

CITY COUNCIL ORDINANCE NO. 22-13

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF IRVINE, CALIFORNIA, ADDING DIVISION 6 TO TITLE 3 OF THE IRVINE MUNICIPAL CODE REGARDING HOTEL WORKER PROTECTION

WHEREAS, the City of Irvine is a charter city organized pursuant to Article XI of the California Constitution and pursuant to the authority so granted, the City has the power to make and enforce within its limits all ordinances and regulations with respect to municipal affairs not in conflict with its own charter. Such powers include, without limitation, the ability to adopt regulations pertaining generally to the protection and promotion of the public health, safety, and welfare; and

WHEREAS, hotel workers are vital contributors to the Irvine 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 from criminal threat and improve public safety overall; and

WHEREAS, hotel workers who clean guest rooms are frequently assigned overly burdensome room cleaning quotas, and can be disciplined for failing to meet these quotas. Overly burdensome room cleaning quotas undermine the public interest in ensuring that hotel room cleaners can perform their work in a manner that adequately protects public health. Such cleaning requirements also interfere with hotel workers' ability to meet family, community, and personal obligations; and

WHEREAS, ensuring that hotel workers receive fair compensation through a wage premium when their workload assignments exceed defined limits promotes the public interest; and

WHEREAS, ensuring that hotel workers receive fair compensation for their work assignments promotes the public interest and enables 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, hotel workers are frequently assigned unexpected and mandatory overtime, which limits hotel workers' ability to meet family and personal commitments and interferes with their ability to schedule in advance for those commitments; and

WHEREAS, prohibiting hotel employers from assigning a hotel worker overtime work when a shift exceeds 10 hours in a day without obtaining the worker's informed consent, except in emergencies, allows hotel workers to schedule and meet family and personal commitments; and

WHEREAS, given that tourism is a large industry in the City and in the entire region, establishing the foregoing safety and security measures, fair compensation, and worker consent to overtime 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 Irvine DOES HEREBY ORDAIN as follows:

SECTION 1. The findings and determinations reflected in the above recitals are true and correct and incorporated herein by this reference.

SECTION 2. Division 6 of Title 3 of the Irvine Municipal Code is hereby added to read in its entirety as follows:

Division 6 – Hotel Worker Protection Ordinance

Chapter 1 General Provisions

Sec. 3-6-101. Definitions.

The following words and phrases shall have the meanings set forth below, unless the context requires otherwise.

- 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. "Checkout room" means a guest room to be cleaned by a hotel worker due to the departure of the guest assigned to that room.
- D. "City" means the City of Irvine.

- E. "Emergency" means an immediate threat to public safety or of substantial risk of property loss or destruction.
- F. "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.
- G. "Guest room" means any room, suite of rooms, dwelling unit, cottage, or bungalow intended to be used by a guest of a hotel for transient sleeping purposes.
- H. "Hotel" an establishment that provides temporary lodging for payment in the form of overnight accommodations in guest rooms to transient patrons for periods of thirty 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 hotels, motor lodges, motels, apartment hotels, transient occupancy residential structures, and extended-stay hotels that rent units (including units with kitchens) for fewer than thirty days, private residential clubs, tourist courts, and hostels that contain both dormitory-style accommodations and private guest rooms that may be reserved, 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. Except as provided above, the term "Hotel" does not include corporate housing, rooming houses, boarding houses, single-room occupancy housing, or licensed bed and breakfast establishments within a single-unit residence. "Hotel" does not include a Short-Term Rental, as defined in Zoning Ordinance Section 3-25-2.E.
- I. "Hotel building" means a structure used as a hotel that contains one or more ground-floor public or guest entrances.
- J. "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.
- K. "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.

- L. "Personal security device" means a portable emergency contact device, including but not limited to a panic button, that signals the hotel worker's location and that provides direct contact between a hotel worker and a hotel security guard or responsible manager or supervisor designated by a hotel employer to respond to violent or threatening conduct. A personal security device does not include a whistle, noise-maker, alarm bell, or similar device that does not provide direct contact between the hotel worker and the designated security officer.
- M. "Room attendant" means a hotel worker whose principal duties are to clean and put in order guest rooms in a hotel.
- N. "Room cleaning" means the performance of services or tasks that are required to prepare or maintain the cleanliness of the physical hotel guest room before, during, or after a guest's stay. Room cleaning does not include time spent maintaining or organizing inventory (e.g., mini-bar, toiletries, towels, linens) or time spent delivering such inventory to a guest room when not accompanied by other room cleaning tasks. Room cleaning does not include turndown service or tasks associated with preparing already-made beds for sleep when not accompanied by other room cleaning tasks. Room cleaning does not include preventative or as needed maintenance activities such as repair, replacement, and general maintenance of appliances, electronics, furniture, doors, windows, carpets, walls, plumbing, and other fixtures.
- O. "Special-attention room" means a checkout room or a guest room for which the occupant declined daily room cleaning on the immediately preceding day.
- P. "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.
- Q. "Workday" means any consecutive 24-hour period commencing at the same time each calendar day.

Sec. 3-6-102. 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 workers are not assigned to be present. The personal security device shall be provided at no cost to the hotel worker and shall be maintained in good working order by the hotel employer.
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 at all times have a designated and assigned security guard who can receive alerts from personal security devices and can provide immediate on-scene assistance in the event that a personal security device is activated. Hotels with fewer than 60 guest rooms may utilize a hotel supervisor or manager to fulfill the requirement of this subsection. If a hotel employer designates a manager or supervisory hotel staff member pursuant to this subsection, the hotel employer shall provide no fewer than three (3) hours of training to the manager or supervisory hotel staff member on: (a) the requirements of this chapter; (b) instruction on the proper functioning and maintenance of the hotel's personal security devices; and (c) the protocols for responding to an activated personal security device. Such training shall be conducted at least annually, and the hotel employer shall maintain accurate records demonstrating attendance at such trainings.

- 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 Irvine 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 by the later of thirty days after the effective date of this chapter or within one month of the hotel worker's date of hire. For hotels having 60 or more guest rooms, hotel employer shall provide the training in English and each language known by the hotel employer to be spoken by ten percent or more of the hotel workers employed by the hotel employer. The hotel employer shall maintain accurate records demonstrating attendance at such trainings.

- E. Records. A hotel employer shall retain records of incidents where the personal security devices were activated for a period of three years from the incident.

Sec. 3-6-103. Measures to provide fair compensation for workload.

- A. Workload. For hotels with at least 45 guest rooms but fewer than 60 guest rooms, a hotel employer shall not require a room attendant to perform room cleaning amounting to a total of more than 4,500 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. For hotels with 60 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 during a workday is assigned to clean any combination of six or more special-attention rooms or additional-bed rooms, the total workload limitation under this subsection shall be reduced by 500 square feet for each such special-attention room or additional-bed room over five (5). If a room attendant is required to clean floor space in more than one hotel building during a workday, the total workload limitation under this subsection shall be reduced by 500 square feet for each additional hotel building. If a room attendant is required to clean floor space on more than two floors of a hotel building, the total workload limitation under this subsection shall be reduced by 500 square feet for each additional floor. 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. The hotel employer shall state the actual square footage of each room in any written assignment of rooms that it provides to room attendants (whether on paper or in digital format).
- B. Workload proration. The workload amount set forth in subsection A shall be reduced on a prorated basis if a room attendant works less than eight hours in a workday or is assigned to perform room cleaning for 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 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. Daily room sanitizing and cleaning. A hotel shall not implement any program or policy whereby guest rooms are not sanitized and cleaned after each and every night that they are occupied, including a program under which guests receive a financial incentive to not have their guest room cleaned on a daily basis. This subsection does not prevent a hotel from continuing, modifying, or establishing a sustainable environmental program, such as a "green program," under which guests are encouraged to re-use linens, bath towels, or similar items, nor does it require a hotel to have any guest room cleaned when the occupant has opted-out of such service without solicitation by the hotel or when the occupant informs the hotel that they do not wish to be disturbed.
- E. Preservation of records. Each hotel employer shall maintain for at least three years a record of each room attendant's name; rate of pay; pay received; identification of rooms cleaned, actual square footage of each room cleaned; number of special-attention rooms, number of additional hotel buildings, number of additional bed rooms, and total square footage cleaned for each workday; overtime hours worked for each workday; and any written consents provided pursuant to subsection C above. A hotel employer shall make these records available for inspection and copying to any hotel worker or hotel worker's designated 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. A hotel employer shall maintain an accurate record of the square footage of each room that room attendants are assigned to clean, a copy of which shall be provided to any hotel worker who requests such record.
- F. Notice of Workload Rights. 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 within 30 days of the effective date of this chapter, whichever is later. Such written notice shall be provided in English, Spanish, and any other language known by the hotel employer to be spoken by ten percent or more of the hotel workers employed by the hotel employer.

Sec. 3-6-104. Exemption; Limited waiver for certain hotel employers.

- A. Exemption. The requirements of Section 3-6-103 shall not apply to a hotel with fewer than 45 guest rooms.
- B. Waiver application. 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 cause a significant adverse economic impact (which could include, but not be limited to, bankruptcy, a shutdown of the hotel, reduction of the hotel's workforce by more than 20 percent, or curtailment of 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, to be provided at the hotel employer's expense. A determination by the City Manager or designee to grant or deny a request for waiver under this section may be appealed to the City Council.
- C. Notice of waiver application. 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.

Sec. 3-6-105. Retaliatory action prohibited.

No person shall discharge, reduce in compensation, discriminate, or otherwise take an adverse employment action against a hotel worker for opposing any practice proscribed by this chapter, for participating in proceedings related to this chapter, for seeking to enforce their rights under this chapter by any lawful means, or for otherwise exercising rights protected under this chapter. A hotel employer taking any adverse employment action against any hotel worker who is known to have engaged in any of the foregoing activities within one year preceding the adverse employment action shall provide to the hotel worker at or before the time of the adverse employment action a detailed written statement of the reason or reasons for the discharge or other adverse employment action, including all the facts claimed to substantiate the reason or reasons..

Sec. 3-6-106. 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.

Sec. 3-6-107. Joint civil liability.

A hotel employer that contracts with another person, including, without limitation, another hotel employer, a temporary staffing agency, employee leasing agency, or professional employer organization, to obtain the services of hotel workers shall share all civil legal responsibility and civil liability for violations of this chapter by that person for hotel workers performing work pursuant to a contract. For the purposes of this section, the term "person" shall not include:

- A. A bona fide nonprofit organization that provides services to workers; or
- B. A bona fide labor organization, as defined in 29 U.S.C. § 152, or an apprenticeship program, training program, or hiring hall operated pursuant to a labor-management agreement.

Sec. 3-6-108. Supersession by a collective bargaining agreement.

The provision of Section 3-6-103, 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 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.

Sec. 3-6-109. Civil Enforcement and 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, whichever is more, 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 Municipal Code or State law.
- F. No criminal penalties. Notwithstanding any provision of this Municipal Code or any other ordinance to the contrary, no criminal penalties shall attach for violation of this chapter.
- G. Coexistence with other available relief for deprivation of protected rights. This chapter shall not be construed to limit an aggrieved person's right to bring legal action for violation of any other federal, state, or local law.

SECTION 3. CEQA Determination. In adopting this Ordinance, the City Council finds that the project is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Title 14 California Code of Regulations Sections 15061(b)(3) and 15378, in that it can be seen with certainty that the Municipal Code amendments propose no activity that may have a significant effect on the environment and will not cause a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment.

SECTION 4. This Ordinance shall become effective thirty (30) days after adoption; provided, however, that Section 3-6-103 shall not become effective until one hundred eighty (180) days after adoption.

SECTION 5. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Ordinance. The City Council hereby declares that it would have adopted this Ordinance and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases or portions thereof be declared invalid or unconstitutional.

SECTION 6. The City Clerk shall certify to the passage of this Ordinance and this Ordinance shall be published as required by law and shall take effect as provided by law.

PASSED AND ADOPTED by the City Council of the City of Irvine at an adjourned regular meeting held on the 22nd day of November, 2022.


MAYOR OF THE CITY OF IRVINE

ATTEST:


CITY CLERK OF THE CITY OF IRVINE

STATE OF CALIFORNIA)
COUNTY OF ORANGE) SS
CITY OF IRVINE)

I, CARL PETERSEN, City Clerk of the City of Irvine, HEREBY DO CERTIFY that the foregoing ordinance was introduced for first reading on the 25th day of October, 2022, and duly adopted at an adjourned regular meeting of the City Council of the City of Irvine, held on the 22nd day of November, 2022.

AYES:	3	COUNCILMEMBERS:	Agran, Kim and Khan
NOES:	1	COUNCILMEMBERS:	Kuo
ABSENT:	1	COUNCILMEMBERS:	Carroll
ABSTAIN:	0	COUNCILMEMBERS:	None


CITY CLERK OF THE CITY OF IRVINE

AFFIDAVIT OF POSTING

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss
CITY OF IRVINE)

I, CARL PETERSEN, City Clerk of the City of Irvine, HEREBY DO CERTIFY that on the 22nd day of November, 2022, I caused to have published and posted a foregoing true and correct copy of Ordinance No. 22-13 of the City of Irvine in the following public places in the City:

- 1) Bulletin Board in Walnut Village Shopping Center, Culver and Walnut, Irvine.
- 2) Bulletin Board in University Park Shopping Center, Culver at Michelson, Irvine.
- 3) Bulletin Board in Northwood Shopping Center, Irvine Boulevard at Yale, Irvine.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City Council of the City of Irvine, California, the 22nd day of November, 2022.



CITY CLERK OF THE CITY OF IRVINE