spanish, and any other language spoken by five percent or more of the hotel workers employed by the hotel employer.

**§ 5.127.090. Retaliatory Action Prohibited.**

No person shall take an adverse employment action against a hotel worker for exercising rights protected under this chapter. There shall be a rebuttable presumption that an adverse employment action taken against a hotel worker within ninety days of the hotel worker's exercise of rights under this chapter was taken in retaliation for the exercise of such rights.

**§ 5.127.100. Administrative Regulations.**

The City Manager is hereby authorized to promulgate and enforce administrative regulations in the implementation and enforcement of this chapter. Violations of the administrative regulations adopted pursuant to this section shall constitute violations of this chapter and shall subject the violator to the penalties set forth in this chapter.

**§ 5.127.110. Supersession by Collective Bargaining Agreement.**

The provisions of the following sections, 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:

- a. Measures to provide fair compensation for workload (Section 5.128.030);
- b. Right of hotel worker recall (Section 5.128.040); and
- c. Hotel worker retention (Section 5.128.050).

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.

**§ 5.127.120. Civil Remedies.**

- a. *Civil Action.* The city or any aggrieved person may enforce the provisions of this chapter by means of a civil action.
- b. *Injunction.* 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 injunction under this subsection may be brought by any aggrieved person, by the City Attorney, or by any person or entity who will fairly and adequately represent the interests of an aggrieved person or persons.

- c. *Damages and Penalties.* Any person who violates the provisions of this chapter is liable for any actual damages suffered by any aggrieved person or for statutory damages up to the amount of \$100 per aggrieved person per day, except that statutory damages for failure to maintain records shall not exceed \$1,000 per day in total. For willful violations, the amount of monies and penalties to be paid under this subsection shall be trebled.
- d. *Attorneys' Fees and Costs.* In a civil action brought under this section, the court shall award the prevailing party reasonable attorneys' fees and costs, including expert witness fees, except that, notwithstanding Section 998 of the Code of Civil Procedure, a prevailing defendant shall not be awarded fees and costs unless the court finds the action was frivolous, unreasonable, or groundless when brought, or the plaintiff continued to litigate after it clearly became so.
- e. *Cumulative Remedies.* 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.

#### **§ 5.127.130. Amendments**

This chapter may not be repealed or amended without approval of the voters of the City of West Hollywood, except that the City Council is authorized to amend this chapter only to the extent the amendment strengthens, enhances, or expands upon the protections or benefits this chapter provides for employees.

#### **SECTION 4. REENACTMENT OF PORTIONS OF WEST HOLLYWOOD MUNICIPAL CODE SECTION 5.130.020**

Subsections (a), (b)(1), and (c)(1) of Section 5.130.020 in Chapter 5.130 of Article 5 of Title 5 of the West Hollywood Municipal Code are substantively reenacted as follows. The remaining subsections of Section 5.130.020 are restated for technical purposes only.

#### **§ 5.130.020. Minimum Wage Payment Requirements.**

- a. On January 1, 2022, the established minimum wage rate in West Hollywood is \$17.64 per hour, as increased in accordance with subsection (c) below.
- b. The minimum wage rate goes into effect according to the following schedule:
  - 1. As of January 1, 2022, hotel employers shall pay hotel workers a wage of no less than the established minimum wage rate as set out in subsection (a). The paid sick leave, vacation, or personal necessity time set out in Section 5.130.030 goes into effect for these hotel workers on this date. For purposes of this subsection, the following definitions apply:

"Hotel" means a commercial facility not approved as a dwelling unit with guest rooms or suites, provided with or without meals or kitchen facilities, rented to the general public for overnight or other lodging generally not intended to be the

guest's domicile. Also, may include accessory guest facilities such as, but not limited to, swimming pools, tennis courts, indoor athletic facilities, accessory retail uses and meeting facilities. This definition includes private clubs with guest rooms available for overnight lodging. "Hotel" includes any contracted, leased, or sublet premises connected to or operated in conjunction with the hotel's purpose.

"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 hotel workers to provide services at a hotel in conjunction with the hotel's purpose. "Hotel employer" includes a person or entity who owns, controls, and/or operates any contracted, leased or sublet premises connected to or operated in conjunction with the hotel's purpose, or a person or entity who provides services at the hotel.

"Hotel worker" means any individual whose primary place of employment is at one or more hotels and who is employed directly by the hotel employer, or by a person who has contracted with the hotel employer to provide services at the hotel. "Hotel worker" includes an employee who works in a restaurant or food and beverage service at a hotel, regardless of whether the restaurant is hotel-owned or operates out of a contracted, leased, or sublet space in a hotel. Except for purposes of implementing this schedule in Section 5.130.020(b), in all other subsections of this section and throughout the rest of this chapter, "hotel employer" is included in the definition of "employer," and "hotel worker" is included in the definition of "employee":

2. Employers with Fifty Employees or More.
  - A. On January 1, 2022, employers with fifty employees or more shall pay employees no less than the hourly wage of \$15.50 per hour.
  - B. On July 1, 2022, employers with fifty employees or more shall pay employees no less than the hourly wage of \$16.50 per hour. The paid sick leave, vacation, or personal necessity time set out in Section 5.130.030 does not go into effect for these employees until this date.
  - C. On January 1, 2023, employers with fifty employees or more shall pay employees no less than the hourly wage of \$17.50 per hour.
  - D. On July 1, 2023, employers with fifty employees or more shall pay employees the established minimum wage rate under subsection (a).
3. Employers with Less Than Fifty Employees.
  - A. On January 1, 2022, employers with less than fifty employees shall pay employees no less than the hourly wage of \$15 per hour.
  - B. On July 1, 2022, employers with less than fifty employees shall pay employees no less than the hourly wage of \$16 per hour. The paid sick leave, vacation, or personal necessity time set out in Section

5.130.030 does not go into effect for these employees until this date.

- C. On January 1, 2023, employers with less than fifty employees shall pay employees no less than the hourly wage of seventeen dollars(\$17.00) per hour.
- D. On July 1, 2023, employers with less than fifty employees shall pay employees the established minimum wage rate under subsection (a).

c. *Annual Increases.*

- 1. For hotel employers, on July 1, 2022 and annually thereafter, the minimum wage rate identified in subsection (a) of this section will increase based on the CPI-W, as determined by the applicable location index determined and adopted by City Council resolution. The city shall announce the adjusted rates annually on or before each April 1 and publish a bulletin announcing the adjusted rates, which shall also take effect on July 1 of each year.
  - 2. For all other employers (excluding hotel employers), on July 1, 2023, the minimum wage rate identified in subsection (a) of this section will increase based on the CPI-W, as determined by the applicable location index determined and adopted by City Council resolution. On January 1, 2025, the minimum wage rate identified in subsection (a) of this section will increase based on the average of the twelve-month percent change for each of the eighteen months from January 2023 to June 2024 of the CPI-W, as determined by the applicable location index determined and adopted by City Council resolution. On January 1, 2026 and annually thereafter, the minimum wage rate identified in subsection (a) of this section will increase based on the average of the twelve-month percent change for each of the twelve months from July to June of the prior year of the CPI-W, as determined by the applicable location index determined and adopted by City Council resolution. The city shall announce the adjusted rates annually on or before each October 1 and publish a bulletin announcing the adjusted rates, which shall also take effect on January 1 of the next year.
- d. Employees who are learners, as defined in Labor Code Section 1192 and consistent with wage orders published by the California Industrial Welfare Commission, shall be paid not less than eighty-five percent of the minimum wage rounded to the nearest nickel during their first one hundred sixty hours of employment, after which learners shall be paid the applicable minimum wage pursuant to this section.
- e. Every employer shall post in a conspicuous place at any workplace or job site where any employee works, the bulletin published each year by the city informing employees of the current minimum wage rate and of their rights under this chapter. Every employer shall post notices in English, Spanish, and any other language spoken by at least five percent of the employees. Every employer shall also provide to each employee at the time of hire, the employer's name, address, and telephone number in writing.

- f. Every employer shall retain payroll records pertaining to employees for no less than three years.
- g. For purposes of this section:
  - 1. Multiple employers that form a single integrated enterprise shall be considered a single employer under this section if so deemed under the Fair Labor Standards Act.
  - 2. The number of employees shall be determined as follows:
    - A. For existing employers, the number of employees shall be calculated based on the average number of employees employed per quarter during the most recent calendar year.
    - B. For new employers, an initial determination of size shall be based upon the actual number of hires at the time of the business's opening. After the business has opened, the employee count shall be determined by the average number of employees per week who worked for compensation in the first ninety days.
    - C. The number of employees shall be determined using the employer's total number of individual employees within the United States, regardless of where those employees work.

**SECTION 5. REENACTMENT OF WEST HOLLYWOOD MUNICIPAL CODE  
SECTION 5.130.030**

Section 5.130.030 in Chapter 5.130 of Article 5 of Title 5 of the West Hollywood Municipal Code is reenacted in full as follows:

**§ 5.130.030 Paid Sick Leave, Vacation, or Personal Necessity.**

- a. Employers shall provide at least ninety-six compensated hours off per year for sick leave, vacation, or personal necessity to full time employees to be made available at the employee's request.
  - 1. A full time employee is classified as someone who works at least forty hours a week or in accordance with the employer's policies, if more generous. A full time employee shall accrue at least ninety-six/fifty-two hours of compensated time off each week in a calendar year that the employee has been employed by the employer. Compensated time off does not accrue for work in excess of forty hours a week. Full time employees that work less than forty hours a week will receive the compensated time off in proportional increments.

2. A part time employee is classified as someone who works less than forty hours per week or in accordance with the employer's policies, if more generous. A part time employee shall accrue compensated time off in increments proportional to that accrued by someone who works forty hours a week, in accordance with subparagraph (1) of this subsection.
  3. General Rules for Compensated Time Off.
    - A. An employee must be eligible to use accrued paid compensated time off after the first six months of employment or consistent with company policies, whichever is sooner.
    - B. An employer may not unreasonably deny an employee's request to use the accrued compensated time off.
    - C. Unused accrued compensated time off will carry over until the time off reaches a maximum of one hundred ninety-two hours unless the employer's established policy is more generous.
    - D. An employer may not implement any employment policy to count accrued compensated time off taken under this section as an absence that may result in discipline, discharge, suspension, or any other adverse action.
- b. Employers shall also permit full time employees to take at least eighty additional hours per year of uncompensated time off to be used for sick leave for the illness of the employee or a member of his or her immediate family where the employee has exhausted his or her compensated time off for that year.
1. A full time employee is classified as someone who works at least forty hours a week or in accordance with the employer's policies, if more generous. A full time employee shall accrue at least eighty/fifty-two hours of uncompensated time off each week in a calendar year that the employee has been employed by the employer. Uncompensated time off does not accrue for work in excess of forty hours a week. Full time employees that work less than forty hours a week will receive the uncompensated time off in proportional increments.
  2. A part time employee is classified as someone who works less than forty hours per week or in accordance with the employer's policies, if more generous. A part time employee shall accrue uncompensated time off in increments proportional to that accrued by someone who works forty hours a week, in accordance with subparagraph (1) of this subsection.
  3. General Rules for Uncompensated Time Off.
    - A. An employee must be eligible to use accrued uncompensated time off after the first six months of employment or consistent with company policies, whichever is sooner.



- B. An employer may not unreasonably deny an employee's request to use the accrued uncompensated time off.
- C. Unused accrued uncompensated time off will carry over until the time off reaches a maximum of eighty hours, unless the employer's established policy is more generous.
- D. An employer may not implement any employment policy to count uncompensated time off taken under this section as an absence that may result in discipline, discharge, suspension, or any other adverse action.

**SECTION 6. REENACTMENT OF WEST HOLLYWOOD MUNICIPAL CODE  
SECTION 5.130.050**

Section 5.130.050 in Chapter 5.130 of Article 5 of Title 5 of the West Hollywood Municipal Code is reenacted in full as follows:

**§ 5.130.050. Service Charges.**

- a. *Service Charges.* Employers shall distribute all service charges in their entirety to the employee(s) who performed services for the customers from whom the service charges are collected. No part of these amounts may be paid to employees whose primary role is supervisory or managerial. No employer or agent thereof shall deduct any amount from wages or other compensation required by this chapter due an employee on account of a service charge or require an employee to credit the amount of a service charge, in whole or in part, against and as a part of the wages or other compensation required by this chapter due the employee.
  - 1. Amounts collected as service charges shall be paid to employee(s) equitably and according to the services that are or appear to be related to the description of the amounts given by the employer to the customers. Employees whose roles are primarily non-managerial or non-supervisory, and who directly or indirectly contributed to the chain of services performed for the customers from whom the service charge is collected, may share in the distribution of the service charge amounts. Except as otherwise required by law, amounts collected as healthcare-related surcharges shall be: (A) deposited within seven days of their collection into segregated accounts controlled exclusively by employees, including, but not limited to, flexible spending accounts, health savings accounts, or premium-only cafeteria plans; or (B) paid to employees in wages. No part of any amount collected as a surcharge for healthcare, or any other employee benefit shall revert to the employer.
  - 2. Notwithstanding the foregoing:
    - A. Amounts collected for hotel banquets or hotel-catered meetings shall be paid to the employees who actually work at the banquet or catered meeting;

- B. Amounts collected for hotel room service shall be paid to the employees who actually deliver food and beverage associated with the charge; and
  - C. Amounts collected for hotel portorage service shall be paid to the employees who actually carry the baggage associated with the charge; provided, however, that employers that had, prior to the effective date of this chapter, an existing practice of pooling and distributing the amounts specified in this subdivision to non-management/non-supervisory employees other than the above listed employees in subdivisions (a) through (c) may continue such practice to the same extent.
- b. All service charges must be disclosed to consumers 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.
  - c. If an employer characterizes and separately designates a service charge as optional, the designation must be written in a manner that requires the customer to affirmatively add the optional payments. The employer shall not automatically add such optional payment amounts to a customer receipt, invoice, or billing statement in a manner that requires the customer to affirmatively opt out of paying such amounts.
  - d. The employer shall disclose in writing to each employee its plan of distribution of service charges and shall report to employees on each payroll date on the amount of service charges collected and amounts distributed to employees for the pay period in question.
  - e. The amounts shall be paid to the employees no later than the next payroll following collection of the amounts from customers, except that any amounts collected in cash shall be paid to employees at the close of business on the day the amounts are collected.
  - f. An employer that permits customers to pay service charges by credit card shall pay the employees 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 employer by the credit card company.
  - g. The 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 an employee by customers over and above the actual amount due for services rendered or for goods, food, drink, or articles sold or served to customers.

## **SECTION 7. CREATION OF WEST HOLLYWOOD MUNICIPAL CODE SECTION 5.130.070**

**Section 5.130.170 in Chapter 5.130 of Article 5 of Title 5 of the West Hollywood Municipal Code is created as follows (new text in underline):**

### **§ 5.130.170. Amendments.**

Subsection (a), paragraph (1) of subsection (b), and paragraph (1) of subsection (c) of section 5.130.020, section 5.130.030, and section 5.130.050, may not be repealed or amended without approval of the voters of the City of West Hollywood, except that the City Council is authorized to amend those provisions only to the extent the amendment strengthens, enhances, or expands upon the protections or benefits those provisions provide for employees.

## **SECTION 8. EFFECTIVE DATE**

The amendments, reenactments, and additions in this Ordinance shall be considered as adopted upon the date that the vote is declared by the City Council, and shall go into effect 10 days after that date.

## **SECTION 9. SEVERABILITY**

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance or any part thereof is for any reason held to be invalid, unlawful or unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance, or any part thereof. The voters of the City of West Hollywood hereby declare that they would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional.

## **SECTION 10. CONFLICTING MEASURES**

This measure is intended to be comprehensive. It is the intent of the people of the City of West Hollywood 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 11. LIBERAL CONSTRUCTION**

This measure is an exercise of the initiative power of the people of the City of West Hollywood 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.