

ORDINANCE NUMBER _____ (CCS)

(City Council Series)

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
SANTA MONICA ADOPTING SANTA MONICA MUNICIPAL CODE CHAPTER 4.67
TO ENHANCE PROTECTION OF HOTEL WORKERS
IN THE LOCAL HOSPITALITY INDUSTRY

WHEREAS, by letter dated September 13, 2018, the Commission on the Status of Women requested the City Council of the City of Santa Monica to adopt legislation to protect hotel workers from physical violence, provide them fair compensation, and require education and training to enable hotel workers to protect their own rights and safety as well as public health and safety; and

WHEREAS, on October 23, 2018, the City Council directed staff to prepare an ordinance for Council consideration based on all of the elements included in the Commission on the Status of Women’s letter; and

WHEREAS, on August 13, 2019, the City Council directed staff to include a worker retention policy in the ordinance prepared for Council consideration; and

WHEREAS, other cities in California and other states have adopted local legislation to protect the safety and security and improve working conditions of hotel employees within their respective jurisdictions; and

WHEREAS, hotel workers are vital contributors to the Santa Monica community and the hospitality industry is an essential component of the City’s economy; and

WHEREAS, hotel workers who work by themselves in guest rooms are vulnerable to crimes and other threatening behavior, including sexual assault; and

WHEREAS, ensuring that hotel workers are equipped with personal security devices and supported in their ability to report criminal and threatening behavior to the proper authorities will promote their personal safety and improve public safety overall; and

WHEREAS, hotel workers are subject to being assigned overly burdensome workloads and unexpected overtime; and

WHEREAS, ensuring that hotel workers receive fair compensation when their work assignments exceed proscribed limits will promote the public interest and enable hotel workers to receive fair pay for honest work, to perform their work in a manner that adequately protects their personal wellbeing, and to meet personal and family obligations; and

WHEREAS, changes in ownership, control, or operation of hotels occur frequently in the hotel industry and can trigger mass layoffs of hotel workers and displace employees who are skilled, knowledgeable, and experienced in providing a safe, clean, and enjoyable experience for the millions of visitors who come to Santa Monica each year; and

WHEREAS, ensuring that hotel workers have an opportunity to continue working for a hotel upon change in hotel ownership, control, or operation will prevent both unnecessary disruption to the labor market and increased demands on social services provided by the City, and thereby maintain the stability and high level of service in the hospitality and tourism businesses in the City, which promotes the public welfare; and

WHEREAS, hotel workers are uniquely positioned to identify and report potential threats or crimes, including potential instances of human trafficking, domestic and sexual violence, and the presence of suspicious materials that may be linked to other potential criminal activity; and

WHEREAS, thorough housekeeping services are essential to preventing and avoiding the spread of disease and pests that pose potential risks to public health and the enjoyment of guests; and

WHEREAS, ensuring that hotel workers are provided with adequate training and education to establish a baseline level of knowledge on key issues affecting the public and their own wellbeing will ensure that hotel workers and visitors alike have safe and healthy experiences during their time in Santa Monica; and

WHEREAS, given that tourism is one of the largest industries in the City and in the entire region, establishing the foregoing safety and security measures, fair compensation, workforce stability, training and education, and worker retention standards for hotel workers will not only improve worker safety and working conditions, but also benefit the local and regional economy overall, and thereby promote the public health, safety, and welfare.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SANTA MONICA DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Santa Monica Municipal Code Chapter 4.67 is hereby adopted to read as follows:

Chapter 4.67 HOTEL WORKER PROTECTION

4.67.010 Definitions.

As used in this chapter:

(a) "Additional bed room" means a guest room with an additional bed or beds other than those regularly within the guest room, such as a cot or rollaway bed.

(b) "Adverse employment action" means an action that detrimentally and materially affects the terms, conditions, or privileges of employment, including but not limited to any act to discharge, reduce in compensation, reduce work hours, alter established work schedules, increase workload, impose fees or charges, or change duties of a hotel worker.

(c) "Affected hotel" means: (1) in the event of a change in control as defined in (d)(1) below, the hotel or discrete portion of the hotel that has been the subject of the change in control and remains in operation following the change in control; or (2) in the event of a change in control as defined in (d)(2) or (d)(3) below, the hotel that remains in operation following the change in control of that hotel.

(d) "Change in control" means (1) any sale, assignment, transfer, contribution, or other disposition of all or substantially all of the assets used in the operation of a hotel or a discrete portion of the hotel that continues in operation as a hotel; (2) any sale, assignment, transfer, contribution, or other disposition of a controlling interest

(including by consolidation, merger, or reorganization) of a hotel employer or any person who controls a hotel employer; or (3) any other event or sequence of events (including a purchase, sale, lease, or termination of a management contract or lease) that causes the identity of the hotel employer at a hotel to change. For purposes of this chapter, a change in control shall be defined to occur on the date of execution of the document effectuating the change in control.

(e) “Checkout room” means a guest room to be cleaned by a hotel worker due to the departure of the guest assigned to that room.

(f) “City” means the City of Santa Monica.

(g) “Eligible hotel worker” means a hotel worker employed by an incumbent hotel employer at the time of a change in control and who has been so employed for at least two months prior to the change in control.

(h) “Emergency” means an immediate threat to public safety or of substantial risk of property loss or destruction.

(i) “Guest” means a registered guest of a hotel, a person occupying a guest room with a registered guest, or a visitor invited to a guest room by a registered guest or other person occupying a guest room.

(j) “Guest room” means any room or suite of rooms intended to be used by a guest of a hotel for sleeping purposes.

(k) “Hotel” means an establishment that provides temporary lodging in the form of overnight accommodations in guest rooms to transient patrons who maintain a permanent place of residence elsewhere for payment for periods of 30 consecutive calendar days or less, and may provide additional services, such as conference and

meeting rooms, restaurants, bars, or recreation facilities available to guests or to the general public. “Hotel” includes motor lodges, motels, apartment hotels, and tourist courts meeting the definition set forth above. “Hotel” also includes 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. “Hotel” does not include a hostel, which is a lodging facility primarily characterized by dormitory-style accommodations, shared bathrooms, and reservations of beds rather than rooms. “Hotel” also does not include corporate housing, rooming houses, boarding houses, or private residential clubs, single-room occupancy housing, vacation rentals, or bed and breakfast establishments within a single-unit residence.

(l) “Hotel employer” means any person who owns, controls, or operates a hotel in the City, and includes any person or contractor who, in a managerial, supervisory, or confidential capacity, employs hotel workers to provide services at a hotel in conjunction with the hotel’s purpose.

(m) “Hotel worker” means any person who is employed by a hotel employer to provide services at a hotel. “Hotel worker” does not include a managerial, supervisory or confidential employee.

(n) “Hotel worker retention period” means the period of time beginning on the date of a change in control and extending to 90 days from the first date that an affected hotel is open to the public after a change in control.

(o) “Incumbent hotel employer” means a hotel employer who owns, controls, or operates a hotel prior to a change in control of the hotel or of a discrete portion of the hotel that continues to operate as a hotel after the change in control.

(p) “Personal security device” means a portable emergency contact device, including but not limited to a panic button, that is designed so that a hotel worker can quickly and easily activate such device to summon to the hotel worker’s location prompt assistance by a hotel security officer, manager or supervisory hotel staff member designated by a hotel employer.

(q) “Room attendant” means a hotel worker whose principal duties are to clean and put in order guest rooms in a hotel.

(r) “Successor hotel employer” means a hotel employer who owns, controls, or operates a hotel after a change in control.

(s) “Violent or threatening conduct” means: (1) any conduct that involves the use of physical violence or that would reasonably be interpreted as conveying a threat of the use of physical violence, and includes but is not limited to rape, assault (including sexual assault), and battery (including sexual battery), as defined by the California Penal Code, as well as any threat or attempt to commit such an act; or (2) any sexual conduct, or solicitation to engage in sexual conduct, directed by a guest at a hotel worker without the consent of the hotel worker and includes, but is not limited to, indecent exposure as defined by the California Penal Code.

(t) “Workday” means any consecutive 24-hour period commencing at the same time each calendar day.

4.67.020 Measures to protect hotel workers from violent or threatening conduct.

(a) **Personal security devices.**

(1) A hotel employer shall provide a personal security device to each hotel worker assigned to work in a guest room or restroom facility where other hotel

employees are not present in the guest room or restroom facility. The personal security device shall be provided at no cost to the hotel worker.

(2) A hotel worker may activate a personal security device whenever a hotel worker reasonably believes that violent or threatening conduct or an emergency is occurring in the hotel worker's presence. Immediately prior to or upon activating the device, the hotel worker may cease work and leave the immediate area of danger to await assistance. No hotel worker shall be subject to an adverse employment action for activating a personal security device or for ceasing work to await assistance absent clear and convincing evidence that the hotel worker knowingly and intentionally made a false claim of emergency.

(3) A hotel employer shall assign a security guard, manager or supervisory hotel staff member to provide immediate on-scene assistance in the event that a personal security device is activated.

(b) **Hotel workers' rights.** A hotel worker who brings to the attention of a hotel employer violent or threatening conduct by a hotel guest shall be afforded the following rights:

(1) A hotel employer shall immediately allow a hotel worker sufficient paid time to report the violent or threatening conduct to a law enforcement agency and to consult with a counselor or advisor of the hotel worker's choice.

(2) A hotel employer shall not prevent, or attempt to prevent, a hotel worker from reporting violent or threatening conduct to a law enforcement agency.

(3) A hotel employer shall not take or threaten to take any adverse employment action against a hotel worker based on the hotel worker's decision not to report violent or threatening conduct to a law enforcement agency.

(4) Upon request by a hotel worker, a hotel employer shall provide reasonable accommodations to a hotel worker who has been subjected to violent or threatening conduct. Reasonable accommodations may include, but are not limited to, a modified work schedule, reassignment to a vacant position, or other reasonable adjustment to job structure, workplace facility, or work requirements.

(c) **Notice.** A hotel employer shall place on the back of the entrance door to each guest room and restroom facility in a hotel a sign written in a font size of no less than 18 points, that includes the heading "The Law Protects Hotel Workers From Threatening Behavior," provides a citation to this chapter of the Santa Monica Municipal Code, and notifies guests that the hotel employer provides personal security devices to its employees.

(d) **Training.** A hotel employer shall provide training to its hotel workers regarding how to use and maintain a personal security device, the hotel employer's protocol for responding to activation of a personal security device, and the rights of hotel workers and obligations of the hotel employer as set forth in this section. Such training shall be provided to hotel workers on the later of the effective date of this chapter or within one month of the hotel worker's date of hire.

4.67.030 Measures to provide fair compensation for workload.

(a) **Workload limitation.** For hotels with fewer than 40 guest rooms, a hotel employer shall not require a room attendant to clean rooms amounting to a total of more than 4,000 square feet of floor space in any eight-hour workday, unless the hotel employer pays the room attendant twice the room attendant's regular rate of pay for each and every hour worked during the workday. For hotels with 40 or more guest rooms, a hotel employer shall not require a room attendant to clean rooms amounting to a total of more than 3,500 square feet of floor space in any eight-hour workday, unless the hotel employer pays the room attendant twice the room attendant's regular rate of pay for each and every hour worked during the workday. If a room attendant is assigned to clean seven or more checkout or additional bed rooms during any eight-hour workday, each such checkout or additional bed room shall for purposes of this subsection count as 500 square feet, regardless of the actual square footage of each room. The limitations contained herein apply to any combination of spaces, including guest rooms, meeting rooms, and other rooms within the hotel, and apply regardless of the furniture, equipment, or amenities in such rooms.

(b) **Workload proration.** The maximum floor space set forth in subsection (a) 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 for each hour of overtime that 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) **Voluntary overtime.** A hotel employer shall not require or permit a hotel worker to work more than 10 hours in a workday unless the hotel worker consents in writing to do so. A hotel worker's consent shall not be valid unless the hotel employer has advised the hotel worker in writing seven days prior to the hotel worker's consent that the hotel worker may decline to work more than 10 hours in a workday and that the hotel employer will not subject the hotel worker to any adverse employment action for declining to work more than 10 hours in a workday. This subsection shall not apply in the event of an emergency.

(d) **Preservation of records.** Each hotel employer shall maintain for at least two years a record of each room attendant's name, rate of pay, pay received, rooms cleaned or total square footage cleaned for each workday, overtime hours worked for each workday, and any written consents provided pursuant to subsection (b) above. A hotel employer shall make these records available for inspection and copying to any hotel worker or hotel worker's employee representative, except that the names and other personally identifying information of individual hotel workers shall be redacted except to the extent that the records identify the hotel worker who is making the request.

4.67.040 Notice of change in control.

(a) Within five days of a change in control, a successor hotel employer shall post written notice of the change in control at the location of the affected hotel. This written notice shall remain posted during any closure of the affected hotel and for six months following the first date on which the affected hotel is open to the public under the successor hotel employer.

(b) This written notice shall include, but not be limited to, the name and contact information of the incumbent hotel employer, the name and contact information of the successor hotel employer, and the effective date of the change in control.

(c) This written notice shall be posted in a conspicuous place at the affected hotel and shall be readily visible to eligible hotel workers, other employees, and applicants for employment.

4.67.050 Hotel worker retention.

(a) Within 15 days of a change in control, an incumbent hotel employer shall provide a successor hotel employer with a list of eligible hotel workers. This list shall include the name, date of hire, and job classification of each eligible hotel worker. A successor hotel employer shall be required to maintain and hire from this list during the hotel worker retention period.

(b) A successor hotel employer shall, during the hotel worker retention period, offer each eligible hotel worker employment for no less than 90 days, except that:

(1) A successor hotel employer shall not be required to offer employment to an eligible hotel worker if the successor hotel employer has reasonable and substantiated cause not to retain that eligible hotel worker based on that eligible hotel worker's individual performance or conduct while employed by the incumbent hotel employer; and

(2) If a successor hotel employer determines during the hotel worker retention period that it requires fewer hotel workers than were required by the incumbent hotel employer, the successor hotel employer shall retain eligible hotel workers pursuant to the terms of a relevant collective bargaining agreement, if any,

or by seniority and experience within each job classification to the extent that comparable job classifications exist.

(c) An eligible hotel worker retained pursuant to this section shall be employed under terms and conditions established by the successor hotel employer as required by law and shall not be discharged except for good cause based on individual performance or conduct.

(d) An offer of employment made pursuant to subsection (b) shall be made in writing and shall remain open for at least ten business days from the date of the offer.

(e) A successor hotel employer shall retain written verification of each offer of employment made pursuant to subsection (b). This verification shall include the name, address, date of hire, and job classification of the eligible hotel worker to whom the offer was made. A successor hotel employer shall retain the required verification for no less than three years from the date the offer is made.

(f) At the end of the hotel worker retention period, a successor hotel employer shall provide each hotel worker retained pursuant to this section with a written performance evaluation. If the hotel worker's performance was satisfactory, the successor hotel employer shall consider offering the hotel worker continued employment under the terms and conditions established by the successor hotel employer and as required by law. A successor hotel employer shall retain the written performance evaluation required under this subsection for no less than three years from the date it is issued.

(g) The rights to retention set forth in this section do not apply to any managerial, supervisory, or confidential employee and do not include the right to retain any supervisory or management responsibility.

4.67.060 Public housekeeping training.

(a) The City manager, or designee, shall establish a process whereby the City will certify and designate a “Public Housekeeping Training Organization.” The certification and designation of the Public Housekeeping Training Organization shall be carried out by the City Manager, or designee, subject to ratification by the City Council.

(b) In order to become certified as the designated Public Housekeeping 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 Housekeeping Training Organization must have experience providing training to hotel 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 hotel workers understand.

(2) The Public Housekeeping Training Organization shall offer a “Public Housekeeping Training Program” that includes no less than six hours of training, including live and interactive instruction, on 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) hotel worker rights and hotel employer responsibilities under this chapter and Chapter 4.63 of this Code;

(B) best practices for identifying and responding to suspected instances of human trafficking, domestic violence, or violent or threatening conduct;

(C) best practices for effective cleaning techniques to prevent the spread of disease;

(D) best practices for identifying and avoiding insect or vermin infestations; and

(E) best practices for identifying and responding to the presence of other potential criminal activity.

(3) The Public Housekeeping Training Organization may coordinate with a hotel employer to ensure that training content aligns where appropriate with the hotel employer's policies and procedures. Ultimate discretion regarding training content shall remain with the Public Housekeeping Training Organization, subject to requirements set forth by the City manager, or designee.

(4) The Public Housekeeping Training Organization shall administer a "Public Housekeeping Examination" to hotel workers who complete its training program. The Public Housekeeping Examination shall test basic proficiency in the required training elements.

(5) The Public Housekeeping Training Organization shall promptly issue a "Public Housekeeping Certificate" to any person who successfully completes its Public Housekeeping Training Program and Public Housekeeping Examination. A Public Housekeeping Certificate shall be valid for a period of five years.

(6) The Public Housekeeping Training Organization shall offer a right of review to an individual who completes the Public Housekeeping Training Program but does not successfully complete the Public Housekeeping Examination.

(c) A hotel employer shall contract with the certified Public Housekeeping Training Organization to, no less than annually, conduct a Public Housekeeping Training Program, administer a Public Housekeeping Examination, and issue a Public Housekeeping Certificate to each person who has successfully completed the Public Housekeeping Training Program and Public Housekeeping Examination. A hotel employer shall document compliance with the training requirement set forth in this section by completing and signing a form as required by the City to certify that the training was conducted. The Public Housekeeping Training Organization that provides such a training shall submit a report to the City within five days of the training to document the date on which the training was held and the names of all hotel workers who received Public Housekeeping Certificates.

(d) No hotel employer shall employ a hotel worker to work as a room attendant for more than 120 days unless the hotel worker presents the hotel employer with a valid Public Housekeeping Certificate. This subsection shall become effective one year from the effective date of this chapter.

(e) Each hotel employer shall retain records sufficient to demonstrate compliance with this section, including a copy of a valid Public Housekeeping Certificate for each hotel worker then assigned to work as a room attendant.

4.67.070 Limited waiver for certain hotel employers.

(a) The City manager, or designee, shall grant a waiver from the requirements of this chapter to any hotel employer who demonstrates that compliance with this chapter would require the hotel employer, in order to avoid bankruptcy or a shutdown of the hotel employer's hotel, to reduce its workforce by more than 20 percent or curtail its hotel workers' total hours by more than 30 percent. The City manager, or designee, shall grant such a waiver only after reviewing a hotel employer's financial condition at the hotel employer's expense. A waiver granted under this section shall be valid for no more than one year. A determination by the City manager, or designee, to grant or deny a request for waiver under this section may be appealed to a hearing examiner pursuant to Chapter 6.16 of this Code.

(b) Prior to submitting a waiver application pursuant to this section, a hotel employer shall provide written notice of the waiver application to all hotel workers employed by the hotel employer. Within three days of receiving a waiver determination from the City manager, or designee, under this section, a hotel employer shall provide written notice of the determination to all hotel workers employed by the hotel employer.

4.67.080 Notice.

A hotel employer shall provide written notice of the hotel workers' rights set forth in this chapter to each hotel worker at the time of hire or on the effective date of this chapter, whichever is later. Such written notice shall be provided in English, Spanish and any other language spoken by five percent or more of the hotel workers employed by the hotel employer.

4.67.090 Retaliatory action prohibited.

No person shall take an adverse employment action against a hotel worker for exercising rights protected under this chapter. There shall be a rebuttable presumption that an adverse employment action taken against a hotel worker within 90 days of the hotel worker's exercise of rights under this chapter was taken in retaliation for the exercise of such rights.

4.67.100 Administrative regulations.

The City manager, or designee, is authorized to adopt administrative regulations that are consistent with and in furtherance of the provisions of this chapter. Violations of the administrative regulations adopted pursuant to this section shall constitute violations of this chapter and shall subject the violator to the penalties set forth in this chapter.

4.67.110 Supersession by collective bargaining agreement.

The provisions of sections 4.67.030, 4.67.040, and 4.67.050, or any part thereof, may be waived pursuant to a bona fide collective bargaining agreement, but only if the waiver is expressly set forth in clear and unambiguous written terms. Neither party to a collective bargaining relationship may waive or supersede any provision of this chapter by means of unilaterally imposed terms and conditions of employment.

4.67.120 Civil remedies.

(a) **Civil action.** The City or any aggrieved person may enforce the provisions of this chapter by means of a civil action.

(b) **Injunction.** Any person who commits an act, proposes to commit an act, or engages in any pattern or practice that violates this chapter may be enjoined therefrom by a court of competent jurisdiction. An action for injunction under this subsection may

be brought by any aggrieved person, by the City Attorney, or by any person or entity who will fairly and adequately represent the interests of an aggrieved person or persons.

(c) **Damages and penalties.** Any person who violates the provisions of this chapter is liable for any actual damages suffered by any aggrieved person or for statutory damages up to the amount of \$100 per aggrieved person per day, except that statutory damages for failure to maintain records shall not exceed \$1,000 per day in total. For willful violations, the amount of monies and penalties to be paid under this subsection shall be trebled.

(d) **Attorneys' fees and costs.** In a civil action brought under this section, the court shall award the prevailing party reasonable attorneys' fees and costs, including expert witness fees, except that, notwithstanding Section 998 of the Code of Civil Procedure, a prevailing defendant shall not be awarded fees and costs unless the court finds the action was frivolous, unreasonable, or groundless when brought, or the plaintiff continued to litigate after it clearly became so.

(e) **Cumulative remedies.** The remedies set forth in this chapter are cumulative. Nothing in this chapter shall be interpreted as restricting, precluding, or otherwise limiting a separate or concurrent criminal prosecution under this Code or State law.

4.67.130 Effective date.

This chapter shall become effective on January 1, 2020, with the exception of section 4.67.050, which shall become effective immediately.

SECTION 2. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any

court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

SECTION 3. The Mayor shall sign and the City Clerk shall attest to the passage of this Ordinance. The City Clerk shall cause the same to be published once in the official newspaper within 15 days after its adoption.

APPROVED AS TO FORM:

LANE DILG
City Attorney