



Legislation Details (With Board Report)

File #: ORD 21-005 **Name:** Provide input to staff on options for a Hospitality Right-to-Recall Ordinance

Type: Ordinance **Status:** Agenda Ready

File created: 4/14/2021 **In control:** Board of Supervisors

On agenda: 4/20/2021 **Final action:**

Title: a. Provide input to staff on options for a Hospitality right-to-recall ordinance; and
b. Introduce waive reading and adopt a “Hospitality Worker Right-to-Recall” Urgency Ordinance for the Unincorporated Areas of Monterey County

Sponsors: Workforce Development Board

Indexes:

Code sections:

Attachments: 1. Urgency COVID-19 Worker Recall Ordinance Monterey County, 2. Item No. 24 - PowerPoint Presentation

Date	Ver.	Action By	Action	Result
4/20/2021	1	Board of Supervisors		

a. Provide input to staff on options for a Hospitality right-to-recall ordinance; and
b. Introduce waive reading and adopt a “Hospitality Worker Right-to-Recall” Urgency Ordinance for the Unincorporated Areas of Monterey County

RECOMMENDATION:

a. Provide input to staff on options for a Hospitality right-to-recall ordinance; and
b. Introduce waive reading and adopt a “Hospitality Worker Right-to-Recall” Urgency Ordinance for the Unincorporated Areas of Monterey County

SUMMARY:

The COVID-19 pandemic has adversely impacted Monterey County’s second-largest industry: hospitality and travel-related business. Hotel and restaurant workers have been separated from their jobs and seek reassurance that they will be able to return to their previous employers and positions once business resumes.

On February 3, 2021, Supervisor Alejo provided a referral to County Counsel and the Monterey County Workforce Development Board (WDB) to draft an ordinance requiring businesses in Monterey County’s Unincorporated Areas to recall laid-off hospitality workers (hotel and restaurant workers) when the economy reopens, based on employee length of service. The referral listed cities that have already adopted similar ordinances, including the cities of Oakland, San Diego, and Santa Clara.

On April 13, 2021, a Hospitality Ad-Hoc Committee meeting was held to secure the input of labor groups, employees, and hospitality industry representatives on a right-to-recall ordinance for Monterey County. At the meeting, it was mentioned that Governor Newsom had vetoed a similar right-to-recall bill in September 2020, and that a new, displaced worker hiring and retention bill, SB 93, is currently moving through the California State Legislature.

BACKGROUND:

UNITE HERE, the hotel and restaurant workers' union, provided to the County a template to create a draft hospitality worker right-to-recall ordinance; however, the template included definitions and information relating to international airport hospitality operations, casinos, and event centers that would require modification for use in Monterey County. Since the language in the ordinance adopted by the City of Oakland is substantially similar to the language in the UNITE HERE template and because the scale of hospitality operations in Oakland is similar to Monterey County, it was determined that the proposed draft ordinance would be modeled on the City of Oakland's Travel and Hospitality Right-to-Recall Ordinance, adopted by Oakland's City Council on July 21, 2020 and enacted on August 15, 2020.

To provide relevant, workforce-related data, WDB staff researched labor market information from the cities and counties in California that have adopted some form of pandemic-inspired right-to-recall ordinance, then developed a comparison of the ordinances to show the variety of approaches that have been taken relating to options such as the types and sizes of impacted employers, the laid-off employees that were covered, how the ordinances would be enforced, and whether there would be a specific date for presentation of a report on the ordinance's effectiveness or a pre-defined expiration date.

In addition, WDB staff provided local labor market information in a PowerPoint presentation to show the sizes of hotel and restaurant businesses in Monterey County in general, and in the Unincorporated Areas, specifically, with information on the number of businesses that could be impacted, depending on the size threshold:

- There are 73 hotels, bed & breakfasts, and lodges in Monterey County's Unincorporated Areas with numbers of employees ranging from 2 to 1,500, 7 of which have 50 or more employees (Dun and Bradstreet, December 2020).
- There are 183 eating, drinking and catering establishments in the County's Unincorporated Areas, with numbers of employees ranging from 5 to 100, 2 of which have 50 or more employees, and 12 of which have 25 or more employees (Dun and Bradstreet, January 2021).

During this time, County Counsel staff adapted the City of Oakland's recall ordinance for use in Monterey County, noting that "travel-related" was defined in the UNITE HERE template and the Oakland ordinance in terms of international airport operations and thus would not be directly applicable to Monterey County. It was determined that a draft ordinance, entitled the "Hospitality Worker Right-to-Recall Ordinance," would be provided to the Board for its consideration on April 20, 2021.

While County Counsel staff was drafting a right-to-recall ordinance for Monterey County, it also undertook a review of recall ordinance-related litigation between the City of San Diego and the San Diego County Lodging Association. Affected San Diego employers argued that the ordinance, similar to what is being contemplated here for Monterey County, represents an unconstitutional attempt to readjust rights and obligations under existing employment contracts. Additionally, San Diego employers argued that the ordinance is burdensome. Governor Newsom had stated that similar recall legislation was "too onerous," vetoing it in September 2020 after it had cleared the legislature.

DISCUSSION:

The following options and issues were identified at the April 13, 2021 Hospitality Ad-Hoc Committee meeting as needing Board input to move forward with a right-to-recall ordinance:

- 1) Applicability to 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 employees - number of months of service;
- 5) Employee qualifications for recall - is now qualified or can be qualified with training;
- 6) Number of days for employee to respond to recall;
- 7) Number of days for employer to transmit reason(s) for non-recall to employees;
- 8) Number of days for a successor (new) employer of a covered business to comply and terms of compliance;
- 9) Enforcement - civil action and punitive damages;
- 10) Exemption for existing collective bargaining agreements with recall provisions or waiver; and
- 11) Effective date and termination of the ordinance.

If the Board determines the thresholds, limits and approaches to be taken on the questions of applicability, employee qualifications, and enforcement, it will be able to adopt a right-to-recall ordinance reflecting its selected options. Staff recommends that the Board provide direction on these issues, and any others, table the matter so staff may return later in the meeting with a finalized ordinance, and then adopt the urgency ordinance.

BOARD OF SUPERVISORS STRATEGIC INITIATIVES:

Approval of a right-to-recall ordinance for hospitality workers would support the following Strategic Initiatives:

- √ Economic Development - Through collaboration, strengthen economic development to ensure a diversified and healthy economy.
- √ Administration - Promote an organization that practices efficient and effective resource management and is recognized for responsiveness, strong customer orientation, accountability and transparency.
- √ Health & Human Services - Improve health and quality of life through County-supported policies, programs, and services, promoting access to equitable opportunities for healthy environments in collaboration with communities.

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ATTACHMENTS:

Board Report

Draft Urgency Ordinance