

RESOLUTION NO. 20200521-094

WHEREAS, COVID-19 (also known as the “Coronavirus Disease”) is a respiratory disease which has now spread across the globe, with some 17,321 cases as of April 17, 2020 confirmed cases in Texas, and over 2,000 cases in Travis County; and

WHEREAS, on January 31, 2020, the United States Secretary of Health and Human Services declared a public health emergency based on the threat caused by COVID-19, and the President of the United States issued a Proclamation Declaring a National Emergency Concerning COVID-19 beginning March 1, 2020; and

WHEREAS, the World Health Organization announced on March 11, 2020, that it has characterized COVID-19 as a pandemic; and

WHEREAS, since the declaration of a national public health emergency, the COVID-19 pandemic has caused hospitality, restaurant, and travel-related employers in the City to discharge, layoff and furlough workers at a massive scale; and

WHEREAS, the Bureau of Labor Statistics report shows an unemployment rate of 14.7 percent in April 2020, which is the highest since the Great Depression; and

WHEREAS, due to the restrictions of movement and travel, nearly all airport concession workers have been separated from their jobs during the pandemic, and many more are expected to face separation in the coming months; and

WHEREAS, while federal, state, and local programs, and efforts by the City’s non-profits have provided a modicum of support to Austin’s airport concession workers in the short-term, the promise of a return to their previous jobs as the pandemic recedes and business returns would provide some hope for these workers; and

WHEREAS, ensuring that Austin's concessionaire employers honor their former employees with a right to return that will speed the transition back to a functioning airport when it is safe to do so; **NOW, THEREFORE**,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

The City Council directs the City Manager to convene an Airport Concessions workers stakeholder working group with representatives from: the Airport administration, Airport Concessions, UNITE here (impacted workers), and the Economic Development Department; to create and/or develop recommendations for a right to return to work program for impacted concessionaires as those businesses begin to reopen. The working group should explore options to create federally and bond-compliant incentives to encourage concessionaires to re-hire employees who were laid off due to COVID-19 before opening these jobs to other applicants.

BE IT FURTHER RESOLVED:

The City Council directs the City Manager, after taking all legal authority and limitations into consideration allowed by Federal Aviation Administration Grant Assurances, federal law, and bond covenants, to include the following considerations in all discussions about a right to return program:

(a) Rehire process that may include the following: Each Concessionaire shall offer its Laid-off employees in writing, to their last known physical address, and by email and text message to the extent the Concessionaire possesses such information, all job positions which become available after the Program's effective date for which the Laid-off employees are qualified. A Laid-off employee is qualified for a position if the Employee:

- (1) held the same or similar position at the Concessionaire at the time of the Employee's most recent separation from active service with the Concessionaire; or

(2) is, or can be qualified for the position with the same training that would be provided to a new Employee hired into that position; and

(3) continues to comply with the security requirements necessary to be employed at the airport.

(b) The Concessionaire shall offer positions to Laid-off employees in an order of preference corresponding to categories (1) and (2) in the preceding sentence. Where more than one Laid-Off Employee is entitled to preference for a position, the Concessionaire shall offer the position to the Laid-off employee with the greatest Length of Service for the Concessionaire.

(c) A Laid-off employee who is offered a position pursuant to final recommendations of the working group and determined by the City Manager shall be given no less than 10 days in which to accept or decline the offer.

(d) A Concessionaire that declines to recall a Laid-off employee on the grounds of lack of qualifications and instead hires someone other than a Laid-off employee shall provide the Laid-off employee a written notice within 30 days identifying the qualifications for those hired in lieu of such recall, along with all reasons for such decision.

(e) Permissible incentives directed to companies certified as Airport Concession Disadvantage Business Enterprises (ACDBEs).

(f) The requirements of this right to return program may also apply in the following circumstances:

(1) The ownership of the Concessionaire changed after the separation from employment of a Laid-off employee and the subsequent owner is conducting the same or similar operations as before January 31, 2020;

- (2) The form of organization of the Concessionaire changed after January 31, 2020;
- (3) The right to operate the concession is assigned to a different entity pursuant to the terms of the lease or other agreement with the Austin-Bergstrom International Airport; or
- (4) Any combination of the circumstances described in (e)(1-3).

(g) For purposes of this Section,

1. The term "Concessionaire" means a food, beverage, and retail concessionaire that is party to a concession agreement or lease agreement at the Austin-Bergstrom International Airport, and any subcontractor or sub-lessee performing work pursuant to such a concession agreement or lease agreement.
2. "Employee" means an individual employed by a Concessionaire. The term "Employee" does not include an employee who is a manager, supervisor, or a confidential employee.
3. "Laid-off employee" means any Employee who was employed by a Concessionaire for six months or more in the 12 months preceding January 31, 2020, and whose most recent separation from active service occurred after January 31, 2020 and was due to a government shutdown order, lack of business, a reduction in force or other, economic, non-disciplinary reason.
4. "Length of Service" means the total of all periods of time during which an Employee has been in active service, including periods of time when the Employee was on leave or on vacation.

(h) Supersession by Collective Bargaining Agreement. A Concessionaire is exempt from the requirements of this incentive program if it is party to a *bona fide* collective bargaining agreement that has a right to return in its terms.

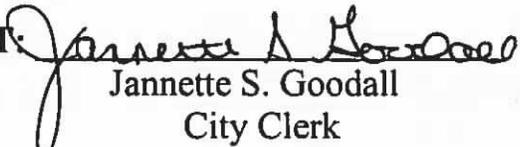
(i) Remedies.

The right to return program should consider all remedies allowed by Federal Aviation Administration Grant Assurances, federal law, state law, and bond covenants that will further the goals of the right to return program while not interfering with the Airport's ability to operate and recover from COVID-19 and that will not impair the existing contracts between the airport and the Concessionaires.

BE IT FURTHER RESOLVED:

The City Council directs the City Manager to report recommendations from the working group for a right to hire program or possible federally and bond-compliant incentives back to Council no later than June 11, 2020 Council; and further return to Council for action if needed, by the same date.

ADOPTED: May 21, 2020

ATTEST: 
Jannette S. Goodall
City Clerk