



City of Santa Ana
20 Civic Center Plaza, Santa Ana, CA 92701
Staff Report
March 2, 2021

TOPIC: Premium Pay for Grocery Workers and Retail Pharmacy Workers

AGENDA TITLE:

Ordinance Establishing Premium Pay for Grocery Workers and Retail Pharmacy Workers

RECOMMENDED ACTION

Consider one of the following options:

1. Adopt an urgency ordinance establishing premium pay for grocery workers and retail pharmacy workers.
2. Approve first reading of an ordinance establishing premium pay for grocery workers and retail pharmacy workers.

DISCUSSION

COVID-19 Pandemic Timeline

On March 11, 2020, the World Health Organization (WHO) declared the Coronavirus (COVID-19) a pandemic.

On March 17 2020, the City Council proclaimed a civil emergency in response to the COVID-19 pandemic, authorizing the City Manager to exercise the emergency powers necessary to take extraordinary measures to prevent death or injury of persons and to protect the public peace, safety and welfare, and alleviate damage, loss, hardship, or suffering.

On March 19, 2020, California Governor Gavin Newsom issued a Stay Home order, closing all non-essential workplaces, requiring people to stay home except to participate in essential activities or to provide essential business services, and banning all gatherings for social, spiritual, and recreational purposes. In addition to healthcare, public health, and emergency services, the Stay Home order identified grocery stores, among other businesses/services, as essential business sectors critical to protecting the health and well-being of all Californians and designated their workers as essential critical infrastructure workers.

Grocery Stores as Essential Businesses

Grocery stores are essential businesses. As such, grocery workers employed at grocery stores are essential workers who perform services that are fundamental to the economy and health of the community during the COVID-19 crisis. They work in high-risk conditions with inconsistent access to protective equipment and other safety measures, work in public situations with limited ability to engage in physical distancing, and continually expose themselves and the public to the spread of disease.

COVID-19 Cases and Deaths to Date

As of February 25, 2021, the World Health Organization reported a global total of 112,209,815 cases of COVID-19, including 2,490,776 deaths; California reported 3,455,361 cases of COVID-19, including 49,877 deaths; and Santa Ana reported 43,835 cases of COVID-19, including 688 deaths.

Premium Pay

Premium pay, such as a “hazard pay” or “hero pay” is wages paid to an employee in addition to regular wages. Premium pay is an established type of compensation for employees performing hazardous duty or work involving physical hardship that can cause extreme physical discomfort and distress.

Premium Pay in Other Cities

Several cities throughout California and elsewhere in the United States have proposed or adopted local ordinances to establish premium pay for grocery workers:

- County of Los Angeles, CA: On January 5, 2021, the Los Angeles County Board of Supervisors voted to draft a mandate requiring large grocery and drugstore chains to provide workers a \$5 per hour pay increase for at least 120 days.
- City and County of San Francisco, CA: In January 2021, the San Francisco Board of Supervisors passed a nonbinding ordinance urging companies to pay hazard pay.
- City of Irvine, CA: On February 9, 2020, the Irvine City Council approved an ordinance requiring grocery store employees in the city to be paid an extra \$4 an hour for 120 days.
- City of Long Beach: On January 19, 2021, the Long Beach City Council approved a “Premium Pay for Grocery Workers Ordinance” which requires employers to pay a \$4 per hour premium wage for employees.
- City of Los Angeles, CA: On February 2, 2021, the Los Angeles City Council directed staff to prepare an emergency ordinance that will provide all on-site grocery workers at grocery stores and certain drug retail stores with 300 or more employees with an additional five dollars per hour in wages, to be effective for 120 days. The City of Los Angeles approved its hero pay ordinance on February 24, 2021.
- City of Montebello, CA: The Montebello City Council approved an ordinance requiring large drug and grocery stores to give its employees a \$4 per hour pay raise for 180 days. The ordinance applies to stores operating within Montebello

that are publicly traded or have at least 300 employees nationwide and more than 15 employees per grocery or drug store location.

- City of Oakland, CA: In February 2021, the Oakland City Council approved a Hazard Pay Ordinance requiring certain grocery store employers to pay an additional \$5 per hour in hazard pay for all part-time and full-time employees, and comply with other new legal obligations. The ordinance does not require employers who have already implemented hazard pay of any amount to pay the additional \$5 per hour.
- City of Santa Monica, CA: On January 12, 2021, the Santa Monica City Council approved \$5 per hour “hero pay” for grocery workers at large employers.
- City of Seattle, WA: On January 25, the Seattle City Council unanimously passed a similar mandate requiring certain large grocery and food retail businesses with at least 500 employees globally to pay \$4 per hour hazard pay for grocery workers.

Pending Litigation with Cities and Premium Pay Ordinances

The California Grocers Association filed a lawsuit against the City of Long Beach, declaring their hero pay ordinance unconstitutional. The suit claims the ordinance is illegal because, by singling out certain grocers and ignoring other groups that employ essential frontline workers, it violates the equal protection clause of the U.S. Constitution that requires that similarly situated people must be treated alike, and that the ordinance is preempted by the federal National Labor Relations Act relating to the collective-bargaining process.

The California Grocers Association filed similar lawsuits relating to premium pay ordinances enacted by the City of Montebello and City of Oakland.

February 2, 2021 City Council Meeting

At the February 2, 2021 meeting, the City Council directed staff to deliver a written report prior to March 2, 2021 that contains a proposed Urgency Ordinance that includes the following:

- A requirement that retail stores located within the city limits which are privately and publicly traded, with at least 300 employees nationwide, and with more than 15 employees per store site, pay all their employees an additional four (4) dollars per hour in wages;
- “Discount language” that applies to employers who are already providing similar benefits;
- A sunset clause, occurring 120 days from the effective date of the ordinance; and
- Any other provisions necessary to implement the intent of the motion.

Additionally, the City Council directed the City Attorney to advise the City Council on the enforceability of such an ordinance, in light of the lawsuit filed against the City of Long Beach in response to their City Council’s adoption of a similar ordinance.

Proposed Urgency Ordinance

The following are key components of the proposed ordinance:

- Grocery Store and Retail Pharmacy Applicability:
 - The ordinance applies to certain grocery stores and retail pharmacies (“hiring entities”) which employ over 300 workers nationally and more than 15 employees per grocery store location or retail pharmacy location in Santa Ana.
 - A “grocery store” means a store that devotes 70 percent or more of its business to retailing a general range of food products, and/or a store that has at least 15,000 square feet of floor space dedicated to retailing a general range of food products.
 - “Retail pharmacy” means a corporate or chain (three or more locations nationally) pharmacy or publicly-traded company that is licensed as a pharmacy by the State of California and that dispenses medications to the general public at retail prices.
- Premium Pay Wages for Designated Workers:
 - The ordinance requires hiring entities to provide each designated worker with premium pay consisting of an additional \$4 cash per hour for each hour worked.
 - For the purposes of the ordinance, “designated worker” means a grocery worker or retail pharmacy worker employed by a hiring entity who is entitled to premium pay pursuant to the ordinance.
- Recognition of Premium Pay Already Being Provided:
 - If a grocery store or retail pharmacy already provides hourly premium pay in accordance with the ordinance, such compensation may be credited toward the additional \$4 per hour of premium pay (and achieving compliance if such pay is in the full amount of \$4).
- Duration of Premium Pay:
 - The ordinance requires premium pay for designated workers for (120) days, beginning on the effective date of the ordinance.
- Notice of Rights:
 - Grocery stores and retail pharmacies must advise their employees of their rights under the ordinance, including their right to premium pay guaranteed by the ordinance.
- Private Right of Action:
 - A designated worker that suffers financial injury as a result of a violation of the ordinance or is the subject of retaliation may bring a civil action in a court of competent jurisdiction against the hiring entity or other person violating the ordinance.

The ordinance is attached for consideration as either an urgency ordinance (Exhibit 1) or regular ordinance (Exhibit 2). The only difference between the two ordinances is that the urgency ordinance contains express findings that the ordinance is necessary as an emergency measure to protect and preserve the health, safety and welfare of the citizens of the City of Santa Ana, and therefore, would become effective immediately if passed by the affirmative votes of at least two-thirds of the members of the City Council. The regular ordinance does not declare such express findings, and therefore, would be considered for a first reading and second reading; if the majority of the members affirm the passage of the first and second readings, the regular ordinance would become effective 30 days after the second reading.

OPTIONS

The City Council has the following options to consider relating to this matter:

1. Adopt an urgency ordinance establishing premium pay for grocery workers and retail pharmacy workers.
2. Approve first reading of an ordinance establishing premium pay for grocery workers and retail pharmacy workers.

ENVIRONMENTAL IMPACT

There is no environmental impact associated with this action.

FISCAL IMPACT

There is no fiscal impact associated with this action.

EXHIBIT(S)

1. Urgency Ordinance
2. Regular Ordinance

Submitted By:

Kristine Ridge, City Manager

Approved By: Kristine Ridge, City Manager