

City of Providence
STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CHAPTER 2010-39

No. 334 **AN ORDINANCE** IN AMENDMENT OF CHAPTER 2009-56 , NUMBER 467, EFFECTIVE OCTOBER 26, 2009, Entitled: "AN ORDINANCE RELATIVE TO "HOSPITALITY BUSINESS PROTECTION AND WORKER RETENTION."

EFFECTIVE ~~XXXXXXXX~~ November 1. 2010

Be it Ordained by the City of Providence:

WHEREAS, The City of Providence finds that tourism, particularly the return of repeat visitors, is a vital element of the city's economy; and

WHEREAS, The City of Providence has invested significant resources in fostering the development of tourism and the hotel industry; and ~~in the downtown convention center district, including the Dunkin Donuts Center, the Rhode Island Convention Center, and Veterans Memorial Auditorium;~~

WHEREAS, The public interest in preserving repeat tourism requires continuity in the hospitality businesses' workforce, as the front line of the city's outreach to visitors; and

WHEREAS, Hospitality businesses frequently change ownership, with uncertain consequences for the retention of employees; and

WHEREAS, The City's interest in preserving repeat tourism calls for the retention of hospitality employees when ownership or management of hospitality businesses change; and

WHEREAS, the wholesale displacement of employees through transfers of hotel operations in New England in the recent past has caused great public outcry, and has caused immeasurable damage to the reputation of the tourist industry in the regional economy.

~~WHEREAS, The City of Providence finds that specific wage standards are necessary to foster career employment in hospitality businesses, and to prevent high turnover and the casualization of the workforce in industry vital to the city's economy.~~

NOW THEREFORE BE IT ORDAINED BY THE CITY OF PROVIDENCE that:

Section 1. The Code of Ordinances of the City of Providence, Chapter 2, entitled,

"Administration," Article I, ~~add the following~~ Section 2-18.5, "Hospitality Business Protection

and Worker Retention” is hereby amended retroactively to the date of first passage on October 26, 2009 as follows:

Section 2-18.5 Hospitality Business Protection and Worker Retention

(a) Purpose.

The purpose of this ordinance is to bolster Providence as a tourist destination, and to promote the stability of Providence’s hospitality and tourism businesses.

(b) Definitions.

Hospitality Business includes any hotel, motel, resort, boarding house, or bed and breakfast which is kept, used or advertised as, or held out to the public as, a place where sleeping or housekeeping accommodations are supplied for pay to guests for leisure, business or group occupancy, which is operating within the City of Providence with at least 25 rooms, and any in-house component thereof, including housekeeping services, front desk, laundry, room service, valet, bell desk, restaurant, food and/or beverage service or other operation facilitating guest service located within a hotel, motel, resort, boarding house, or bed and breakfast containing at least 25 rooms.

Hospitality Business covered by the October 26, 2009 Ordinance means any hotel ~~or food service operation~~ within the property of the Dunkin Donuts Center, the Rhode Island Convention Center, and Veterans Memorial Auditorium, or within any building physically connected by internal walkways, skybridges, or parking lots (including streets that are closed to public traffic to facilitate parking or other functions) connected to these facilities, with the exception of the Providence Place Mall, and any instrumentality of the State of Rhode Island, including the Rhode Island Convention Center.

Hospitality Business Owner means any person or combination of persons that purchases or enters into a lease of the real property or the fixtures, or both, of a hospitality business and within two years thereafter operates any part of the hospitality business directly, through affiliates of such person or persons, or through a contract with an unaffiliated entity. This includes but is not limited to any purchaser or new management company, contractor, subcontractor, lessee, sublessee, or other person, that will take over as an employer in any part of the facility where a hospitality business has been located.

Employee means any person employed to perform any services by a hospitality business, including part-time and on-call employees who work an average of at least ~~ten (10)~~ twenty (20)

hours per week, including supervisors and managerial employees whose compensation from salary and cash bonuses is less than \$60,000 per year, and including employees on vacations or leaves of absence, but excluding all other any supervisors or ~~and~~ managerial employees as defined in 29 U.S.C. §152(11). If a person or entity is employed by a hospitality business as an independent contractor, ~~on an occasional or sporadic basis and solely at the hospitality business's option~~, said person or entity will not be considered an employee for the purposes of this ordinance.

Hospitality employer means a person, whether owner or a manager, who acts as the immediate employer of the employees in a hospitality business.

Change in the identity of the hospitality employer means any event or sequence of events (including a purchase, sale, lease, or termination of a management contract or lease) that causes, within a one-year period, the identity of the hospitality employer at a hospitality business to change.

Manager means any person who operates a hospitality business on behalf of another person pursuant to a lease, sublease, management agreement, operating agreement, franchise agreement or other arrangement.

Ownership means the possessory interest or interests acquired by a hospitality business buyer in property that enables the hospitality business buyer to control any part of the operation of hospitality business.

Person means any individual, firm, partnership, corporation, limited liability company, trust, association, joint venture or other legal entity.

(c) Retention of Hospitality Business Employees.

(1) In the event of a change in the identity of the employer at a hospitality business, the new employer (whether the hospitality business owner or its manager) shall retain for at least three (3) ~~six (6)~~ months after the commencement of operation of the hospitality business under the new hospitality business employer, those employees who were employed for at least two (2) months preceding the date on which the previous hospitality business employer's status as employer terminated. During such three-month ~~six-month~~ period, employees so hired shall be employed under the terms and conditions established by the hospitality business buyer or manager or as required by law. ~~Except as provided in section 2-18.5 (c) (3), during such six-month period the new hospitality business employer shall not discharge without good cause an~~

employee retained pursuant to this ordinance. Hospitality employers shall have the right to discharge any employee during this three-month period for good cause.

~~(2) At the end of such six-month period, the new hospitality business employer shall perform a written performance evaluation for each employee retained pursuant to this article. If the employee's performance during such six-month period is satisfactory, the new hospitality business employer shall offer the employee continued employment under the terms and conditions established by the hospitality business owner or manager or as required by law.~~

~~(32) If at any time the new hospitality business employer determines that fewer employees are required for its full operation than were required by the previous hospitality business employer, the new hospitality business employer may retain that number of employees needed for its new operations. shall retain or cause its manager to retain the prior employees by seniority within job classification and shall place the remaining employees on a preferential hiring list from which the hospitality business buyer or manager shall hire additional employees. All hospitality business employers will maintain a list of employees who were laid off due to lack of business in the previous year on a preferential hiring list. In the event that a new hospitality employer determines that more employees are required than were required by the previous hospitality business employer, the new hospitality business employer shall recall employees first from their own preferential hiring lists and then from the preferential hiring list of any previous hospitality business employer in that property in order of seniority.~~

~~(4) If there has been a change in the identity of a hospitality employer in the six (6) months preceding the effective date of this ordinance, the hospitality employer who entered the facility during the preceding six (6) months shall place the previous employees on a preferential hiring list from which the hospitality business or manager shall hire additional employees. In the event that the hospitality employer determines that more employees are required than were required by the previous hospitality business employer, the new hospitality business employer shall recall employees first from their own preferential hiring lists and then from the preferential hiring list of any previous hospitality business employer in that property in order of seniority.~~

~~(d) Maintaining Minimum Wage Standards.~~

~~(1) Upon a change in the identity of a hospitality employer, the new hospitality business employer shall pay its employees a minimum wage. Should a change in the identity of a hospitality business employer take place after September 1, 2009, but prior to the enactment of~~

~~the ordinance, the new hospitality business employer shall pay its employees a minimum wage effective immediately.~~

~~(2) The minimum wage for hospitality business employees shall be twice the United States Department of Health and Human Services Federal Poverty Guideline for a family of three (3), divided into an hourly wage at forty (40) hours per week, fifty-two (52) weeks per year, provided that up to four dollars (\$4.00) per hour of this minimum wage may be offset dollar-for-dollar by any payments the employer makes to fund the employee's health care or retirement, and provided further that any provision of this subsection may be waived by a clear and unmistakable waiver in an unexpired collective bargaining agreement.~~

(d) Preservation of rights.

(1) No provision of this Ordinance shall be construed to impair, prohibit, or provide for any right of recovery for, that lawful exercise of employees' or employers' right to engage in strike or lockout.

(2) Nothing in this Ordinance shall impose any obligation, direct or indirect, on any instrumentality of the State of Rhode Island, including the Rhode Island Convention Center.

(e) Enforcement.

(1) An employee who has been not been retained or who has been discharged ~~or who is paid a wage in violation of this ordinance~~ may bring an action in any court of competent jurisdiction of the State of Rhode Island no later than within three years of the violation against the hospitality business employer, and shall be awarded:

(i) 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:

- The average regular rate of pay received by the employee during the last three (3) years of the employee's employment in the same occupation classification; or
- The final regular rate received by the employee.


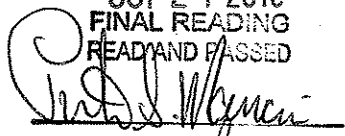

(ii) Treble the damages in subsection (i) if the hospitality business employer's violation is shown to be willful ~~without any legitimate business reason.~~

(2) If the employee is the prevailing party in any such legal action, the court shall award reasonable attorney's fees and costs as part of the costs recoverable.


(f) Severability.

The provisions of this ordinance shall be severable. If any provision of this ordinance is held to be unenforceable by a court of competent jurisdiction, all remaining provisions shall remain in force.

SECTION 2. This ordinance and its amendments are retroactive to October 26, 2009 as to any Hospitality Business covered by the October 26, 2009 Ordinance. As to the other Hospitality Business, this ordinance and its amendments are effective on the date of passage of these amendments to this Ordinance. shall take effect upon passage.

<p>IN CITY COUNCIL OCT - 7 2010 FIRST READING READ AND PASSED  CLERK</p>	<p>IN CITY COUNCIL COUNCIL OCT 21 2010 FINAL READING READ AND PASSED  PRESIDENT  CLERK</p>
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Effective without the
Mayor's Signature:


Anna M. Stetson
City Clerk