SEATTLE CITY COUNCIL
CENTRAL STAFF

July 30, 2019

M E M O R A N D U M

To: Housing, Health, Energy & Workers Rights Committee
From: Karina Bull, Legislative Analyst
Subject: Hotel Employees Safety Protections – Proposed Legislation

On August 1, 2019, the agenda for the Housing, Health, Energy & Workers Rights Committee (Committee) includes discussion of two Council Bills: C.B. 119557 and C.B. 119555. These proposed ordinances are part of package legislation (listed below) that would extend protections to hotel employees similar to protections included in the *Hotel Employees Health and Safety Initiative* (Initiative 124):

1. Hotel Employees Safety Protections Ordinance C.B. 119557
2. Protecting Hotel Employees from Injury Ordinance C.B. 119554
3. Improving Access to Medical Care for Hotel Employees Ordinance C.B. 119555
4. Hotel Employees Job Retention Ordinance C.B. 119556

This memo identifies policy issues for discussion in the Hotel Employees Safety Protections Ordinance (C.B. 119557).

Central Staff understands that the Chair of the Committee is holding space on upcoming meeting agendas in August and September to further discuss the proposed ordinances and vote on potential amendments. In the intervening time, staff will work with any Councilmember who requests an amendment to the proposed ordinances for future consideration and potential action.

The proposed ordinance would require employers to provide hourly employees working in hotels or ancillary hotel businesses with panic buttons and other safety protections to address violent or harassing conduct by guests.

Potential Issues:

A. Coverage of "ancillary hotel business"

The proposed ordinance would cover (a) employers who own, operate, or control hotels with 60 or more rooms, and (b) other employers who own, control, or operate an "ancillary hotel business."

The proposed definition of "ancillary hotel business" is "any contracted, leased, or sublet premises connected to or operated in conjunction with the hotel's purpose or providing services at the building."

For reference, Initiative 124 (codified as Chapter 14.25 in the Seattle Municipal Code) also covers employers that meet this definition of "ancillary hotel business." Initiative 124 has similar language, almost word for word, in the definition of "hotel." See SMC 14.25.160.

As another reference, laws protecting hotel workers in Long Beach and Oakland, California cover, "a person who owns, controls, and/or operates any contracted, leased, or sublet premises connected to or operated in conjunction with the hotel's purpose, or a person, other than a hotel employee, who provides services at the hotel."[1] The Long Beach and Oakland definitions clarify that an employer must provide services "at the hotel" rather than "at the building."

Employers have shared their belief that Seattle's proposed definition of "ancillary hotel business" is too broad and includes businesses that they believe are tangential to the hotel's purpose, such as independent retail stores (e.g., florist, clothing), service-oriented establishments (e.g., hair salons, day spas), and food and beverage establishments (e.g., restaurants, coffee shops). These types of businesses might be located on the hotel premises but serve the public with or without customer access into the hotel.

One approach to addressing these concerns is to clarify the proposed definition of "ancillary hotel business" in administrative rules. The rules could clarify whether the phrases, "operating in conjunction with the hotel's purpose" or "providing services at the building" restrict coverage to certain types of businesses.

Another approach is to amend the ordinance to explicitly restrict coverage. For example, the definition could restrict coverage to businesses supporting the hotel's core function or businesses providing services that directly benefit hotel guests. This approach could identify the hotel's core function, such as "providing lodging and room service accommodations to guests" or delegate clarification of "hotel's core function" to the rules.

Other variations of this approach could restrict coverage to certain types of businesses such as food and beverage establishments or, more narrowly, on-site food and beverage establishments that contract with the hotel. Coverage could also be restricted to businesses with a higher threshold number of employees.

A further step could eliminate all coverage of ancillary hotel businesses. This option could still require hotel employers to make a panic button available to employees of other entities when they work on hotel property.

The implication of these approaches depends on the type of restrictions. Restrictions that focus on the ancillary hotel business's connection to the hotel's core functions and guest services could still cover employers who might represent the "fissuring" of hotel services

[1] See Long Beach Municipal Code 5.49.020 and Oakland Municipal Code 5.93.010.

into different entities to lower hotel employer costs. Restrictions that focus on the ancillary hotel business's number of employees could result in covering fewer small businesses. Removing all ancillary hotel businesses could significantly reduce the scope of employer and employee coverage.

Options

1. Make no changes to the proposed ordinance.
2. Amend the definition of "ancillary hotel business" to restrict coverage to certain types of ancillary hotel businesses:
    a. Any business that contracts, leases, or sublets physical space on the hotel premises if such business provides services connected to or operated in conjunction with the hotel's purpose, including but not limited to food and beverage services at the hotel; or
    b. Any business that (a) contracts, leases, or sublets premises connected to or operated in conjunction with the hotel's purpose core function or (b) contracts with the hotel to provide food, recreational, personal care, housekeeping, laundry, parking, event, or other services that directly benefit hotel guests; or
    c. Businesses that support the hotel's core function of providing lodging and room service accommodations to guests; or
    d. Food and beverage establishments; or
    e. Food and beverage establishments that contract with the hotel; or
    f. Businesses with a higher threshold number of employees; or
    g. Other specified restriction(s).
3. Amend the proposed ordinance to eliminate all coverage of "ancillary hotel businesses" with or without a requirement for hotel employers to make a panic button available to non-covered employees on hotel property.

B. Definition of "panic button"

The proposed ordinance would require covered employers to provide a panic button to each employee assigned to work in a guest room or assigned to deliver items to a guest room. The proposed ordinance would require employers to immediately deploy a security guard, employer representative, or another employee to render assistance to the specific location of the employee who activated the panic button. The proposed ordinance defines "panic button" as follows:

> "[An] emergency contact device that an employee may easily carry and activate. When activated, the panic button *must* summon immediate on-scene assistance from another employee, security guard, or representative of the employer *to the employee's specific location*" (emphasis added).

For reference, Initiative 124 and Senate Bill 5258 (a statewide bill amending RCW 49.60 that was passed in April 2019) also require employers to provide a panic button to hotel

employees assigned to work in a guest room but do not affirmatively require the devices to summon immediate on-scene assistance. These laws define "panic button" as follows:

> "[A]n emergency contact device carried by an employee by which the employee *may* summon immediate on-scene assistance from another worker, a security guard, or a representative of the employer" (emphasis added).[2]

Employers have shared concerns about the costs and protocols associated with providing panic buttons that are different from Initiative 124 and state law requirements. For example, some employers may have already satisfied the requirements of Initiative 124 or state law with a panic button that emits a local alarm sound. The proposed ordinance would likely require such employers to provide a different panic button that notifies an employer representative of the precise location of the deployed panic button.

An amendment could align the definition of panic button in the proposed ordinance with Initiative 124 and state law. This approach would allow employers to continue using panic buttons that they purchased to comply with Initiative 124 and state law. Additionally, this approach could facilitate outreach because employers and employees would only need to learn about one set of panic button requirements. The trade-off of this approach is that employers would be allowed to distribute a panic button with limited ability to summon immediate assistance, such as a loud alarm or whistle.

Another type of amendment would retain the proposed definition of panic button but provide employers with a one-year extension to comply. The extension would only be available to employers who purchased panic buttons that comply with state law but need additional time to purchase a panic button that meets the criteria of the proposed ordinance. This extension would hinge on an employer's temporary provision of an interim panic button that meets state legal requirements. Under this approach, all employees would ultimately receive a panic button with heightened protections and safety features, but some employees would not receive such panic buttons as quickly as envisioned in the proposed ordinance.

<u>Options</u>

1. Make no changes to the proposed ordinance.
2. Amend the proposed definition of "panic button" to the following:
    a. Remove panic button requirement to affirmatively summon immediate on-scene assistance when activated; and
    b. Align panic button requirements with those required under state law.

[2] See Senate Bill 5258.

3. Amend the ordinance to permit a one-year extension to January 1, 2021 for compliance with the proposed definition for those employers who meet the following criteria:
    a. By January 1, 2020, employers must purchase so-called "interim panic buttons" that comply with state law (i.e., Senate Bill 5258).
    b. By January 1, 2020, employers must have distributed interim panic buttons to employees.

C. Requirement to decline service to a guest for violent or harassing conduct.

The proposed ordinance would require an employer to decline service to a guest (i.e., ban the guest) for five years if the employer's investigation determines that the guest engaged in violent or harassing conduct toward an employee that involved bodily injury or inappropriate sexual contact.

The Mayor, the American Civil Liberties Union, and the Seattle Office for Civil Rights have raised several concerns with the proposed ban, including concerns that the proposed legislation violates due process and could disproportionately impact people of color, particularly men of color. These parties believe that the proposed definition of "violent or harassing conduct" is vague and does not provide enough guidance to guide guest behavior or to prevent arbitrary and discriminatory enforcement. These parties also believe that the proposed ban would deprive a guest of a liberty interest without proper notice and a meaningful opportunity to be heard because the guest's sole option to challenge the employer's determination is to request a hearing before the Hearing Examiner, an appeal process that might not be tenable for a guest quickly travelling through town or a guest with limited English proficiency.

If Councilmembers are interested in exploring other approaches to protecting employees from guest misconduct, one approach could require employers to take unspecified steps to safeguard employees (i.e., no requirement for taking any specific actions).

Another approach could require employers to take steps to safeguard employees with a list of either required actions or examples of suggested actions. Under this approach, employers would retain the option of voluntarily banning the guest using the employer's existing discretion to decline services; however, employers would not be required by law to ban guests under any circumstances.

Specific actions could include:

a) Declining to provide the guest with any in-room services (e.g., room cleaning, massage, etc.) and delivery services;

b) Requiring team cleaning of the guest's room; or

c) Other specific measures to safeguard employees besides banning the guest.

An additional step could require any of the above actions after an employer receives a report of guest misconduct rather than after an employer investigates a report of guest misconduct and issues a determination. The next section further discusses this option.

Options

1. Make no changes to the proposed ordinance.
2. Amend the proposed ordinance to the following:
    a. Remove the requirement to decline service to a guest;
    b. Require employers to take unspecified steps to safeguard employees from future violent or harassing conduct; and
    c. Do *not* provide a list of exemplary or required actions.
3. Amend the proposed ordinance to the following:
    a. Remove the requirement to decline service to a guest;
    b. Require employers to take steps to safeguard employees from future violent or harassing conduct; and
    c. Provide a list of exemplary or required actions (e.g., declining room cleaning and delivery services, requiring team cleaning of the guest's rooms).

D. Requirement to investigate reports of guests engaging in violent or harassing conduct

The proposed ordinance would require covered employers to (a) investigate reports that a guest engaged in violent or harassing conduct toward an employee and (b) issue a prompt determination. The proposed ordinance requires the employer to investigate such reports regardless of what kind of violent or harassing conduct is alleged to have taken place.

There are three potential outcomes following an investigation:

1. If the employer determines that the guest engaged in violent or harassing conduct that involved bodily injury or inappropriate sexual contact, then the employer must decline services to a guest (i.e., ban the guest) for five years.
2. If the employer determines that the guest engaged in the violent or harassing conduct that did not involve bodily injury or inappropriate sexual contact, then the employer must not assign employees to work in or make deliveries to the guest's room for five years.
3. If the employer determines that the guest did not engage in violent or harassing conduct, then the employer must ensure that the employee who was the alleged victim of the conduct is not assigned to work in the guest's room or provide services to that guest for five years.

The Mayor, the American Civil Liberties Union, the Seattle Office for Civil Rights, the King County Prosecutor's Office, and other parties also have raised concerns about the proposed

investigation requirements. Generally, these parties expressed concerns that requiring an employer investigation could hamper parallel law enforcement investigations because employer investigations would not be conducted by individuals with adequate training, guidance, or accountability to the public.

If Councilmembers are interested in exploring alternatives to requiring an employer investigation, one approach is to require an investigation by a City department, such as the Office of Labor Standards or the Office for Civil Rights. This approach could address concerns about the adequacy of investigations and public accountability, but it likely would delay determinations and require additional City funding for implementation.

Another approach is to remove the requirement to conduct investigations altogether. Instead, the ordinance could require employers to take specific actions based on reports of guest misconduct. Depending on the nature of the required actions, this approach could address concerns about deputizing employers as state actors; insufficient guidance on conducting investigations; lack of public accountability; and the impact of investigations on employees. However, removing the investigation requirement could cause some to question whether the proposed ordinance enables a fair and thorough process prior to requiring an employer to deprive a guest of some or all services.

Options

1. Make no changes to the proposed ordinance.
2. Amend the proposed ordinance to remove the requirement for employers to investigate reports of guest misconduct and require a City of Seattle department, such as the Office of Labor Standards or the Office for Civil Rights, to conduct the investigation.
3. Amend the proposed ordinance to remove the requirement for employers to investigate reports of guest misconduct.

E. Requiring notice of crime victim rights and access to a victim advocate

The proposed ordinance would require covered employers to take certain actions following an employee's report of violent or harassing conduct by a guest:

(a) reassign the employee to a different work area;

(b) provide the employee with paid time to contact the police and consult with a counselor or advisor; and

(c) cooperate with any law enforcement investigation.

The King County Prosecutor's Office, King County Sherriff's Office, Harborview Center for Sexual Assault and Traumatic Stress and Seattle Police Department have expressed concerns that the proposed ordinance does not specifically incorporate provisions of the Washington State Victim Bill of Rights and King County Special Assault Protocol, including

requirements to notify victims of their rights and provide access to a community or legal advocate.

One approach to addressing these concerns is to incorporate more explicit protections for employees who report guest misconduct. For example, the ordinance could require employers to promptly provide employees with notice of their rights under state law, including the right to access a victim advocate, and remind them of their rights under this proposed ordinance. Another approach would be to require employers to assist interested employees with reporting an allegation of guest misconduct to the police.

These additional requirements could mitigate employee concerns about personal safety, job safety, and immigration status; and the additional requirements could encourage more employees to come forward with reports of misconduct.

Options

1. Make no changes to the proposed ordinance.
2. Amend the proposed ordinance to require employers to take one or more additional actions following an employee's report of guest misconduct:
    a. Provide the employee with written notice of crime victim rights under state law, including the right to access a victim advocate;
    b. Provide the employee with a verbal explanation and written notice of their rights under this proposed ordinance;
    c. Assist interested employees with reporting an allegation of guest misconduct to the police; and/or
    d. Other specified action(s).

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