

ORDINANCE NO. _____

**AN ORDINANCE OF THE COUNTY OF MONTEREY, STATE OF CALIFORNIA,
ESTABLISHING A HOSPITALITY WORKER RIGHT TO RECALL**

County Counsel Summary

This ordinance supplements new Labor Code Section 2810.8, which establishes a process certain hospitality-based employers must follow in recalling workers laid-off due to the impact on an employer's business of the COVID-19 pandemic. The process includes offering to recall defined laid-off workers jobs for which they are either qualified in order of seniority. This ordinance provides that in the unincorporated area of Monterey County a private right of action in Superior Court for an alleged violation of the Labor Code is available for a laid-off employee. The ordinance would take effect thirty (30) days after adoption, and expires on January 1, 2022, unless renewed or extended.

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. 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.

C. 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.

D. 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).

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

F. 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.

G. 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.

H. 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.

I. Since the declaration of a national public health emergency on January 31, 2020, the COVID-19 pandemic has negatively affected the hospitality related economic sector in Monterey County disproportionately to other sectors due to restrictions on travel and occupancy, and caused hospitality employers (which include both hotel and restaurant employers) in Monterey County to discharge, layoff and furlough workers with widespread impacts on such workers.

J. Many thousands of hospitality workers have been separated from their employment during the pandemic.

K. 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 workers in the short-term, these workers need the assurance of a return to their previous jobs as the pandemic recedes and business returns.

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

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

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

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

P. On April 16, 2021, the Governor signed into law SB 93, which added Section 2810.8 to the Labor Code providing a right to recall for specific laid-off employees, as defined.

Q. SB 93 was by its terms effective immediately.

R. SB 93 also provided that nothing in the added code section prohibits a local government from enacting ordinances that establish "additional enforcement provisions" to those prescribed in the bill.

S. SB 93 does not create a private right of action in the superior court on the part of a laid-off employee.

T. This ordinance is necessary to address issues not addressed in SB 93.

U. The adoption of this ordinance is not a “project” under CEQA.

SECTION 2. TITLE AND APPLICABILITY.

This Ordinance shall be known as the “Hospitality Worker Right to Recall” Ordinance, shall supplement the provisions of SB 93 as effective April 16, 2021, and applies in the unincorporated area of the County of Monterey.

SECTION 3. ENFORCEMENT.

A. A laid-off employee (as defined in Labor Code section 2810.8) may bring an action in the Superior Court of the State of California against an employer for violations of Labor Code section 2810.8 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; and
3. Reasonable attorney fees and costs to a laid-off employee who prevails in any such enforcement action. Punitive damages are specifically not authorized to be recovered.

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 4. 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 5. EFFECTIVE DATE AND TERMINATION.

This ordinance shall take effect thirty (30) days after its adoption, and shall expire on January 1, 2022, unless renewed or extended.

PASSED AND ADOPTED this ____ day of May 2021, by the following vote:

AYES:

NOES:

ABSENT:

Wendy Root Askew
Chair, Monterey County Board of Supervisors

A T T E S T:

VALERIE RALPH
Clerk of the Board of Supervisors

By: _____
Deputy

APPROVED AS TO FORM
Leslie J. Girard County Counsel