



AGENDA REPORT

TO: Honorable City Council

FROM: Edward D. Reiskin
City Administrator

SUBJECT: Grocery Worker Hazard Pay
Emergency Ordinance

DATE: January 28, 2021

RECOMMENDATION

Staff Recommends That The City Council Receive a Supplemental Report on and Defer Consideration of an Emergency Ordinance (1) Adding Chapter 5.96 To The Oakland Municipal Code To Require Large Grocery Stores In Oakland To Pay Employees An Additional Five Dollars (\$5.00) Per Hour In Hazard Pay During The Novel Coronavirus (Covid-19) Pandemic And (2) Amending Chapter 2.44 Of The Oakland Municipal Code To Include Enforcement Of Emergency Hazard Pay To Grocery Employees As Part Of The Duties Of The Department Of Workplace And Employment Standards.

REASON FOR SUPPLEMENTAL

The proposed emergency ordinance represents a significant policy decision for the City Council and the public to consider. As such, it warrants sufficient time for review and analysis. There has not been time since this ordinance's recent scheduling by the Rules Committee for that review and analysis to take place. Staff therefore recommends, should the City Council want to consider advancing of legislation such as this, that the City Council direct staff to review the policy issues and impacts and report back findings.

BACKGROUND / LEGISLATIVE HISTORY

The Rules Committee on January 21, 2021, scheduled consideration of this emergency ordinance to the February 2, 2021 City Council meeting, scheduled to occur twelve days hence. The report accompanying the proposed emergency resolution includes references to other cities' legislation in this realm. Staff understanding of those legislative efforts are as follows:

- **San Francisco:** On January 5, 2021, the San Francisco Board of Supervisors adopted a [resolution](#) urging certain grocery stores to provide \$5/hour hazard pay to employees until San Francisco returns to the yellow tier under the state blueprint. The city and county has not adopted an ordinance requiring it, as this emergency ordinance would do.
- **Los Angeles:** On January 26, 2021, a committee of the Los Angeles City Council approved a [motion](#) (originally introduced on December 15, 2020 and referred to committee) to request the city attorney to draft an emergency ordinance that would require certain grocery stores to provide \$5/hour hazard pay to employees until Los Angeles County returns to the yellow tier under the state blueprint. According to a news [story](#), "...the committee also asked for the chief legislative analyst's office to look at both the economic impact of the proposed ordinance and potential legal challenges — the

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latter of which could pose a real obstacle.” The draft emergency ordinance will return to the committee for consideration as to whether to advance to the full City Council.

- **Berkeley:** On January 19, 2021, the Berkeley City Council approved a [recommendation](#) to have the City Manager and City Attorney draft an emergency ordinance that would require certain grocery stores to provide \$5/hour hazard pay to employees until Berkeley returns to the yellow tier under the state blueprint, and that the City Manager should take into consideration similar hazard pay programs in Long Beach and Los Angeles.
- **Long Beach:** On January 22, 2021, the Long Beach City Council adopted an emergency [ordinance](#) that would require certain grocery stores to provide \$4/hour hazard pay to employees for 120 days, unless extended. The ordinance will be heard for final reading on February 2, 2021. According to a new [story](#), the California Grocers Association has filed a legal challenge to the ordinance, including a preliminary injunction.
- **San Leandro:** On January 19, 2021, the San Leandro City Council voted to refer to its Rules Committee a potential future agenda item, “Discussion of an ordinance related to Hazard (Hero) Pay for Grocery Workers during COVID”. There was limited discussion at committee on January 27, 2021, with the expectation that further staff and legal analysis is needed. The City Council will discuss the item in closed session February 9, 2021.

In sum, just one of the referenced cities has adopted an ordinance requiring hazard pay along the lines of what has been proposed in this emergency ordinance, and that city is facing a legal challenge to what it has adopted.

Economic Development Considerations

From an economic development standpoint, staff needs additional time to determine how many businesses would be subject to the proposed ordinance to allow for outreach to Large Grocery businesses to seek input on the measures put in place to protect the food supply chain, ability to provide a well-trained consistent staffing, and current employee turn-over trends that have occurred within the specific labor market for Large Grocery and how the proposed premium pay would support the proposed ordinance intent. This outreach and business engagement would provide additional details for supporting a determination on the nexus for the premium wage payment to eligible employees. In addition, Large Grocery businesses could provide information on the business operation impact if the ordinance was adopted and the ability to pay premium wages as contemplated.

As outlined in the ordinance introduction staff report, premium wages were provided by some Large Grocery businesses as voluntary wage enhancements that recently ended. Understanding the analysis that supported those enhancements and if there were other factors involved in the business decision and impacts from it would provide the Council insight on potential unintended consequences. One concern is that additional pay enhancements would be passed onto Oakland residents raising grocery pricing and impacting food access. There is also an unknown time factor as the draft ordinance requires premium pay until such time the State reaches Minimal (Yellow) impact status, which could impact employment opportunities or potential reduction in grocery staffing to meet the enhanced payments should there be a long duration the requirement is in place.

The COVID-19 pandemic is a fluid situation and even since the submittal of the ordinance introduction, the State stay at home order has been modified. Essential businesses include businesses other than grocery stores and food manufacturing, triggering a policy question

around risk and the applicability of pay enhancements. Specifically, why would Large Grocery be the select industry when risk factors and impacts have been spread over multiple essential businesses? A recent article from the San Francisco Chronicle¹ identified a study from University of California San Francisco that has been released identifying multiple job types that are considered higher risk including: cooks, packaging and machine operators and tenders, agriculture workers, bakers, construction laborers, production workers, sewing machine operators, shipping, receiving and traffic clerks, ground maintenance workers, and customer service representatives. The recommendation was not premium wage enhancements, but increased safety measures, government enforcement, and vaccination prioritization.

Policy Implementation and Enforcement Considerations

Upon approval, the Department of Workplace and Employment Standards would have to develop regulations, implement, publicize, monitor compliance, and enforce the Hazard Pay policy for Grocery Workers and whenever feasible tie operations and enforcement to existing policies that protect the interests of other workers.

Whenever the City implements policies to enhance benefits for the Oakland workforce, an internal foundation must be either built or existing monitoring and enforcement operations must be enhanced. With the introduction of the Hazard Pay policy, staff expects residual impacts on other sectors if not included, such as requests or demands for inclusion.

In any case, implementation would require the following:

- (1) Start-up process: development of regulations and procedures for compliance monitoring and enforcement (operational costs may be minimized if monitoring and enforcement builds upon existing policy implementation efforts)
- (2) Outreach, Monitoring, and Enforcement: outreach that covers media distribution and targeted distribution to include grocery worker unions and covered grocery stores in Oakland
- (3) Funding: for start-up and ongoing operations, plus potential costs of independent investigative officers for complex and/or extensive non-compliance investigations, and additional potential costs resulting from legal challenges
- (4) Infrastructure: can build on most recent wage and labor policies processes, but additional work would require additional resources or reprioritization of existing work

Finance is working with DWES to further assess the operational impacts of implementing this Ordinance and associated costs, should it be adopted by the Council.

¹ Cabanatuan, Michael and Tucker, Jill "New study ranks the riskiest jobs in California during the pandemic" *The San Francisco Chronicle*, January 23, 2021, available at: <https://www.sfchronicle.com/bayarea/article/California-s-essential-workers-dying-in-greater-15893374.php>

FISCAL IMPACT

There is no fiscal impact associated with this supplemental report. The City Council's consideration of this ordinance should include a fiscal impact analysis. One direct area of impact would be the cost of new, unbudgeted duties of the Department of Workplace and Employment Standards associated with developing regulations, outreach, and enforcement. The Finance Department will need to work with DWES to cost fiscal impact.

An indirect area of potential impact would depend on analysis of business impact to covered grocers. The City assesses a gross receipts tax on grocery stores operating in the city. Implementation of this Ordinance is not expected to have a significant negative impact on tax revenue generated by the covered employers, as the gross receipts tax does not allow for any deduction of the cost of the property sold, the cost of materials used, labor or service costs, interest paid or payable, or losses or other expenses. But potential changes in pricing and demand or other market dynamics could impact tax revenues.

PUBLIC OUTREACH / INTEREST

No public outreach has occurred from staff with Oakland business or workers that would and would not be impacted by this proposed ordinance.

COORDINATION

Development of this report included input from the Economic & Workforce Development Department, Department of Workplace and Employment Standards, Human Resources Management, and the Finance Department.

SUSTAINABLE OPPORTUNITIES

Economic: None associated with this supplemental report, but economic analysis should be done prior to City Council's consideration of the ordinance.

Environmental: None associated with this supplemental report.

Race & Equity: None associated with this supplemental report, but a race & equity impact analysis should be done prior to City Council's consideration of the ordinance.

ACTION REQUESTED OF THE CITY COUNCIL

Staff Recommends That The City Council Receive a Supplemental Report on and Defer Consideration of an Emergency Ordinance (1) Adding Chapter 5.96 To The Oakland Municipal Code To Require Large Grocery Stores In Oakland To Pay Employees An Additional Five Dollars (\$5.00) Per Hour In Hazard Pay During The Novel Coronavirus (Covid-19) Pandemic And (2) Amending Chapter 2.44 Of The Oakland Municipal Code To Include Enforcement Of Emergency Hazard Pay To Grocery Employees As Part Of The Duties Of The Department Of Workplace And Employment Standards

For questions regarding this report, please contact Deborah Barnes, Director of Workforce & Employment Standards at (510) 238-6270.

Respectfully submitted,



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