

COUNCIL REFERRAL FORM

Name of Councilmember requesting referral: Jim Oddie

Date of submission to City Clerk (must be submitted before 5:00 p.m. on the Monday before the Council meeting requested): 1/21/2015

Council Meeting date: 2/3/2015

Brief description of the subject to be printed on the agenda, sufficient to inform the City Council and public of the nature of the referral:

Request that the City Council direct the appropriate City Staff to draft and return to the City Council a proposed ordinance relative to a transitional retention period upon change of ownership, control, or operation of grocery stores.

Attached for reference is the "Grocer Worker Retention Ordinance" from the City of Los Angeles.

City of Los Angeles Municipal Code Chapter XVIII

Grocery Worker Retention Ordinance

SEC. 181.00. PURPOSE.

Supermarkets and other grocery retailers are the main points of distribution for food and daily necessities for the residents of Los Angeles and are essential to the vitality of any community. The City has an interest in ensuring the welfare of the residents of these communities through the maintenance of health and safety standards in grocery establishments. Experienced grocery workers with knowledge of proper sanitation procedures, health regulations, and understanding of the clientele and communities they serve are instrumental in furthering this interest. A transitional retention period upon change of ownership, control, or operation of grocery stores ensures stabilization of this vital workforce, which results in preservation of health and safety standards. Through this ordinance, the City seeks to sustain the stability of a workforce that forms the cornerstones of communities in Los Angeles.

SEC. 181.01. DEFINITIONS.

The following definitions shall apply to this chapter:

- A. **"City"** shall mean the City of Los Angeles.
- B. **"Change in Control"** shall mean 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 Grocery Employer or any Person who controls such Incumbent Grocery Employer ("IGE Parent") or any Grocery Establishment(s) under the operation or control of either such Incumbent Grocery Employer or IGE Parent.
- C. **"Eligible Grocery Worker"** shall mean any individual whose primary place of employment is at the Grocery Establishment subject to a Change in Control, and who has worked for the Incumbent Grocery Employer for at least six months prior to the execution of the Transfer Document. "Eligible Grocery Worker" does not include a managerial, supervisory, or confidential employee.
- D. **"Employment Commencement Date"** shall mean the date on which an Eligible Grocery Worker retained by the Successor Grocery Employer pursuant to this chapter commences work for the Successor Grocery Employer in exchange for benefits and compensation under the terms and conditions established by the Successor Grocery Employer and as required by law.
- E. **"Grocery Establishment"** shall mean a retail store in the City of Los Angeles that is over 15,000 square feet in size and that sells primarily household foodstuffs for offsite consumption, including the sale of fresh produce, meats, poultry, fish, deli products, dairy products, canned foods, dry foods, beverages, baked foods and/or

prepared foods. Other household supplies or other products shall be secondary to the primary purpose of food sales. The definition of "Grocery Establishment" shall also include Superstores as defined in the Los Angeles Municipal Code Section.

F. **"Incumbent Grocery Employer"** shall mean the Person that owns, controls, and/or operates the Grocery Establishment prior to the Change in Control.

G. **"Person"** shall mean 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.

H. **"Retaliatory Action"** shall mean the failure to hire, or the discharge, suspension, demotion, penalization, or discrimination or any other adverse action against an Eligible Grocery Employee with respect to the terms and conditions of the Eligible Grocery Worker's employment.

I. **"Successor Grocery Employer"** shall mean the Person that owns, controls, and/or operates the Grocery Establishment after the Change in Control.

J. **"Transfer Document"** shall mean the purchase agreement or other document(s) effecting the Change in Control.

SEC. 181.02. GROCERY EMPLOYERS' RESPONSIBILITIES.

A. The Incumbent Grocery Employer shall, within fifteen days after the execution of the Transfer Document, provide to the Successor Grocery Employer the name, address, date of hire, and employment occupation classification of each Eligible Grocery Worker.

B. The Successor Grocery Employer shall maintain a preferential hiring list of Eligible Grocery Workers identified by the Incumbent Grocery Employer as set forth in Subsection A. of this section and shall be required to hire from that list for a period beginning upon the execution of the Transfer Document and continuing for ninety days after the Grocery Establishment is fully operational and open to the public under the Successor Grocery Employer.

C. If the Successor Grocery Employer extends an offer of employment to an Eligible Grocery Worker, the Successor Grocery Employer shall retain written verification of that offer for no fewer than three years from the date the offer was made. The verification shall include the name, address, date of hire, and employment occupation classification of each Eligible Grocery Worker.

SEC. 181.03. TRANSITION EMPLOYMENT PERIOD.

A. A Successor Grocery Employer shall retain each Eligible Grocery Worker hired pursuant to this chapter for no fewer than ninety days following the Eligible Grocery

Worker's Employment Commencement Date. During this ninety-day transition employment period, Eligible Grocery Workers shall be employed under the terms and conditions established by the Successor Grocery Employer, as required by law and pursuant to the terms of a relevant collective bargaining agreement, if any.

B. If within the period established in Section [181.02](#)(B) the Successor Grocery Employer determines that it requires fewer Eligible Grocery Workers than were required by the Incumbent Grocery Employer, the Successor Grocery Employer shall retain Eligible Grocery Workers by seniority within each job classification to the extent that comparable job classifications exists or pursuant to the terms of a relevant collective bargaining agreement, if any. Non-classified Eligible Grocery Workers shall be retained by seniority and according to experience or pursuant to the terms of a relevant collective bargaining agreement, if any.

C. During the ninety-day transition employment period, the Successor Grocery Employer shall not discharge without cause an Eligible Grocery Worker retained pursuant to this chapter.

D. At the end of the ninety-day transition employment period, the Successor Grocery Employer shall perform a written performance evaluation for each Eligible Grocery Worker retained pursuant to this chapter. If the Eligible Grocery Worker's performance during the ninety-day transition employment period is satisfactory, the Successor Grocery Employer shall consider offering the Eligible Grocery Worker continued employment under the terms and conditions established by the Successor Grocery Employer and as required by law. The Successor Grocery Employer shall retain a record of the written performance evaluation for a period of no fewer than three years.

SEC. 181.04. NOTICE TO PUBLIC.

A. The Incumbent Grocery Employer shall post public notice of the Change in Control at the location of the affected Grocery Establishment within five business days following the execution of the Transfer Document. Notice shall remain posted during any closure of the Grocery Establishment and until the Grocery Establishment is fully operational and open to the public under the Successor Grocery Employer.

B. Notice shall include, but not be limited to, the name of the Incumbent Grocery Employer and its contact information, the name of the Successor Grocery Employer and its contact information, and the effective date of the Change in Control.

C. Notice shall be posted in a conspicuous place at the Grocery Establishment so as to be readily viewed by Eligible Grocery Workers and other employees, customers, and members of the public.

SEC. 181.05. ENFORCEMENT.

A. Eligible Grocery Workers may bring an action in the Superior Court of the State of California, as appropriate, against the Incumbent Grocery Employer or the Successor Grocery Employer for violations of this chapter and may be awarded:

1. Hiring and reinstatement rights pursuant to this chapter, whereupon the ninety-day transition employment period shall not commence until the Eligible Grocery Worker's Employment Commencement Date with the Successor Grocery Employer.

2. Front pay or back pay for each day during which the violation continues, which shall be calculated at a rate of compensation not less than the higher of:

a. The average regular rate of pay received by the Eligible Grocery Worker during the last three years of the Eligible Grocery Worker's employment in the same occupation classification; or

b. The most recent regular rate received by the Eligible Grocery Worker while employed by either the Incumbent Grocery Employer or the Successor Grocery Employer.

3. Value of the benefits the Eligible Grocery Worker would have received under the Successor Grocery Employer's benefit plan.

B. If the Eligible Grocery Worker is the prevailing party in any legal action taken pursuant to this section, the court shall award reasonable attorney's fees and costs as part of the costs recoverable.

SEC. 181.06. EXEMPTION FOR COLLECTIVE BARGAINING AGREEMENT.

Parties subject to this chapter may, by collective bargaining agreement, provide that the agreement supersedes the requirements of this chapter.

SEC. 181.07. COEXISTENCE WITH OTHER AVAILABLE RELIEF FOR SPECIFIC DEPRIVATIONS OF PROTECTED RIGHTS.

This chapter shall not be construed to limit an Eligible Grocery Worker's right to bring legal action for wrongful termination.

SEC. 181.08. SEVERABILITY.

If any provision of this chapter is found invalid by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect.

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