

ATTACHMENT B

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ADOPTED ORDINANCE**

ORDINANCE G-_____

AN ORDINANCE AMENDING THE PHOENIX CITY CODE,
BY ADDING A NEW CHAPTER 17, BUSINESS AND WAGE
REGULATIONS, ARTICLE I. GENERAL PROVISIONS AND
ARTICLE IV, PUBLIC HYGIENE AND HANDWASHING FOR
TOURISM AND HOSPITALITY WORKERS.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF PHOENIX AS

FOLLOWS:

SECTION 1. PHOENIX CITY CODE, CHAPTER 17, ARTICLE I, GENERAL
PROVISIONS, SECTIONS 17-1 THROUGH 17-8 ARE ADDED AS FOLLOWS:

Article I. General Provisions.

Sec. 17-1. Declaration of Policy.

The SARS-CoV-2 pandemic caused widespread economic dislocation in Phoenix due to interruptions of normal enterprise activity through voluntary and government-ordered cutbacks and closures. Thousands of workers in Phoenix 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 and are afforded additional assistance.

Sec. 17-2. Definitions.

Airport means Sky Harbor International Airport.

An *airline food caterer* prepares food or beverage to or for aircraft crew or passengers, delivers prepared food or beverage to or for aircraft crew or passengers, conducts security or inspection of aircraft food or beverage, or provides any other service related to or in connection with the preparation of food or beverage to or for aircraft crew or passengers, at the Airport. The term airline food caterer does not include an air carrier certificated by the Federal Aviation Administration.

An *airport service provider* prepares or sells food or other retail products or services to customers or provides custodial or janitorial services at the Airport. Airport service provider does not include the City of Phoenix or any subdivision thereof, or an air carrier certificated by the Federal Aviation Administration and any entity owned or controlled by such an air carrier.

A *Campus service provider* prepares or sells food or other retail products to customers or provides custodial or janitorial services at any public or private college or university with more than 1,000 enrolled students.

Compensation means an employee's average weekly earnings for the 12-month period immediately preceding the employee's last day of active employment with an employer, including wages or salary, payments to an employee while on vacation or on leave, allocated or declared tip income, bonuses or commissions, contributions or premiums paid by the employer for fringe benefits, overtime or other premium payments, and allowances for expenses, uniforms, travel or education.

City means the City of Phoenix.

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, conducts an enterprise and employs or exercises control over the wages, hours or working conditions of any employee.

Employment site means the principal physical place where a furloughed employee performed the predominance of the worker's duties prior to being furloughed.

Enterprise means any airline food caterer, airport service provider, campus service provider, event center or hotel in the City.

Event center means a convention center, stadium, arena, or like venue with a total capacity of at least 1,000 people that hosts conventions, sporting events, concerts, or shows. Does not include any facilities on the campus of any public elementary, middle, or high school, or in a place of worship.

Hospitality employer means any person who owns, controls, or operates an enterprise in the City, and includes any person or contractor who, in a managerial, supervisory, or confidential capacity, employs workers to provide services at an enterprise in conjunction with the enterprise's purpose.

Hospitality worker means any person who is employed by a hospitality employer to provide services at or for an enterprise. "Hospitality worker" does not include a managerial, supervisory or confidential employee.

Hotel has the same meaning as in Section 14-100 and includes any restaurant as defined in Section 14-100 and any contracted, leased or sublet premises operated in conjunction with a hotel or that is used for the primary purpose of providing services at a hotel, but does not include a hotel with fewer than 150 guestrooms.

Person means any natural person, joint venture, joint stock company, partnership, association, club, company, corporation, business trust, or organization of any kind.

Sec. 17-3. Retaliatory action prohibited.

a. 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.

b. An employer refusing to employ, terminating or taking any other adverse action against any employee who has engaged in any of the foregoing activities must, within sixty (60) days preceding the refusal, termination or other adverse action, provide to the employee at or before the time of the refusal, termination or other adverse action, a detailed written statement of the reason or reasons for the refusal, termination or other adverse action. Statement must include all the facts substantiating the reason or reasons, and all facts known to the person that contradict the substantiating facts.

Sec. 17-4. Enforcement.

a. This chapter may be enforced in a civil action in Superior Court brought by the City Attorney 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 17-3.

c. 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.

Sec. 17-5. Collective bargaining agreements.

All the provisions of this chapter, or any part of this chapter, may be waived in a bona fide collective bargaining agreement, but only if the waiver is explicitly set forth in the agreement in clear and unmistakable terms. Unilateral implementation of terms and conditions of employment by either party to a collective bargaining relationship shall not constitute, or be permitted, as a waiver of all or any part of the provisions of this chapter.

Sec. 17-6. No waiver of rights.

Except for bona fide collective bargaining agreements, any waiver by a worker of any or all of the provisions of this chapter shall be deemed contrary to public policy and shall be void and unenforceable. Any attempt by an employer to have a worker waive rights given by this chapter shall constitute a violation of this chapter. In order to protect the public welfare from the adverse effects of long-term mass unemployment and underemployment, this chapter may be enforced regardless of any waiver or release executed by a worker prior to enactment of this chapter unless barred from doing so by another provision of law. Any private agreement by which an intended layoff or termination for economic reasons is relabeled a resignation or quit shall be disregarded under this chapter to the fullest extent permitted by law.

Sec. 17-7. Coexistence with other available relief for deprivations of protected rights.

The provisions of this chapter shall not be construed as limiting any person's right to obtain any other relief to which he or she may be entitled at law or in equity. Any rule or regulation issued thereunder, which are more favorable to employees than the minimum standards applicable under this chapter, or any rule or regulation issued hereunder, shall not be affected by this chapter and such other laws, or rules or regulations, shall be in full force and effect and may be enforced as provided by law.

Sec. 17-8. Severability.

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

Sec. 17-9 through 17-19. Reserved.

SECTION 2. PHOENIX CITY CODE, CHAPTER 17, ARTICLE IV, PUBLIC HYGIENE AND HANDWASHING FOR TOURISM AND HOSPITALITY WORKERS, SECTIONS 17-20 & 17-21, ARE ADDED AS FOLLOWS:

Article IV. Public Hygiene and Handwashing for Tourism and Hospitality Workers

Sec. 17-20. Public Hygiene Training Requirement

- A. The City shall contract with a public hygiene training organization to
 1. develop and conduct a public hygiene training program,
 2. develop and administer a public hygiene examination, and
 3. issue documentation to each person who complete the training program and passes the examination.
- B. The City shall issue a solicitation to select one or more organizations to perform these functions.
- C. To be eligible for selection as a public hygiene training organization, the organization shall meet requirements set forth by the City Manager, or designee, that shall include, but not be limited to, the following:

1. The public hygiene training organization must have experience providing training to hospitality workers or immigrant low-wage workers, utilize interactive teaching strategies that engage across multiple literacy levels, and provide trainers and educators who are culturally competent and fluent in the language or languages that workers understand; and
2. shall offer a public hygiene training program that includes no less than six hours of training, including live and interactive instruction; and
3. include the following elements, except that the City Manager, or designee, may determine that any element below is separately and sufficiently required by State or local law, in which case the element may be eliminated, and the total training time reduced accordingly:
 - a. Best practices for effective cleaning techniques to prevent the spread of viral and bacterial disease, including spread of the COVID-19 Coronavirus and like diseases;
 - b. Best practices for identifying and avoiding insect or vermin infestations;
 - c. Best practices for identifying and responding to suspected instances of human trafficking, domestic violence, or violent or threatening conduct;
 - d. Best practices for identifying and responding to the presence of other potential criminal activity;
 - e. The rights of employees under this Article and any other law enacted by the City of Phoenix.

D. The training organization may coordinate with a hospitality employer to ensure that training content aligns where appropriate with the hospitality employer's policies and procedures. Ultimate discretion regarding training content shall remain with the training organization, subject to requirements set forth by the City Manager, or designee.

E. The training organization shall administer an examination to workers who complete its training program. The examination shall test basic proficiency in the required training elements.

F. The training organization shall promptly issue a certificate to any person who successfully completes its training program and examination.

G. The certificate shall be valid for a period of five years.

H. Training organizations that provide this training shall submit a report to the City within five business days of the training to document the date on which the training was held and the names of all hospitality workers who received the certificates.

I. Training organizations shall offer a right of review to an individual who complete the training program but does not successfully complete the examination.

J. No hospitality employer shall employ a hospitality worker for more than one hundred twenty (120) calendar days unless the hospitality worker presents the hospitality employer with a valid certificate.

K. Each hospitality employer shall retain records sufficient to demonstrate compliance with this article, including a copy of a valid certificate for each hospitality worker whom it has employed for more than one hundred twenty (120) calendar days.

L. This article shall become effective one hundred and eighty (180) calendar days from the effective date of the ordinance codified in this Article.

Sec. 17-21. Measures to Facilitate Handwashing and Hygiene

A. Every hospitality employer shall authorize and permit all hospitality workers to take breaks totaling at least fifteen (15) minutes per four (4) hours, or major fraction thereof, worked. Such break periods shall be counted as hours worked for which there shall be no deduction from wages.

B. Hotel employers shall adhere to the following rules:

1. No room attendant shall be subject to an adverse employment action for failing to clean more than four thousand square feet of floor space in any eight-hour workday. This requirement shall apply to any combination of spaces, including guest rooms, meeting rooms, and other rooms within a hotel, and apply regardless of the furniture, equipment, or amenities in such rooms. The floor space shall be reduced on a prorated basis if a room attendant works less than eight hours in a workday, shall be increased on a prorated basis if a room attendant works in excess of eight hours in a workday, and shall be calculated on a prorated basis by room attendant if a room attendant is assigned to clean rooms jointly with one or more other room attendants.

C. Hotel employers shall ensure that room attendants are able to wash their hands with soap after cleaning each hotel room or public area within a hotel.

PASSED by the City Council of the City of Phoenix this ____ day of July,
2020.

MAYOR

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

REVIEWED BY:

City Manager

DRAFT