

ORDINANCE

By Fletcher

Amending Title 2, Chapter 40 of the Minneapolis Code of Ordinances relating to Administration: Workplace Regulations.

The City Council of the City of Minneapolis do ordain as follows:

Section 1. That Chapter 40 of the Minneapolis Code of Ordinances be amended by adding thereto a new Article VII, Hospitality Worker Right to Recall, including new Sections 40.900 through 40.1040, to read as follows:

ARTICLE VII. – HOSPITALITY WORKER RIGHT TO RECALL

40.900. – Short Title. This Article VII shall be known and may be cited as the Minneapolis Hospitality Worker Right to Recall Ordinance.

40.910. – Findings; Purpose. The City Council makes the following findings:

(1) As a home rule charter city, Minneapolis has broad authority through its police powers to adopt regulations to further the public health, safety, and general welfare.

(2) As a result of the COVID-19 pandemic, the resulting economic disruption, and the Executive Orders issued by the State of Minnesota and Emergency Regulations issued by the City of Minneapolis to protect the public health and welfare, many workers in the City of Minneapolis are facing significant job losses and economic insecurity.

(3) On March 13, 2020, Minnesota Governor Walz issued Executive Order 20-01 declaring a peacetime emergency in response to COVID-19. In the following months, Governor Walz issued numerous Executive Orders, many of which limit economic activity in Minnesota in the interest of protecting public health.

(4) On March 16, 2020, Minneapolis Mayor Frey declared a Local Public Health Emergency pursuant to Minneapolis Code of Ordinances § 128.50 in response to the COVID-19 pandemic. In the following months, Mayor Frey issued additional Emergency Regulations, many of which limit economic activity within the City in the interest of protecting public health.

(5) The COVID-19 pandemic has had a devastating effect upon the hospitality industry, as travel, tourism, and events have halted and businesses in these industries cannot easily adjust to the temporary lack of business.

(6) Minneapolis, as Minnesota's tourist and event destination, is home to many hotels and event centers, which have suffered from a lack of business due to the COVID-19 pandemic and resulting economic conditions and government orders. These businesses have been forced to lay off many of their employees. As a result, Minneapolis's hospitality employees have experienced a great degree of economic dislocation and insecurity.

(7) As the COVID-19 pandemic subsides, and tourism, travel, and events resume, hospitality employers will resume their operations. When this occurs, it is in the interests of the City that hospitality employers welcome their former employees back to work as they are able.

(8) Ensuring that hospitality employers welcome back their former employees will reduce the devastating effects of the pandemic on these employees and their families and reduce the need for government-funded benefits and social services.

(9) Ensuring that hospitality employers welcome back their former employees will also speed the City's transition back to a fully functioning economy and lessen the long-term damage to the Minneapolis economy.

40.920. - Definitions. The following words, terms, and phrases, when used in this Article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

City means the City of Minneapolis.

Covered Enterprise means a Hotel or an Event Center located within the City.

Department means the Minneapolis Department of Civil Rights.

Director means the director of the Department of Civil Rights, or the Director's designee.

Employee means any individual employed by an Employer, including temporary employees and part-time employees, who performed work within the geographic boundaries of the City for at least eighty (80) hours in the twelve (12) months that preceded March 13, 2020, for that Employer at a Covered Enterprise. For purposes of this Article, "Employee" does not include the following:

(1) Employees classified as extended employment program workers as defined in Minnesota Rules part 3300.6000, subpart 13 and participating in the Minnesota Statutes, Section 268A.15 extended employment program.

(2) Independent contractors.

Employer means any individual, partnership, association, corporation, business trust, or any person or group of persons acting directly or indirectly in the interest of an Employer in relation to an Employee and which owns or operates a Covered Enterprise. For purposes of this article, "Employer" does not include any of the following:

(1) The United States government.

(2) The State of Minnesota, including any office, department, agency, authority, institution, association, society, or other body of the state, including the legislature and the judiciary.

(3) Any county or local government, except the City.

Event Center means a publicly or privately owned structure of more than fifty thousand (50,000) rentable square feet or two thousand (2,000) fixed seats that is used primarily for the purposes of public performances, sporting events, conventions, or similar public events, and includes concert halls, stadiums, sports arenas, 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. The term “Event Center” shall not include any religious institution place of assembly.

Hotel means an establishment containing more than fifty (50) guest rooms, which is used or advertised as a place where lodging accommodations are supplied for pay to guests for transient occupancy. The term “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.

Laid-off Employee means an Employee who was employed by an Employer at a Covered Enterprise for six (6) months or more in the twelve (12) months preceding March 13, 2020, and whose most recent separation from active service occurred after March 13, 2020, and was due to a government order, lack of business, a reduction in force or other, economic, non-disciplinary reasons.

Length of Service means the total of all periods of time during which the Laid-off Employee was in the active service of the Employer, including periods of time when the Laid-off Employee was on vacation or leave.

40.930. – Right to Recall. (a) *Priority for Laid-off Employees.* An Employer shall offer its Laid-off Employees in writing, by mailing 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 at a Covered Enterprise after this Article’s effective date and for which the Laid-off Employee is qualified.

(b) A Laid-off Employee is qualified for a position if the Laid-off Employee:

(1) Held the same or similar position 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.

(c) The Employer shall offer such positions first to Laid-off Employees who qualify under subsection (b)(1) of this section and then to Laid-off Employees who qualify under subsection (b)(2) of this section. Where more than one (1) 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.

(d) An Employer may make simultaneous, conditional offers of employment to Laid-off Employees, with final offers of employment conditioned on application of the priority system set forth in subsections (b) and (c) of this section.

(e) A Laid-off Employee who is offered a position pursuant to this section shall be given at least seven (7) calendar days from the date of offer in which to accept or decline the offer. If the Employer does not possess for the Laid-off Employee information that will allow the offer to be made by email or text message in addition to physical mailing, the Laid-off Employee shall be given at least ten (10) calendar days from the date of offer in which to accept or decline. A Laid-off Employee who does not respond to

an offer within the time provided shall be deemed to have declined it. A Laid-off Employee that accepts a position shall have seven (7) calendar days following the expiration of the time for acceptance of the offer to be available for return to work, unless the Employer and the Laid-off Employee mutually agree upon a different time.

(f) An Employer that declines to offer a position to a Laid-off Employee on the grounds of lack of qualification and instead hires someone other than the Laid-off Employee must provide the Laid-off Employee a written notice of the non-selection within thirty (30) calendar days of the date of hire, documenting the reasons for such decision. This written record must be retained for at least three (3) years.

40.940. – Successor Employers. (a) The provisions of this Article also apply if, after the Laid-off Employee's separation from active service, the ownership of a Covered Enterprise changes due to a sale, assignment, transfer, or other disposition of substantially all of its assets, or there is a change in the Covered Enterprise's form of organization, but the enterprise continues to conduct or reopens conducting the same or similar business operations as before March 13, 2020, at the same or substantially the same location.

(b) If subsection (a) applies, the Employer shall transfer the records required by Section 40.960 to the Successor Employer to facilitate compliance with this Article.

40.950. – Retaliation. It shall be unlawful for an Employer or any other person acting on its behalf to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right protected under this Article, including, but not limited to, inquiring, disclosing, reporting, or testifying about any violation of this Article. An Employer shall not take adverse employment action against or discriminate against an Employee because the Employee has exercised rights under this Article.

40.960. – Enforcement. (a) *Authority.* The Director has broad authority to implement, administer, and enforce this Article. The Director shall have broad authority to investigate possible violations of this Article whenever there is cause to believe that any violation of this Article has occurred, either on the basis of a report of a suspected violation or on the basis of any other credible information, including violations found during the course of an investigation.

(b) The Director, together with the Community Planning and Economic Development Department's Business Licensing division, shall develop and implement an outreach program to educate Covered Enterprises and Employees about their rights and responsibilities under this Article.

(c) The Director may, upon any credible information that a violation may have occurred or is about to occur, which may but need not include a Report of violation described in subsection (d), promptly provide education to the Covered Enterprise with the purpose of preventing or promptly remediating any violation or potential violation. If such educational efforts are sufficient to prevent or promptly remediate any potential violation, and the Director is provided with satisfactory information that there has been no monetary harm to Laid-off Employees, the matter may in the Director's discretion be closed without investigation, determination of violation, or relief or administrative fines being ordered.

(d) *Report of violations.* An Employee or other person may report to the Department any suspected violation of this Article. A report of a suspected violation may be filed only if the matter complained of occurred after the effective date of this Article and within three hundred and sixty-five (365) days prior to the filing of the report.

(e) *Enforcement process.* The Department shall enforce this Article pursuant to Chapter 40, Article II, Sections 40.120 through 40.160, which are incorporated herein by reference, except for subsections 40.120(a) and (d).

(f) *Relief and administrative fines.* If an Employer is found to have violated this Article, the Director shall order the Employer to cease and desist from engaging in the violative practice and may order any appropriate relief, including but not limited to:

(1) Reinstatement.

(2) Compensatory damages to the Laid-off Employee in the amount of the lost wages and benefits suffered by the Laid-off Employee, or one thousand dollars (\$1,000.00), whichever is greater. The compensatory damages available shall be reduced by the wages and benefits actually earned by the Laid-off Employee in alternative employment during the same time period.

(3) A penalty of up to one thousand dollars (\$1,000.00) payable to each Laid-off Employee who has suffered damage due to a violation.

(4) Payment to the Department of a civil fine of up to one thousand dollars (\$1,000.00) for each violation of this Article. Each Laid-off Employee who was not offered employment as required by this Article constitutes a separate violation.

(5) Payment to the Department of a civil fine of not less than seven hundred dollars (\$700.00) nor more than three thousand dollars (\$3,000.00) for each violation of Section 40.940. This fine shall be in addition to payment to the Employee of compensatory damages for the retaliatory conduct in the amount of the Employee's lost wages, up to one thousand dollars (\$1,000.00).

(6) Reimbursement of the Department for reasonable costs of investigation expended in enforcing this Article, unless the payment of costs would impose an extreme financial hardship on the Employer, in which case the Director may order the payment of a percentage of costs expended which will not cause extreme financial hardship. In determining the amount of the costs to be reimbursed, the size of the Employer and the gravity of the violation shall be considered.

(7) An Employer that is subject to the licensing power of the City may be referred to the City department issuing the license and may be subject to adverse action as otherwise provided by the licensing provisions of this Code.

40.970. – Records Retention. (a) An Employer shall retain the following records documenting compliance with this Article:

(1) Each Laid-off Employee's full legal name, job position at the time of separation from employment, date of hire, last known physical address, last known email address, and last known telephone number.

(2) Records sufficient to demonstrate offers of employment made to Laid-off Employees pursuant to Section 40.920.

(3) Any notices to Laid-off Employees of non-selection, pursuant to Section 40.920(f).

(b) Such records shall be retained for a period of not less than three (3) years from the date that the offer of employment or notice of non-selection was provided to the Laid-off Employee.

(c) An Employer must allow an Employee to inspect records required by this Article and relating to the Employee at a reasonable time and place.

(d) The Department shall have access to the records required by this Article, with appropriate notice and at a mutually agreeable time, to investigate alleged violations of and monitor compliance with the requirements of this Article.

(e) If an Employer fails to create and retain adequate records or does not allow the Department reasonable access to the records and an issue arises as to an alleged violation of this Article, it shall be presumed that the Employer has violated this Article, absent clear and convincing evidence otherwise.

40.980. – Relationship with Civil Service Rules. This Article shall not apply to an employee who has recall rights under the Minneapolis Civil Service Commission Rules.

40.990. – Preemption. Nothing in this Article shall be interpreted or applied so as to create any power or duty in conflict with federal or state law. No provision of this Article shall apply to any Employer that is operating under the protection of the bankruptcy court or under receivership or under a trustee appointed by a court of competent jurisdiction.

40.1000. – No assumption of liability. In undertaking the adoption and enforcement of this Article, the City is undertaking only to preserve and protect safety, health, and general welfare. The City is not assuming liability, nor is it imposing on its officers and employees an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury. This Article does not create a legally enforceable right against the City.

40.1010. – Severability. If any of parts or provisions of this Article or the application thereof to any circumstance is held invalid by a court of competent jurisdiction, the remainder of this Article, including the application of such part or provision to circumstances other than those to which it has been held invalid, shall not be affected and shall continue in full force and effect. To this end, the provisions of this Article are severable.

40.1020. – Rulemaking. The Director may make appropriate rules to implement, administer, and enforce this Article. Such rules shall be consistent with this Article and may be relied upon by employers and employees in determining their rights and responsibilities under this Article.

40.1030. – Effective Date; Sunset Date. This Article shall be effective on May 1, 2021. It shall continue in effect until one (1) year after the termination of both the peacetime emergency declared by the Governor of the State of Minnesota due to the COVID-19 pandemic and the Local Public Health Emergency declared by the Mayor of the City of Minneapolis due to the COVID-19 pandemic, at which time it shall automatically terminate unless the City Council takes action to extend it. When both such emergency declarations have been terminated, the Department shall calculate and make publicly available the sunset date of this Article.

40.1040. – Reporting. Not later than sixty (60) days before the sunset date of this Article, the Director shall provide a written report to the appropriate committee of the City Council regarding this Article. The report shall include, but need not be limited to, a discussion of the implementation and enforcement of this Article, including the number and nature of violations, the number of employees reinstated, the penalties assessed, any information available to the Director regarding the effectiveness of this Article in promoting the goals and purposes set forth herein, and a recommendation regarding whether there is a continuing need for the provisions of this Article based upon the City’s economic recovery from the COVID-19 pandemic.