

Monterey County

*Monterey County
Meeting Held via Zoom*



Meeting Agenda - Final

Tuesday, April 13, 2021

9:00 AM

Or Telephone:
1-669-900-6833

<https://montereycty.zoom.us/j/91293257126>

COVID-19 Hospitality Ad-Hoc Committee

*Supervisor John M. Phillips - District 2
Supervisor Mary L. Adams - District 5*

Agenda

1. Presentation on Board referral for a “Hospitality Recall Ordinance

Attachments: [ATTACHMENT A \(Board Referral\)](#)
[ATTACHMENT B \(Board Presentation\)](#)
[ATTACHMENT C \(Unite Here Template\)](#)
[ATTACHMENT D \(Draft County Ordinance\)](#)
[ATTACHMENT E \(Issues Needing Direction\)](#)
[ATTACHMENT F \(Gov Newsom Veto\)](#)

2. Perspective from Labor Groups and Employees
3. Perspective from Hospitality Industry

Public Comment

4. Recommendation from Hospitality Ad Hoc Committee

Adjournment



Monterey County

Item No.1

Board Report

Board of Supervisors
Chambers
168 W. Alisal St., 1st Floor
Salinas, CA 93901

Legistar File Number: 21-316

April 13, 2021

Introduced: 4/9/2021

Current Status: Agenda Ready

Version: 1

Matter Type: General Agenda Item

Presentation on Board referral for a "Hospitality Recall Ordinance"

**Monterey County Board of Supervisors
Referral Submittal Form**

Referral No. 2021.03
Assignment Date: 2/09/21
(Completed by CAO's Office)

SUBMITTAL - Completed by referring Board office and returned to CAO no later than noon on Thursday prior to Board meeting:

Date: 2/3/2021	Submitted By: LUIS ALEJO	District #: 1
Referral Title: Monterey County Hospitality and Travel Worker Right-to-Recall Ordinance		
Referral Purpose: To recall laid-off Monterey County hospitality, restaurant and travel workers when our economy re-opens based on greatest length of service.		
<p>Brief Referral Description (attach additional sheet as required): The COVID-19 pandemic has had a major adverse impact on Monterey County's second largest industry in hospitality and travel-related businesses with an estimated 25,000 employees. Thousands of hospitality, restaurant, and travel-related workers have been separated from their jobs already during the COVID pandemic, and many thousands more are expected to face separation in the coming months. What these workers need most is the promise of a return to their previous jobs as the pandemic recedes and business returns, protecting their earned wages and benefits and reducing stress and anxiety. Honoring the right of return by former employees will speed the transition back to a functioning labor market and will lessen the damage to the Monterey County's economy.</p> <p>This referral aims to establish an ordinance that requires employers to recall the same workers as before the pandemic, as their enterprises resume operation and restore their workforces as they are able. The ordinance will require an employer to offer its laid-off employees in writing all job positions which become available after this ordinance becomes effective, and shall offer the position to the laid-off employee with the greatest length of service. Other local governments, including the Cities of Oakland, San Diego and Santa Clara, have recently approved similar measures to protect their hospitality and travel-related workers. Monterey County, however, would be the first county in California to approve such a measure to recall its hospitality and travel-related workers.</p>		
Classification - Implication		Mode of Response
<input type="checkbox"/> Ministerial / Minor	<input type="checkbox"/> Memo	<input checked="" type="checkbox"/> Board Report <input checked="" type="checkbox"/> Presentation
<input type="checkbox"/> Land Use Policy	Requested Response Timeline	
<input checked="" type="checkbox"/> Social Policy	<input type="checkbox"/> 2 weeks	<input checked="" type="checkbox"/> 1 month <input type="checkbox"/> 6 weeks
<input type="checkbox"/> Budget Policy	<input checked="" type="checkbox"/> Status reports until completed	
<input checked="" type="checkbox"/> Other: <u>Pandemic Economic Recovery</u>	<input type="checkbox"/> Other: _____ <input type="checkbox"/> Specific Date: _____	

ASSIGNMENT – Provided by CAO at Board Meeting. Copied to Board Offices and Department Head(s) Completed by CAO's Office:

Department(s): Human Resources CAO-Workforce Development Board /County Counsel	Referral Lead: Irma Ramirez Bough Chris Donnelly /Les Girard	Board Date: 2/9/21
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REASSIGNMENT – Provided by CAO. Copied to Board Offices and Department Head(s). Completed by CAO's Office:

Department(s):	Referral Lead:	Date:
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ANALYSIS - Completed by Department and copied to Board Offices and CAO:

Department analysis of resources required/impact on existing department priorities to complete referral:

Analysis Completed By:

Date: _____

Department's Recommended Response Timeline

- By requested date
- 2 weeks 1 month 6 weeks 6 months
- 1 year Other/Specific Date: _____

REFERRAL RESPONSE/COMPLETION - Provided by Department to Board Offices and CAO:

Referral Response Date:

Board Item No.:

Referrals List Deletion:



PROGRESS UPDATE TO THE MONTEREY COUNTY BOARD OF SUPERVISORS: RIGHT TO RECALL ORDINANCE

April 6, 2021

RIGHT TO RECALL ORDINANCE PROGRESS UPDATE TO THE BOARD OF SUPERVISORS

The Office of Supervisor Alejo provided a referral to draft an ordinance to recall laid-off Monterey County hospitality and restaurant workers as our economy reopens

- The referral aims to establish an ordinance that requires a *covered employer* in Monterey County's Unincorporated Areas to recall the same individuals working before the pandemic as their enterprises resume operations and to offer these laid-off employees in writing those job positions which become available after this ordinance becomes effective, based on employee length of service.
 - Other local governments, including the Cities of Oakland, San Diego and Santa Clara, have approved similar measures to protect their workers.
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RIGHT TO RECALL ORDINANCE PROGRESS UPDATE TO THE BOARD OF SUPERVISORS

The Workforce Development Board and County Counsel have been working on the follow items for the Right to Recall Ordinance:

- Review of other jurisdictions' Right to Recall Ordinances
 - Review of City of San Diego vs. San Diego County Lodging Association litigation
 - Review of Labor Market Information of Monterey County and other jurisdictions
 - Identification of Accommodation and Food and Beverage Businesses in the Unincorporated Areas of Monterey County that may be impacted
 - Update from the Ad-Hoc Hospitality Committee
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RIGHT TO RECALL ORDINANCE

PROGRESS UPDATE TO THE BOARD OF SUPERVISORS

- Key Definitions
 - Covered Employers (Hotels and Restaurants: size of businesses?)
 - Laid-Off Employees
 - Recall Process
 - Retaliation & Enforcement
 - Effective Dates
-

RIGHT TO RECALL ORDINANCE PROGRESS UPDATE TO THE BOARD OF SUPERVISORS

Similar City & County Ordinances

Right of Recall	City of Oakland	City of Santa Clara	City of San Diego	County of Los Angeles	City/County of San Francisco
Overview of Right of Recall Ordinances	Hospitality and Travel Worker Right to Recall Ordinance: Eligible laid-off workers of covered employers shall be rehired in order of greatest length of service before offering same or substantially similar positions to new hires.	COVID-19 Right of Recall Ordinance: Eligible, laid-off workers of covered employers shall be rehired in order of length of service before offering same or substantially similar positions to new hires.	COVID-19 Worker Recall Ordinance: When a covered employer is reopening, it must first offer its laid-off employees all job positions for which the employees are qualified. Employees with greatest length of service must be given priority.	Right of Recall Ordinance: Eligible janitorial, maintenance, security service and hospitality workers who were laid off due to the pandemic have first right of recall to their jobs, in order of greatest length of service, when employers are ready to bring employees back.	Back to Work Ordinance: Creates a seniority-based right to reemployment for eligible laid-off workers if their prior employers resume business operations and seek to rehire staff. The Office of Economic and Workforce Development (OEWD) shall be notified of all layoffs of eligible workers, offers of reemployment, and acceptances/rejections of such offers.

RIGHT TO RECALL ORDINANCE PROGRESS UPDATE TO THE BOARD OF SUPERVISORS

Similar City & County Ordinances

Right of Recall	City of Oakland	City of Santa Clara	City of San Diego	County of Los Angeles	City/County of San Francisco
Who is Covered?	Employees who were: (1) employed for at least 6 months in the 12 months before January 31, 2020, and (2) laid off after January 31, 2020 for economic, non-disciplinary reasons.	Full- or part-time employees whose regular place of work is Santa Clara, who have at least six months with the employer, and who were laid off for economic, non-disciplinary reasons.	Covered Employees as defined below.	The ordinance protects laid off employees who: work at least 2 hours per week in the County for an employer; have a length of service with employer of 6 months or more; had their most recent separation on or after March 4, 2020; and were separated due to an economic, non-disciplinary reason.	The ordinance protects laid off employees who were (1) employed by their employer for at least 90 days of the calendar year preceding the date on which the employer provides a written notice of layoff, and (2) separated due to layoff.

RIGHT TO RECALL ORDINANCE PROGRESS UPDATE TO THE BOARD OF SUPERVISORS

Similar City & County Ordinances

Right of Recall	City of Oakland	City of Santa Clara	City of San Diego	County of Los Angeles	City/County of San Francisco
Who is Not Covered?	City of Oakland and Port of Oakland.	Other governmental entities. The ordinance does not apply to managerial, supervisory, or confidential positions.	Restaurants that are not part of hotels or event centers. The ordinance does not apply to managerial, supervisory, or confidential positions.	Non-profit entities; federal, state and local government agencies.	Federal, state, local and other public agencies and employers that have provided or are providing services that qualified or qualify as healthcare operations.

RIGHT TO RECALL ORDINANCE PROGRESS UPDATE TO THE BOARD OF SUPERVISORS

Similar City & County Ordinances

Right of Recall	City of Oakland	City of Santa Clara	City of San Diego	County of Los Angeles	City/County of San Francisco
Impacted Businesses	Airport Hospitality, Airport Service Providers, Event Centers, Hotels, and Covered Restaurants.	Entities in Santa Clara with more than 25 employees in CA that enter into contracts for building and/or food services; Entertainment & Convention venues with capacity of at least 8,000; Entities operating a hotel with 50 or more guest rooms; businesses with City contracts.	Commercial property, hotel and event centers.	Janitorial, maintenance, security service, and hospitality employees.	For-profit businesses and nonprofits.

RIGHT TO RECALL ORDINANCE PROGRESS UPDATE TO THE BOARD OF SUPERVISORS

Similar City & County Ordinances

Right of Recall	City of Oakland	City of Santa Clara	City of San Diego	County of Los Angeles	City/County of San Francisco
Key Recall Ordinance Definitions	<p>Covered Service Employer Any person who directly or indirectly owns or operates a Covered Service Enterprise and employs individuals or controls any employee's wages, hours, or working conditions.</p> <p>Covered Service Enterprise An Airport Hospitality Operation, Airport Service Provider, an Event Center, a Hotel, or a Restaurant.</p> <p>Event Centers Structures with more than 50K sq. ft., or 5,000 seats.</p> <p>Hotels Buildings with 50 or more guest rooms.</p> <p>Covered Restaurant Employers Any entity that directly or indirectly operates a restaurant that also employs more than 500 employees whether through a franchisor/franchisee relationship or a network of franchises.</p>	<p>Contracts Subject to Ordinance: Contracts in excess of \$25,000 with a term of 3 months or longer for regularly scheduled building and/or food services.</p>	<p>Covered Employers/Employees</p> <ul style="list-style-type: none"> - Generally, covers event center employers of a certain size (50K sq. ft. or 5,000 seats used for public performances, hotel employers whose hotel is located in the City of San Diego and has at least 100 guest rooms, and commercial property employers located in the City of San Diego and employing 10 or more janitorial, maintenance, or security service employees. - The ordinance protects laid off employees who: work at least two hours per week in the City of San Diego; have a length of service with employer of three months or more in the 12 months preceding March 4, 2020; had their most recent separation or failure to be scheduled for customary work on or after March 4, 2020; and were separated due to an economic, non-disciplinary reason. 	<p>County The unincorporated areas of the County of Los Angeles.</p> <p>Commercial Property Employer An owner, operator, manager, or lessee of a non-residential property in the County that employs 25 or more janitorial, maintenance, or security service workers.</p> <p>Hotel Employer An owner, operator, or manager of a residential building in the County designated or used for public lodging or other related service for the public and either contains 50 or more guest rooms or has earned gross receipts in 2019 exceeding \$5 million. A Hotel Employer also includes the owner, operator, manager or lessee of any restaurant physically located on hotel premises.</p>	<p>Covered Employers A person who directly or indirectly owns or operates a for-profit business or a non-profit in the City of San Francisco and, commencing on or after February 25, 2020, employed or employs, or have employed, 100 or more employees as of the earliest layoff date.</p>

RIGHT TO RECALL ORDINANCE PROGRESS UPDATE TO THE BOARD OF SUPERVISORS

Similar City & County Ordinances

Right of Recall	City of Oakland	City of Santa Clara	City of San Diego	County of Los Angeles	City/County of San Francisco
When does an Employee Have a Right to Recall?	<p>(1) The available position is the same or substantially similar to employee's position at time of layoff, or</p> <p>(2) The employee can be qualified for the position with the same training as provided to a new hire.</p>	<p>(1) The available position is the same or substantially similar to employee's position at time of layoff, or</p> <p>(2) The employee can be qualified for the position with the same training as provided to a new hire.</p>	<p>When a covered employer is reopening, it must offer its laid-off employees all job positions that become available after September 8, 2020, for which the laid-off employees are qualified.</p>	<p>(1) A laid off worker shall be offered a position at the same site that is the same or substantially similar to employee's position at time of layoff, or</p> <p>(2) The laid off worker can be qualified for the position with the same training as provided to a new hire, with 5 business days to accept or decline.</p>	<p>An employer shall provide written notice of layoff and right to reemployment to any eligible worker the employer separated due to layoff within 30 days of the effective date of the ordinance, including a hotline telephone number for information regarding the right to reemployment, as well as navigation services and other resources.</p>

RIGHT TO RECALL ORDINANCE PROGRESS UPDATE TO THE BOARD OF SUPERVISORS

Similar City & County Ordinances

Right of Recall	City of Oakland	City of Santa Clara	City of San Diego	County of Los Angeles	City/County of San Francisco
Enforcement	Ordinance includes an anti-retaliation provision and is enforced by the City's Department of Workplace and Employment Standards. Enforcement of ordinance commenced on August 15, 2020, three weeks after adoption.	Ordinance includes an anti-retaliation provision and can be enforced as a civil action in the Superior Court.	Ordinance includes an anti-retaliation provision and can be enforced as a civil action in the Superior Court. Remedies may include hiring/reinstatement rights, actual or statutory damages, punitive damages, and reasonable atty. fees/costs.	Ordinance includes an anti-retaliation provision and can be enforced in court. Remedies may include hiring/reinstatement rights, the greater of actual damages or \$1K statutory damages, punitive damages, and reasonable atty. fees/costs.	Relief may include hiring and reinstatement rights, back pay for each day of the violation and front pay for each day during the violation, the value of benefits that the worker would have received, and reasonable atty. fees/costs.

RIGHT TO RECALL ORDINANCE PROGRESS UPDATE TO THE BOARD OF SUPERVISORS

Similar City & County Ordinances

Right of Recall	City of Oakland	City of Santa Clara	City of San Diego	County of Los Angeles	City/County of San Francisco
Additional Information	<ul style="list-style-type: none"> √ All provisions may be waived in a bona fide collective bargaining agreement if waiver is set forth in clear, unambiguous terms. √ Written notice is required from covered employer to laid-off employees not called back due to lack of qualifications. √ Ordinance was adopted in July 2020 and is similar to City of Los Angeles Right of Recall Ordinance. √ On or before January 31, 2022, the Chief Officer of the Department of Workplace and Employment Standards shall report on the effectiveness of the provisions. 	<ul style="list-style-type: none"> √ Ordinance applies to all laid off workers regardless of whether they are covered by a collective bargaining agreement. √ The City provided information and input sessions on the worker recall ordinance approved November 10, 2020 and the proposed revisions to the worker retention ordinance. 	<ul style="list-style-type: none"> √ Written notice is required from covered employer to laid-off employees not called back due to lack of qualifications. √ Ordinance expires six months after date of adoption unless rescinded or extended. √ A lawsuit was filed by the San Diego County Lodging Association arguing that the ordinance seeks to "readjust rights and obligations under existing employment contracts." √ Ordinance remains effective for 6 months from date of adoption and is repealed as of that date unless otherwise extended or rescinded. 	<ul style="list-style-type: none"> √ All provisions may be waived in a bona fide collective bargaining agreement if waiver is set forth in clear, unambiguous terms. √ Before March 1, 2022, the CEO shall report to the Board on the effectiveness of the provisions in protecting workers' stability of employment, recommendations for additional protections, and whether the provisions are still necessary based on the County's recovery from the pandemic. √ County of Los Angeles' Right of Recall ordinance is similar to City of Los Angeles' Right of Recall ordinance. 	<ul style="list-style-type: none"> √ An employer shall provide written notice to the OEWD within 30 days of the date it initiates a layoff. √ This ordinance shall become effective immediately upon enactment and shall expire upon the 61st day following enactment unless the ordinance is reenacted.

RIGHT TO RECALL ORDINANCE PROGRESS UPDATE TO THE BOARD OF SUPERVISORS

Data from the Monterey County Conventions & Visitors Bureau

- Monterey County Tourism Improvement Districts (MCTID)
 - 253 Properties with 12,076 Total Rooms
 - 63 Properties with over 50 Rooms
 - 25 Properties with over 100 Rooms
 - 33 Properties are in the Unincorporated Area
 - District 2 – 5
 - District 3 – 3
 - District 5 – 25
-

RIGHT TO RECALL ORDINANCE PROGRESS UPDATE TO THE BOARD OF SUPERVISORS

Hotel and Accommodation Properties in Unincorporated Areas of Monterey County

- There are 73 Hotels / B&Bs / Lodges in the Unincorporated Areas
 - Number of employees ranges from 2 to 1,500
 - There are 7 Hotel and Accommodation Businesses with over 50 Employees:
 - Bernardus Lodge
 - Carmel Highlands
 - Carmel Mission Inn
 - Carmel Valley Resort
 - Pebble Beach Resorts
 - Quail Lodge
 - Ventana Inn

Source: Dun and Bradstreet, December 2020

RIGHT TO RECALL ORDINANCE PROGRESS UPDATE TO THE BOARD OF SUPERVISORS

Eating, Drinking, and Catering Establishments in Unincorporated Areas of Monterey County

- There are 183 Eating, Drinking, and Catering Establishments in the County's Unincorporated Areas
 - Number of employees ranges from 5 to 100
 - Largest employers:
 - Nepenthe Restaurant, Big Sur
 - Rio Grill, Carmel
 - Sierra Mar Restaurant, Big Sur
 - Rocky Point Restaurant
 - All other businesses are small restaurants, coffee shops, and fast-food establishments with 5 to 40 employees.

Source: Dun and Bradstreet, December 2020

RIGHT TO RECALL ORDINANCE PROGRESS UPDATE TO THE BOARD OF SUPERVISORS

Largest Employers in Accommodations and Food Service in Unincorporated Areas

Registered Company Name	Trade Style Name	City	Zip	Employment
ACCOMMODATIONS				
Lone Cypress Company, LLC	Pebble Beach Resorts	Pebble Beach	93953	1,500
Cvr Hsge, LLC	Carmel Valley Ranch Hotel	Carmel	93923	250
Quail Lodge, Inc.	Quail Lodge Resort	Carmel	93923	250
The Highlands Inn, Inc.	Carmel Highlands	Carmel	93923	225
Bernardus Lodge, LLC	Bernardus Lodge	Carmel Valley	93924	199
48123 CA Investors, LLC	Ventana Inn & Spa	Big Sur	93920	152
Mission Ranch, Inc.	Mission Ranch	Carmel	93923	50
Big Sur River Inn	River Inn	Big Sur	93920	30
Big Sur Lodge	Big Sur Lodge	Big Sur	93920	20
FOOD SERVICE				
Phoenix Corporation	Nepenthe Restaurant	Big Sur	93920	100
Rio Grill, Inc.	Rio Grill Restaurant	Carmel	93923	60
Rocky Point Restaurant	Rocky Point Restaurant	Monterey	93940	40
Post Ranch Inn LLC	Sierra Mar	Big Sur	93920	40

Source: Dun and Bradstreet, December 2020

PROGRESS UPDATE TO THE BOARD OF SUPERVISORS – RIGHT TO RECALL ORDINANCE

Labor market Information on Other Jurisdiction vs Monterey County

* Employment Development Dept. **EconoVue	City of L.A.	Oakland	Monterey County	City of Santa Cruz	San Diego	L.A. County	San Francisco City/County
Labor Force, Feb. 2021*	2,085,100	209,400	205,500	69,800	702,200	4,915,800	536,300
Employment, Feb. 2021*	1,863,600	192,600	183,000	66,600	653,500	4,289,900	503,100
Accommodations/Hotel Employment**	26,773	2,095	4,400	1,059	43,405	25,100	9,000
Eating and Drinking Employment**	121,611	10,903	10,700	4,248	111,386	281,400	47,400
Total Employment in selected sectors	191,967	12,998	15,100	5,307	154,791	306,500	56,400
Unemployment Rate*	10.60%	8.00%	10.90%	4.60%	6.90%	12.70%	6.20%
Accommodations/Hotel Businesses**	1,017	101	351	20	1,270	916	658.00
Eating and Drinking Businesses **	11,065	1,241	911	359	9,206	9,234	4,410
Total Number of Businesses in selected sectors	12,082	1,342	1,262	379	10,476	10,150	5,068

[GOVERNING BODY]

ORDINANCE NO. _____

ORDINANCE (1) PROTECTING JOB SECURITY BY ESTABLISHING A TRAVEL AND HOSPITALITY WORKER RIGHT TO RECALL

WHEREAS, COVID-19 (also known as the “Coronavirus Disease”) is a respiratory disease which was first detected in China and has now spread across the globe, with multiple confirmed cases in [State], including the [City or Region]; and

WHEREAS, on January 31, 2020, the United States Secretary of Health and Human Services declared a public health emergency based on the threat caused by COVID-19, and the President of the United States issued a Proclamation Declaring a National Emergency Concerning COVID-19 beginning March 1, 2020; and

WHEREAS, [local government emergency declaration, if any]; and

WHEREAS, [State emergency declaration, if any]; and

WHEREAS, the World Health Organization announced on March 11, 2020, that it has characterized COVID-19 as a pandemic; and

WHEREAS, since the declaration of a national public health emergency on January 31, 2020, the COVID-19 pandemic has caused hospitality, restaurant, stadium, and travel-related employers to discharge, layoff and furlough workers at a massive scale; and

WHEREAS, many thousands of hospitality, restaurant, stadium, and travel-related workers have been separated from their jobs already during the pandemic, and many thousands more are expected to face separation in the coming months; and

WHEREAS, while federal, state, and local programs, and efforts by some of the [political subdivision]’s non-profits, have provided a modicum of support to [jurisdiction]’s hospitality, restaurant, stadium and travel-related workers in the short-term, these workers need most is the promise of a return to their previous jobs as the pandemic recedes and business returns; and

WHEREAS, ensuring that [jurisdiction]’s hospitality, restaurant, stadium, and travel-related employers honor their former employees’ right to return will speed the transition back to a functioning labor market and will lessen the damage to the [political subdivision]’s economy;

[Short alternative to WHEREASES if preferred:]

Findings and purpose.

The SARS-CoV-2 pandemic caused widespread economic dislocation in this city due to interruptions of normal enterprise activity through voluntary and government-ordered cutbacks

and closures. Thousands of workers in [jurisdiction] were unable to continue in their occupations during this time, particularly in the hospitality industry. Although many received income from public and private sources to carry them through this crisis and prevent widespread destitution, these measures have necessarily been only temporary. What matters most for the recovery of workers and their families and for the city's economy as a whole is that they get back to work as they were before the crisis hit. [jurisdiction] hospitality-industry employers are required to bring back the same workers as before the pandemic, as their enterprises resume operation and restore their workforces as they are able. Some enterprises have been transferred to new ownership or relocated after employees were laid off. These changes should not defeat the right of employees to return to their former work.

NOW, THEREFORE, THE [JURISDICTION] [GOVERNING BODY] DOES ORDAIN AS FOLLOWS:

SECTION 1. A new [code reference] is added to the [jurisdiction] Municipal Code as follows:

xxx.010. Title.

This Chapter shall be known as the "Hospitality and Travel Worker Right to Recall" Ordinance.

xxx.020. Definitions.

The definitions set forth in this section shall govern the construction and meaning of the terms used in this chapter:

- A. "Airport" means the [jurisdiction] International Airport.
- B. "Airport Hospitality Operation" means a business that provides food and beverage, retail, or other consumer goods or services to the public at the Airport. The term Airport Hospitality Operation does not include an air carrier certificated by the Federal Aviation Administration.
- C. "Airport Service Provider" means a Person that performs, under contract with a passenger air carrier: (i) food and beverage catering functions; or (ii) functions on the property of the Airport that are directly related to the air transportation of persons, property, or mail, including but not limited to the loading and unloading of property on aircraft; assistance to passengers under the federal regulation at 14 C.F.R. Part 382; security; airport ticketing and check-in functions; ground-handling of aircraft; or aircraft cleaning and sanitization functions and waste removal. The term "Airport Service Provider" does not include an air carrier certificated by the Federal Aviation Administration.
- D. "Casino" has the same meaning as under [cross-reference].
- E. "Covered Enterprise" means an Airport Hospitality Operation, an Airport Service Provider, a Casino, an Event Center, a Hotel, or a Restaurant.
- F. "Employee" has the same meaning as under [cross-reference].

G. “Employer” means any Person, including a corporate officer or executive, who directly or indirectly or through an agent or any other Person, including through the services of a temporary service or staffing agency or similar entity, owns or operates a Covered Enterprise within the [jurisdiction] and employs or exercises control over the wages, hours or working conditions of any Employee.

H. “Event Center” means a publicly or privately owned structure of more than 50,000 square feet or 5,000 seats that is used for the purposes of public performances, sporting events, business meetings, or similar events, and includes concert halls, stadiums, sports arenas, racetracks, coliseums, and convention centers. The term “Event Center” also includes any contracted, leased, or sublet premises connected to or operated in conjunction with the Event Center’s purpose, including food preparation facilities, concessions, retail stores, restaurants, bars, and structured parking facilities.

I. “Hotel” means a residential building that is designated or used for lodging and other related services for the public, including but not limited to food and beverage preparation and service and meetings, tradeshows and conventions, and containing [number] or more guest rooms, or suites of rooms (adjoining rooms do not constitute a suite of rooms). “Hotel” also includes any contracted, leased or sublet premises connected to or operated in conjunction with the building’s purpose, or providing services at the building.

J. “Laid-off Employee” means any Employee who was employed by the employer for six months or more in the 12 months preceding January 31, 2020, and whose most recent separation from active service occurred after January 31, 2020, and was due to a government order, lack of business, a reduction in force or other, economic, non-disciplinary reasons.

K. “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.

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

M. “Restaurant” means a business conducting full-service restaurant commercial activities, limited-service restaurant and café commercial activities, fast-food restaurant commercial activities, or alcoholic beverage sales commercial activities with on-premises consumption from a structure within the [political subdivision].

xxx.030. Right to Recall.

A. An Employer shall offer its Laid-Off Employees in writing, by registered mail to their last known physical address, and by email and text message to the extent the Employer possesses such information, all job positions which become available after this Chapter’s effective date for which the Laid-Off Employees are qualified. A Laid-Off Employee is qualified for a position if the Laid-Off Employee:

1. held the same or similar position at the Covered Enterprise at the time of the Laid-Off Employee's most recent separation from active service with the Employer; or
2. is or can be qualified for the position with the same training that would be provided to a new employee hired into that position.

The Employer shall offer positions to Laid-Off employees in an order of preference corresponding to categories (1) and then (2) in the preceding sentence. Where more than one Employee is entitled to preference for a position, the Employer shall offer the position to the Laid-Off Employee with the greatest length of service for the Covered Enterprise.

B. A Laid-Off Employee who is offered a position pursuant to this Chapter shall be given no less than ten (10) days from the date of receipt of the mailed offer in which to accept or decline the offer. An Employer may make simultaneous, conditional offers of employment to Laid-Off Employees, with final offer of employment conditioned on application of the priority system set forth in subsection (A).

B. An Employer that declines to recall a Laid-Off Employee on the grounds of lack of qualifications and instead hires someone other than a Laid-Off Employee shall provide the Laid-Off Employee a written notice thereof within thirty (30) days identifying all reasons for such decision.

C. The requirements of this Chapter also apply in the following circumstances:

1. The ownership of the Employer changed after the separation from employment of a Laid-Off Employee, but the Covered Enterprise is conducting the same or similar operations as before January 31, 2020;
2. The form of organization of the Employer changed after January 31, 2020;
3. Substantially all of the assets of the Employer were acquired by another entity which conducts the same or similar operations using substantially the same assets;
4. The employer relocates the operations at which a Laid-Off Employee was employed before January 31, 2020 to a different location within the [political subdivision]; or
5. Any combination of the circumstances described in paragraphs (1) through (4).

xxx.040. Retaliatory Action Prohibited.

No Employer shall refuse to employ, terminate, reduce in compensation, or otherwise take any adverse action against any person for seeking to enforce his or her rights under this Chapter by any lawful means, for participating in proceedings related to this Chapter, for opposing any practice proscribed by this Chapter, or for otherwise asserting rights under this chapter. This Section shall also apply to any employee who mistakenly, but in good faith, alleges noncompliance with this Chapter.

xxx.050. Enforcement.

A. This chapter may be enforced in a civil action in Superior Court brought by the [public officer] or by one or more employees for and in behalf of oneself or themselves and other employees similarly situated, or the employee or employees may designate an agent or representative to maintain action for and in behalf of all employees similarly situated.

B. If the court finds that the employer has violated this chapter, the court may enjoin the employer from engaging in such violation, and order such affirmative action as may be appropriate, which may include, but is not limited to, reinstatement or hiring of employees, with or without back pay including fringe benefits, or any other equitable relief as the court deems appropriate. Interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the back pay otherwise allowable. Before interim earnings are deducted from lost wages, there shall be deducted from the interim earnings any reasonable amounts expended by the employee in searching for, obtaining, or relocating to new employment. The court may also order compensatory and punitive damages if the court finds that the employer engaged in the violation with malice or with reckless indifference to the requirements of this chapter, and treble damages on behalf of an employee terminated in violation of xxx.040.

C. If it is established that a laid-off employee exercised rights under this chapter or alleged in good faith that the employer was not complying with this chapter, and the employer thereafter refused to employ, terminated, demoted or otherwise took adverse action against the employee, and that action took place within sixty (60) days after such exercise, then a rebuttable presumption shall arise that the employer's action was taken in violation of xxx.040. The employer must prove that the true and entire reason for the action was a legitimate business reason. The plaintiff may rebut the employer's asserted legitimate business reason by showing that it was, in fact, a pretext.

D. If the plaintiff prevails in any legal action taken pursuant to this chapter, the court shall award reasonable attorney's fees, expert witness fees and costs as part of the costs recoverable.

xxx.060. Regulations.

The [political subdivision] and, on and after _____, 2020, [agency], may promulgate and enforce rules and regulations, and issue determinations and interpretations, consistent with and necessary for the implementation of this Chapter. Such rules and regulations, determinations, and interpretations shall have the force of law and may be relied upon by employers, employees, and other persons to determine their rights and responsibilities under this Chapter.

xxx.070. Relationship to employment contracts and agreements.

This Chapter applies to all employees as defined herein regardless whether they are represented for purposes of collective bargaining or are covered by a collective bargaining agreement. Nothing in this Ordinance shall be construed to invalidate or limit the rights, remedies and procedures of any contract or agreement that provides greater or equal protection for employees than are afforded by this Ordinance.

xxx.080. No Preemption of Higher Standards.

The purpose of this Chapter is to ensure minimum labor standards. This Chapter does not preempt or prevent the establishment of superior employment standards (including higher wages) or the expansion of coverage by ordinance, resolution, contract, or any other action of the [political subdivision]. This Chapter shall not be construed to limit a discharged Employee's right to bring a common law cause of action for wrongful termination.

xxx.090. Severability.

If any subsection, sentence, clause or phrase of this Chapter is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Chapter, which shall remain in full force and effect. The [political subdivision] [governing body] hereby declares that it would have adopted this Chapter and each and every subsection, sentence, clause and phrase thereof not declared invalid or unconstitutional, without regard to whether any portion of the article would be subsequently declared invalid or unconstitutional. The courts are hereby authorized to reform the provisions of this Chapter in order to preserve the maximum permissible effect of each subsection herein.

xxx.100. Report. On or before [anniversary of layoff cutoff date], the [officer] shall report to the [governing body] on the effectiveness of this Chapter in promoting employment stability and shall advise the [governing body] on the need for further action.

COUNTY OF MONTEREY POTENTIAL ORDINANCE

The Board of Supervisors of the County of Monterey ordains as follows:

SECTION 1. FINDINGS AND DECLARATIONS

A. Pursuant to Article XI, section 7 of the California Constitution, the County of Monterey (“County”) may adopt and enforce ordinances and regulations not in conflict with general laws to protect and promote the public health, safety, and welfare of its residents.

B. Pursuant to Government Code section 25123, to protect against an immediate threat to the public safety, health, and welfare, the County may adopt an urgency ordinance that takes effect immediately.

C. COVID-19 (also known as the “Coronavirus Disease”) is a respiratory disease which was first detected in abroad and has now spread across the globe, with tens of thousands of confirmed cases in California, including the Monterey County area.

D. On January 31, 2020, the United States Secretary of Health and Human Services declared a public health emergency based on the threat caused by COVID-19, and the President of the United States issued a Proclamation Declaring a National Emergency Concerning COVID-19 beginning March 1, 2020.

E. On March 4, 2020, California Governor Gavin Newsom proclaimed that a State of Emergency exists in California as a result of the threat of COVID-19 (Executive Order N-25-20).

F. The World Health Organization announced on March 11, 2020, that it characterized COVID-19 as a “pandemic.”

G. On March 17, 2020, Monterey County Health Officer Edward Moreno, MD, issued a Shelter-in-Place Order requiring all Monterey County residents to stay in their homes and leave only for specified purposes.

H. On March 19, 2020, California Governor Gavin Newsom issued Executive Order N-33-20, ordering, with limited exceptions, all individuals living in the state of California to stay at home or at their place of residence, until further notice.

I. On May 4, 2020, California Governor Gavin Newsom issued Executive Order N-60-20, which directed individuals living in the state of California to continue staying at their home or place of residence, until further notice.

J. Since the declaration of a national public health emergency on January 31, 2020, the COVID-19 pandemic has caused hospitality and restaurant employers in Monterey County to discharge, layoff and furlough workers with widespread impacts on such workers.

K. Many thousands of hospitality, hotel and restaurant workers have been separated from their employment during the pandemic.

L. While federal State, and local programs, and efforts by some of Monterey County's non-profits, have provided assistance and support for Monterey County's hospitality and restaurant workers in the short-term, these workers need the assurance of a return to their previous jobs as the pandemic recedes and business returns.

M. Ensuring that Monterey County's hospitality and restaurant employers respect their former employees' rights and appreciate that the smooth transition back to a fully-functioning hospitality and restaurant business will lessen the damage to the County's economy and the incomes of employers and employees alike.

N. With Monterey County and the State now moving more rapidly through the State's "tiers" described in its Blueprint for a Safer Economy, hotel and hospitality establishments will be allowed to operate at greater and greater capacity.

O. The Governor has indicated that all businesses in the state should be allowed to fully reopen by June 15, 2021, under specific conditions.

P. The rapid re-opening of the County's economy, in particular the hotel and restaurant sectors of the economy, present an immediate need to protect the public health, safety and welfare through the adoption of this ordinance for the reasons stated above.

Q. The adoption of this ordinance is not a "project" under CEQA.

SECTION 2. TITLE AND APPLICABILITY.

This Ordinance shall be known as the "Hospitality and Restaurant Worker Right to Recall" Ordinance, and applies in the unincorporated area of the County of Monterey.

SECTION 3. DEFINITIONS.

The definitions set forth in this Section shall govern the construction and meaning of the terms used in this Ordinance:

- A. "Change in Control" means any sale, assignment, transfer, contribution, or other disposition of all or substantially all of the assets or a controlling interest (including by consolidation, merger, or reorganization) of the Incumbent Employer or any Person who controls such Incumbent Employer.
- B. "Covered Enterprise" means the business owned or operated by an Employer.
- C. "Covered Hotel Employer" means any Person who, directly or indirectly or through an agent or any other Person, owns or operates a commercial building that is designated for intermittent lodging for one or more days/nights, and related services, for the public,

including but not limited to food and beverage preparation and service, and containing [REDACTED] or more guest lodging rooms, and who employs or exercises control over the wages, hours or working conditions of any Employee.

- D. "Covered Restaurant Employer" means any Person who (a) directly or indirectly or through an agent or any other Person owns or operates a Restaurant and employs or exercises control over the wages, hours or working conditions of any Employee; and (b) employs more than [REDACTED] Employees, regardless of where those Employees are employed, or is a Franchisee associated with a Franchisor or a network of Franchises with Franchisees that employ more than [REDACTED] Employees in the aggregate, regardless of where those Employees are employed.
- E. "Employee" has the same meaning as under the California Labor Code.
- F. "Employer" means a Covered Hotel Employer or Covered Restaurant Employer.
- G. "Franchise" means a written agreement by which:
1. A Person is granted the right to engage in the business of offering, selling, or distributing goods or services under a marketing plan prescribed or suggested in substantial part by the grantor or its affiliate; and
 2. The operation of the business is substantially associated with a trademark, service mark, trade name, advertising, or other commercial symbol; designating, owned by, or licensed by the grantor or its affiliate; and
 3. The Person pays, agrees to pay, or is required to pay, directly or indirectly, a Franchise Fee;
- H. "Franchisee" means a Person to whom a Franchise is offered or granted.
- I. "Franchisor" means a Person who grants a Franchise to another Person.
- J. "Incumbent Employer" means the Employer prior to a Change in Control.
- K. "Laid-Off Employee" means any Employee who was employed by an Employer for at least six (6) months in the twelve (12) months preceding January 31, 2020, and whose most recent separation from employment occurred after January 31, 2020, and was due to an economic, non-disciplinary reason, including but not limited to a lack of business due to a government-issued stay-at-home order, bankruptcy, or reduction in force. "Laid-off Employee" also includes an Employee who was employed by an Incumbent Employer and a Successor Employer for a combined total of at least six (6) months in the twelve (12) months preceding January 31, 2020, and who meets the other conditions in the preceding sentence.
- L. "Length of Service" means the total of all periods of time during which an Employee has

worked as an Employee for the Employer, including but not limited to periods of time when the Employee was on leave including family leave, sick leave, or on vacation.

- M. "Person" means an individual, corporation, partnership, limited partnership, limited liability partnership, limited liability company, business trust, estate, trust, association, joint venture, agency, instrumentality, or any other legal or commercial entity, whether domestic or foreign. "Person" may include a temporary services or staffing agency.
- N. "Restaurant" means a "public eating establishment" as defined in Monterey County Code of Ordinances 10.43.030 including those conducting full-service restaurant commercial activities, limited-service restaurant and cafe commercial activities, or fast-food restaurant activities.
- O. "Successor Employer" means the Employer after a Change in Control.
- P. "Transfer Document" means the purchase agreement or other document(s) effecting a Change in Control.

SECTION 4. RIGHT TO RECALL.

- A. An Employer shall provide notice and offer its Laid-Off Employees in writing, by U.S. mail to their last known physical address, and by email and text message to the extent the Employer possesses such information, all job positions which become available after this Ordinance's effective date for which the Laid-Off Employees are qualified. A Laid-Off Employee is qualified for a position if the Laid-Off Employee:
 - 1. held the same or substantially similar position at the Covered Enterprise at the time of the Laid-Off Employee's most recent separation from active service with the Employer; or
 - 2. is or can be qualified for the position with the same training that would be provided to a new employee hired into that position.
- B. The Employer shall offer positions to Laid-Off Employees in an order of preference corresponding to the categories in subsections (A)(1) and (2). Where more than one Employee is entitled to preference for a position, the Employer shall offer the position to the Laid-Off Employee with the greatest Length of Service for the Covered Enterprise.
- C. A Laid-Off employee who is offered a position pursuant to this Ordinance shall be given no less than [REDACTED] days from the postmark date of the mailed letter and dates of email and text notification to accept or decline the offer. If the dates referenced in the preceding sentence are not the same, the [REDACTED] days begins to run from the latest of the dates.
- D. An Employer that declines to recall a Laid-Off Employee on the grounds of lack of qualifications and instead hires someone other than a Laid-Off Employee shall provide the Laid-Off Employee a written notice advising of the non-selection within [REDACTED] days of the date of hire. The Employer shall within [REDACTED] days of the date of hire document

the reason(s) for such decision and maintain that written record for no less than three (3) years. The employer shall make such record available to the County upon request.

E. Within fifteen (15) days after the execution of a Transfer Document, an Incumbent Employer shall provide to the Successor Employer a recall list containing the name, address, email address, telephone number, date of hire and employment classification of each Laid-Off Employee.

F. A Successor Employer shall comply with the requirements of this Ordinance as to the Incumbent Employer's Laid-off Employees for _____ days after execution of a Transfer Document, subject to the following limitations:

1. The Successor Employer shall retain each recalled worker for no fewer than forty-five (45) days unless during the forty-five (45) day period the Successor Employer has cause to discharge the worker. During the forty-five (45) day period, the Successor Employer shall be employed under terms and conditions established by the Successor Employer, as required by law.

2. At the end of the forty-five (45) day period, the Successor Employer shall provide a written performance evaluation to each worker recalled pursuant to this subsection. If a Worker's performance is satisfactory, the Successor Employer shall consider offering the worker continued employment under terms and conditions established by the Successor Employer or as required by law. The Successor Employer shall retain a record of the written performance evaluation for a period of no fewer than three (3) years and shall make such evaluation available to the County upon request.

SECTION 5. RETALIATORY ACTION PROHIBITED.

No Employer shall refuse to employ, terminate, reduce in compensation, or otherwise take any adverse action against any person for seeking to enforce his or her rights under this Ordinance by any lawful means, for participating in proceedings related to this Ordinance, for opposing any practice proscribed by this Ordinance, or for otherwise asserting rights under this Ordinance. This Section shall also apply to any Employee who mistakenly, but in good faith, alleges noncompliance with this Ordinance.

SECTION 6. ENFORCEMENT.

A. A Laid-Off Employee may bring an action in the Superior Court of the State of California against an Employer for violations of this Ordinance and may be awarded:

1. Hiring and reinstatement rights pursuant to this Ordinance;
2. Actual damages (including, but not limited to, lost pay and benefits) suffered by the Laid-Off Employee, and statutory damages in the amount of \$1,000, whichever is greater;

3. **Punitive damages**, pursuant to California Civil Code section 3294; and Attorney fees and costs to a Laid-Off Employee who prevails in any such enforcement action; however, punitive damages may be awarded to an Employer who prevails and obtains a court determination that the Laid-off Employee's lawsuit was frivolous.
- B. A civil action pursuant to this Ordinance by a Laid-Off Employee alleging a violation of any provision of the article shall commence only after the following requirements have been met:
1. The Laid-Off Employee had provided written notice to the Employer of the provisions of the Ordinance alleged to have been violated and the facts supporting to alleged violation; and
 2. The Employer is provided fifteen (15) days from receipt of the Laid-Off Employee's written notice to the Employer to cure any alleged violation.

SECTION 7. EXEMPTION FOR COLLECTIVE BARGAINING AGREEMENT.

The provisions of this Ordinance, or any part thereof, are not intended to, and shall not, take precedence over the terms of any existing collective bargaining agreement that provides for the return of laid-off workers. All of the provisions of this Ordinance, or any part of the Ordinance, may be waived under a bona fide collective bargaining agreement that does not provide for the return of laid-off workers, but only if the waiver is explicitly set forth in that agreement in clear and unambiguous terms. Unilateral implementation of terms and conditions of employment by either party to a collective bargaining agreement shall not constitute, or be permitted to constitute, a waiver of any or all of the provisions of this Ordinance.

SECTION 8. SEVERABILITY.

If any subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance, which shall remain in full force and effect. The Board of Supervisors hereby declares that it would have adopted this Ordinance and each and every subsection, sentence, clause and phrase thereof not declared invalid or unconstitutional, without regard to whether any portion of the article would be subsequently declared invalid or unconstitutional. The courts are hereby authorized to reform the provisions of this Chapter in order to preserve the maximum permissible effect of each subsection herein.

SECTION 9. EFFECTIVE DATE AND TERMINATION.

In light of the recitals in this ordinance, the Board declares that this ordinance is adopted in compliance with Government Code Section 25123 and is necessary as an urgency measure for the immediate preservation of the public health, safety, and welfare. This ordinance shall take effect immediately upon adoption for the reasons set forth herein, and shall expire upon the

earlier of the Governor's termination of his Proclamation of a State of Emergency, or 90 days after its effective date, unless reenacted.

DRAFT

ISSUES NEEDING DIRECTION

1. Applicability – managerial or supervisory employees?
2. Threshold for hotels – number of rooms.
3. Threshold for restaurants – number of employees and for franchises.
4. Threshold for Laid-off Employee – number of months of service.
5. Qualifications for recall – is or can be qualified with training.
6. Number of days to respond to recall
7. Number of days for employer to transmit to non-recalled employees reasons for non-recall.
8. Number of days a successor employer must comply and terms of compliance.
9. Enforcement – civil action and punitive damages.
10. Exemption for existing collective bargaining agreement with recall provisions or waiver.
11. Effective date and termination.



OFFICE OF THE GOVERNOR

SEP 30 2020

To the Members of the California State Assembly:

I am returning Assembly Bill 3216 without my signature.

This bill would provide a right of recall and retention for specified employees previously laid-off due to a local, state, or federal declaration of a public health-related state of emergency. It would require specified employers to offer the same or similar jobs to laid off employees or those which the laid off employee could be trained to do, based on seniority. The bill additionally would require employers who hire an individual other than a laid-off employee to provide that laid-off employee with the name of the individual who was hired and all the reasons for that decision.

It would also require successor employers in these specified industries, regardless of the existence of a state of emergency, to give preference in hiring to employees of the incumbent employer by seniority.

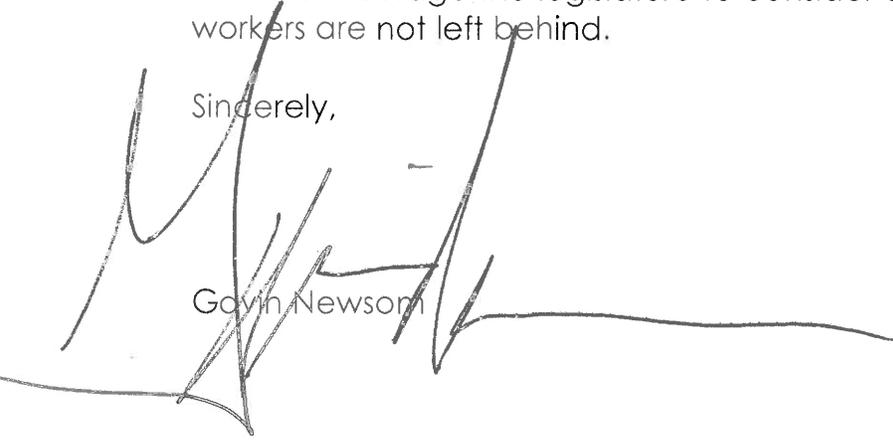
I recognize the real problem this bill is trying to fix—to ensure that workers who have been laid off due to the COVID19 pandemic have certainty about their rehiring and job security. But, as drafted, its prescriptive provisions would take effect during any state of emergency for all layoffs, including those that may be unrelated to such emergency. Tying the bill's provisions to a state of emergency will create a confusing patchwork of requirements in different counties at different times.

The bill also risks the sharing of too much personal information of hired employees. There must be more reasonable tools to effectively enforce the recall provisions.



Finally, the hospitality industry and its employees have been hit hard by the economic impacts of the pandemic. I believe the requirements of this bill place too onerous a burden on employers navigating these tough challenges, and I would encourage the legislature to consider other approaches to ensure workers are not left behind.

Sincerely,



Gavin Newsom



Monterey County

Item No.2

Board Report

Board of Supervisors
Chambers
168 W. Alisal St., 1st Floor
Salinas, CA 93901

Legistar File Number: 21-317

April 13, 2021

Introduced: 4/9/2021

Current Status: Agenda Ready

Version: 1

Matter Type: General Agenda Item

Perspective from Labor Groups and Employees



Monterey County

Item No.3

Board Report

Board of Supervisors
Chambers
168 W. Alisal St., 1st Floor
Salinas, CA 93901

Legistar File Number: 21-318

April 13, 2021

Introduced: 4/9/2021

Current Status: Agenda Ready

Version: 1

Matter Type: General Agenda Item

Perspective from Hospitality Industry



Monterey County

Item No.4

Board Report

Board of Supervisors
Chambers
168 W. Alisal St., 1st Floor
Salinas, CA 93901

Legistar File Number: 21-319

April 13, 2021

Introduced: 4/9/2021

Current Status: Agenda Ready

Version: 1

Matter Type: General Agenda Item

Recommendation from Hospitality Ad Hoc Committee