



DATE: January 21, 2020
TO: City Council and Members of the Public
FROM: Council President Nikki Fortunato Bas
Councilmember Noel Gallo
SUBJECT: **Grocery Worker Hazard Pay Emergency Ordinance**

RECOMMENDATION

We respectfully request that the City Council, in order to protect the health and safety of its residents and workers, adopt an Emergency Ordinance (1) Adding Chapter 5.96 To The Oakland Municipal Code To Require Large Grocery Stores In Oakland To Pay Grocery Store Employees An Additional Five Dollars (\$5.00) Per Hour In Hazard Pay During The Coronavirus (COVID-19) Pandemic And (2) Amending Chapter 2.44 Of The Oakland Municipal Code To Include Enforcement Of Emergency Hazard Pay To Grocery Store Employees As Part Of The Duties Of The Department Of Workplace And Employment Standards.

EXECUTIVE SUMMARY

While many workers in Oakland have shifted to working from home amidst the COVID-19 pandemic, grocery store workers—who are among the lowest paid workers in our service economy— have continued to report to work and provide the City with critical services, while placing their own health and lives at risk, as well as the health of their loved ones. Grocery store workers interact indoors with large numbers of people on a daily basis. Despite the efforts of grocery stores to take precautions and keep customers and employees safe, there have been outbreaks of COVID-19 among grocery store employees.¹

This emergency ordinance is required for the immediate protection of the public peace, health and safety for the following reasons: The COVID-19 pandemic has led to the current State of Emergency in California, in which Governor Newsom’s “Safer at Home” emergency order issued on December 3, 2020 as a result of the critically low availability of ICU beds. The City of Oakland is currently operating at maximum capacity in its ICUs. The virus is spreading rapidly across the region with many clusters arising within retail establishments. Retail food

¹ Debolt, David, “Coronavirus: 12 workers at Oakland Cardenas Markets test positive for COVID-19,” *The Mercury News*, May 28, 2020, available at: <https://www.mercurynews.com/2020/05/28/coronavirus-12-workers-at-oakland-cardenas-markets-test-positive-for-covid-19/>.

outlets remain a critical piece of infrastructure in our fight against COVID-19 and in protecting the food supply chain.

In order for the City of Oakland to protect the food supply chain and public health and safety, it must guard against turn-over and ensure that our retail food establishments have well-trained, consistent and stable staffing. To do so, the City, through this emergency ordinance, will require large grocery store retailers to provide a \$5.00 hazard pay bonus to all Covered Employees so long as they are working hours while the City remains within a Widespread (purple), Substantial (red) or Moderate (orange) Risk Level, and until such time as risk levels return to Minimal (yellow) under State Health Orders.

BACKGROUND / LEGISLATIVE HISTORY

On March 16, 2020, six Bay Area counties (Alameda, Contra Costa, Marin, San Francisco, San Mateo, and Santa Clara) issued Shelter-in-Place Orders, directing nearly seven million residents to shelter in place through April 7, the strongest and most serious effort up to that point in the U.S. to contain the spread of the COVID-19 virus and forestall health systems becoming overwhelmed with new cases. On March 19, 2020, the California State Public Health Officer, designated specific sectors and their workers as Essential Critical Infrastructure Workers (“**essential workers**”) to ensure the “continuity of functions critical to public health and safety, as well as economic and national security.”² Grocery stores, retail and food manufacturing were considered sectors essential to California’s infrastructure.

Oakland has not been able to slow the spread of COVID-19. As the number of people infected by the COVID-19 virus increases, grocery store workers face constant and increased exposure given the nature of work interacting with customers and restocking essential supplies indoors. Despite precautions, including wearing masks, social distancing, and wiping down cash registers, food conveyor belts and carts, there have been outbreaks of the COVID-19 virus among grocery workers. United Food and Commercial Workers (“UFCW”) Locals in Northern California, which represent grocery workers, report that over 700 grocery workers in their ranks have tested positive with COVID-19, and members of their union have been hospitalized or have died from the coronavirus. In a journal article from *Occupational and Environmental Medicine*, a study found that 20% of grocery workers were at risk of asymptomatic infection despite taking precautions, but remaining unable to socially distance.³

Some retail employers, in recognition of the risk and exposure involved in service to economic security and public safety, afforded **Hazard Pay** (e.g. Appreciation Pay or Hero Pay) to their

² <https://covid19.ca.gov/essential-workforce/>

³ Christensen, Jen, “About 20% of grocery store workers had Covid-19, and most didn’t have symptoms,” *CNN*, Oct. 29, 2020, available at: <https://www.cnn.com/2020/10/29/health/grocery-workers-increased-covid-19-risk-wellness/index.html>.

workers in the form of increased hourly wages or one-time bonuses.⁴ For most employees, however, hazard pay ended toward the end of Summer 2020, despite no comparable decrease in the risks COVID-19 poses to grocery store employees. While the wages of many grocery workers have returned to their pre-pandemic levels, the risk of COVID-19 infection is at its worst level ever, both in Oakland and throughout the U.S. This threat is felt particularly hard by women and people of color, who are overrepresented among retail and grocery workers.

Despite the increased risk and health hazards of their essential employees during the pandemic, the country's largest grocery employers have seen a large jump in their profits.⁵ Albertsons recorded 12.3% increase in profits in 2020 compared to 2019, while Amazon (parent company of Whole Foods) recorded nearly 4.5 times its profit and saw its stock price jump nearly 70% in the same timeframe.⁶

San Francisco and Los Angeles were among the first cities to introduce ordinance language for retail worker hazard pay in December 2020. They recognized the failure of the federal government to act, and responded to the desperate need to adequately compensate grocery store workers for the increased health risks they took on while providing essential services to the public.⁷ Berkeley, Long Beach and San Leandro passed grocery worker hazard pay legislation on January 19, 2021; San Jose and Seattle will introduce legislation in February; and Napa, Antioch and Santa Ana are considering such legislation as well.

The City of Oakland must take action to ensure that the wages of its grocery store employees reflect the hazards that they face each time they report for their jobs. Even as the vaccine becomes more available, a pay increase of five (5) dollars an hour while the threat of COVID-19 stays above the minimum level in the City is necessary to treat our grocery store workers as the heroes they are.

⁴ Hazard Pay is "additional pay for performing hazardous duty or work involving physical hardship," Kinder, Molly, "The COVID-19 hazard continues, but the hazard pay does not: Why America's essential workers need a raise," *Brookings*, Oct. 29, 2020, available at: <https://www.brookings.edu/research/the-covid-19-hazard-continues-but-the-hazard-pay-does-not-why-americas-frontline-workers-need-a-raise/>.

⁵ Kinder, Molly, Laura Stateler, and Julia Du, "Windfall profits and deadly risks: How the biggest retail companies are compensating essential workers during the COVID-19 pandemic," *Brookings*, Nov. 2020, available at: <https://www.brookings.edu/essay/windfall-profits-and-deadly-risks/>.

⁶ Windfall profits and deadly risks

Brookings website: <https://www.brookings.edu/essay/windfall-profits-and-deadly-risks/>.

⁷ Moroski, Rachel, "California Municipalities Move Closer to Requiring Hazard Pay for Grocery and Pharmacy Workers," *JD Supra*, Jan. 8, 2021, available at: <https://www.jdsupra.com/legalnews/california-municipalities-move-closer-6847863/>.

ANALYSIS

The following are key components of this emergency ordinance:

1. **Covered Employees:** Any individual who qualifies as an employee entitled to payment of a minimum wage from any employer under the California minimum wage law, and who works in a Large Grocery Store on either a full-time or part-time basis. There are an estimated 2,000 grocery workers in the City of Oakland.
2. **Covered Employers:** Any Person who owns or operates a Large Grocery Store and employs or exercises control over the wages, hours or working conditions of any Covered Employee and employs 500 or more employees nationwide regardless of where those employees are employed. In Oakland these are: Cardenas, Safeway/Albertsons, Savemart, Target, Trader Joe's, and Whole Foods.
3. **Employer-Initiated Hazard Pay:** Means a premium hourly rate to compensate Covered Employees for the hardships and/or risks associated with working during the COVID-19 pandemic.
4. **Hazard Pay Wages:** Means an additional \$5.00 per hour wage bonus in addition to each Covered Employee's Base Wage for each hour worked within the City of Oakland.
5. **Duration of Hazard Pay:** Covered Employers shall pay Hazard Pay to all Covered Employees for any pay period during which the City of Oakland is within a Widespread (purple), Substantial (red) or Moderate (orange) Risk Level, and until such time as Risk Levels return to Minimal (yellow) under State Health Orders.
6. **Enforcement:** Covered Employers shall have all obligations of "Employers" and "employers" under City Municipal Code. The provisions of this Chapter do not diminish, alter, or negate any other legal rights, remedies, or procedures available to an Employee, meaning, there is a private right of action for individuals to seek legal remedies in court.
7. **Large Grocery Store:** Means a retail or wholesale store that is over 15,000 square feet in size, that is located within the geographic limits of the City, and that sells primarily household foodstuffs for offsite consumption, including the sale of fresh produce, meats, poultry, fish, deli products, dairy products, canned foods, dry foods, beverages, baked foods, or prepared foods. Other household supplies or other products shall be secondary to the primary purpose of food sales.

FISCAL IMPACT

The Department of Workforce and Employment Standards will add the requirement under this emergency ordinance to provide hazard pay for grocery workers as a cause of action to the list of local laws it enforces. Individuals may also file complaints through the court system to exercise their rights under this emergency ordinance. The timeframe is limited in duration to when the City of Oakland is within a Widespread (purple), Substantial (red) or Moderate (orange) Risk Level, and until such time as risk levels return to Minimal (yellow) under State Health Orders related to the COVID-19 pandemic.

PUBLIC OUTREACH / INTEREST

The authors engaged with the United Food and Commercial Workers, which represents approximately 1,300 grocery workers in the City of Oakland, as well as other localities including the cities of Berkeley and San Jose.

COORDINATION

The author consulted with the City Administrator's Office and the Department of Workplace and Employment Standards and worked with the City Attorney's Office to draft this legislation.

SUSTAINABLE OPPORTUNITIES

Economic and Environmental: According to national media reports in August 2020, the nation's 2.7 million grocery workers are among the lowest wage earners, at least 130 U.S. grocery workers died, and more than 8,200 tested positive for COVID-19 since late March.⁸ Providing hazard pay for grocery store workers, who have been deemed "essential" during this pandemic, and allowing individuals and families to have more financial stability during the pandemic, effectively helps create more job and living security and increases healthier outcomes for all communities in Oakland.

Race and Equity: Black and Latino communities have borne the brunt of the COVID-19 pandemic in California and other parts of the United States, becoming infected and dying at disproportionately high rates relative to their share of the population. According to health experts, one of the main reasons Latinos are especially vulnerable to COVID-19 is because many work in jobs deemed "essential," that require them to leave home and interact with the public, many in the retail food industry, which includes grocery stores. Latinos comprise about 40% of California's population but 54.9% of positive cases, according to state data as of January 20, 2021.⁹ In Alameda County, there have been 27,369 confirmed COVID-19 cases in the Latino community, which far exceeds any other ethnic or racial group in the county.¹⁰ Latinos in California are significantly less likely than whites, Asians and blacks to say that working from home amid the pandemic is an option, according to a November 2020 poll of California voters from the UC Berkeley Institute of Governmental Studies.¹¹ According to the poll, Latinos were nearly three times more likely than whites to be concerned about their jobs placing them in close proximity to others, a particular problem for the COVID-19 pandemic.

⁸ Bhattarai, Abha, "Grocery workers say morale is at an all-time low: 'They don't even treat us like humans anymore,'" *The Washington Post*, Aug. 12, 2020, available at:

<https://www.washingtonpost.com/business/2020/08/12/grocery-workers-coronavirus/>

⁹ <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Race-Ethnicity.aspx>

¹⁰ <https://covid-19.acgov.org/data.page>

¹¹ <https://www.igs.berkeley.edu/research/berkeley-igs-poll>

ACTION REQUESTED BY THE CITY COUNCIL

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For questions regarding this report, please contact Miya Saika Chen, Chief of Staff, Office of Council President Nikki Fortunato Bas, at mchen@oaklandca.gov.

Respectfully Submitted,



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Council President, District 2



Noel Gallo
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