



OFFICE OF THE CITY ATTORNEY
Long Beach, California

ORD-27

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January 19, 2021

HONORABLE MAYOR AND CITY COUNCIL
City of Long Beach
California

RECOMMENDATION:

Declare ordinance amending the Long Beach Municipal Code by adding Chapter 5.91 establishing premium pay for grocery workers, read the first time and laid over to the next regular meeting of the City Council for final reading; and declaring the urgency thereof, and declaring that this ordinance shall take effect immediately. (Citywide)

DISCUSSION:


Pursuant to your request on December 15, 2020, an ordinance has been prepared and is submitted for your consideration.

SUGGESTED ACTION:

Approve recommendation.

Very truly yours,

CHARLES PARKIN, City Attorney

By 
GARY J. ANDERSON
Principal Deputy City Attorney

GJA:kjm A20-06935
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ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LONG BEACH AMENDING THE LONG BEACH MUNICIPAL CODE BY ADDING CHAPTER 5.91, RELATING TO GROCERY WORKERS IN LONG BEACH, AND ESTABLISHING LABOR STANDARDS REQUIREMENTS FOR PREMIUM PAY FOR GROCERY WORKERS WORKING IN LONG BEACH; DECLARING THE URGENCY THEREOF; AND DECLARING THAT THIS ORDINANCE SHALL TAKE EFFECT IMMEDIATELY

WHEREAS, the new coronavirus 19 (COVID-19) disease is caused by a virus that spreads easily from person to person and may result in serious illness or death, and is classified by the World Health Organization (WHO) as a worldwide pandemic; and

WHEREAS, COVID-19 has broadly spread throughout California and remains a significant health risk to the community, especially members of our most vulnerable populations; and

WHEREAS, the World Health Organization has declared that COVID-19 is a global pandemic, which is particularly severe in high risk populations such as people with underlying medical conditions and the elderly, and the WHO has raised the health emergency to the highest level, requiring dramatic interventions to disrupt the spread of this disease; and

WHEREAS, on March 4, 2020, California Governor Gavin Newsom proclaimed a state of emergency in response to new cases of COVID-19, directing state agencies to use all resources necessary to prepare for and respond to the outbreak; and

WHEREAS, on March 4, 2020, the City of Long Beach Public Health Office issued orders temporarily shutting down restaurants, bars, and other entertainment and

1 food establishments, except for take-out food; and

2 WHEREAS, on March 10, 2020, the City Council of the City of Long Beach
3 proclaimed a civil emergency in response to new cases of COVID-19, authorizing the City
4 Manager to exercise the emergency powers necessary to take extraordinary measures to
5 prevent death or injury of persons and to protect the public peace, safety and welfare,
6 and alleviate damage, loss, hardship or suffering; and

7 WHEREAS, on March 19, 2020, California Governor Gavin Newsom issued
8 a “Stay Home – Stay Healthy” proclamation closing all non-essential workplaces,
9 requiring people to stay home except to participate in essential activities or to provide
10 essential business services, and banning all gatherings for social, spiritual, and
11 recreational purposes. In addition to healthcare, public health and emergency services,
12 the “Stay Home – Stay Healthy” proclamation identified grocery stores as essential
13 business sectors critical to protecting the health and well-being of all Californians and
14 designated their workers as essential critical infrastructure workers; and

15 WHEREAS, on March 24, 2020, in order to mitigate the effects of COVID-
16 19 within the City of Long Beach, the Long Beach Health Officer issued the “Safer at
17 Home” Order to control the affects and spread of COVID-19 by closing all non-essential
18 workplaces, requiring people to stay home except to participate in essential activities or
19 to provide essential business services, and banning all gatherings for social, spiritual, and
20 recreational purposes. In addition to healthcare, public health and emergency services,
21 the “Safer at Home” Order identified grocery stores as essential business sectors critical
22 to protecting the health and well-being of all Californians and designated their workers as
23 essential critical infrastructure workers; and

24 WHEREAS, on December 3, 2020, California Governor Gavin Newsom
25 extended the “Stay Home – Stay Healthy” proclamation; and

26 WHEREAS, on December 3, 2020, in order to mitigate the effects of
27 COVID-19 within the City of Long Beach, the Long Beach Health Officer extended the
28 “Safer at Home” Order to control the affects and spread of COVID-19; and

1 WHEREAS, as of January 5, 2021, the World Health Organization Situation
2 Report reported a global total of 86,833,481 cases of COVID-19, including 1,875,460
3 deaths; California reported 2,490,000 cases of COVID-19, including 27,038 deaths; and
4 Long Beach reported 35,664 cases of COVID-19, including 420 deaths; and

5 WHEREAS, grocery stores are essential businesses operating in Long
6 Beach during the COVID-19 emergency making grocery workers highly vulnerable to
7 economic insecurity and health or safety risks; and

8 WHEREAS, grocery workers working for grocery stores are essential
9 workers who perform services that are fundamental to the economy and health of the
10 community during the COVID-19 crisis. They work in high risk conditions with inconsistent
11 access to protective equipment and other safety measures; work in public situations with
12 limited ability to engage in physical distancing; and continually expose themselves and
13 the public to the spread of disease; and

14 WHEREAS, premium pay, paid in addition to regular wages, is an
15 established type of compensation for employees performing hazardous duty or work
16 involving physical hardship that can cause extreme physical discomfort and distress; and

17 WHEREAS, grocery workers working during the COVID-19 emergency
18 merit additional compensation because they are performing hazardous duty due to the
19 significant risk of exposure to the COVID-19 virus. Grocery workers have been working
20 under these hazardous conditions for months. They are working in these hazardous
21 conditions now and will continue to face safety risks as the virus presents an ongoing
22 threat for an uncertain period, potentially resulting in subsequent waves of infection; and

23 WHEREAS, the availability of grocery stores is fundamental to the health of
24 the community and is made possible during the COVID-19 emergency because grocery
25 workers are on the frontlines of this devastating pandemic supporting public health,
26 safety, and welfare by working in hazardous situations; and

27 WHEREAS, establishing an immediate requirement for grocery stores to
28 provide premium pay to grocery workers protects public health, supports stable incomes,

1 and promotes job retention by ensuring that grocery workers are compensated for the
2 substantial risks, efforts, and expenses they are undertaking to provide essential services
3 in a safe and reliable manner during the COVID-19 emergency.

4 NOW, THEREFORE, the City Council of the City of Long Beach ordains as
5 follows:

6 Section 1. The Long Beach Municipal Code is amended by adding
7 Chapter 5.91 to read as follows:

8 CHAPTER 5.91

9 PREMIUM PAY FOR GROCERY WORKERS

10
11 5.91.005 Purpose.

12 As a result of the COVID-19 pandemic and the "Stay at Home" order
13 issued by California Governor Gavin Newsom and the "Safer at Home" order
14 issued by the City of Long Beach, this Ordinance aims to protect and
15 promote the public health, safety, and welfare during the new coronavirus 19
16 (COVID-19) emergency by requiring grocery stores to provide premium pay
17 for grocery workers performing work in Long Beach. Requiring grocery
18 stores to provide premium pay to grocery workers compensates grocery
19 workers for the risks of working during a pandemic. Grocery workers face
20 magnified risks of catching or spreading the COVID-19 disease because the
21 nature of their work involves close contact with the public, including
22 members of the public who are not showing symptoms of COVID-19 but
23 who can spread the disease. The provision of premium pay better ensures
24 the retention of these essential workers who are on the frontlines of this
25 pandemic providing essential services and who are needed throughout the
26 duration of the COVID-19 emergency. As such, they are deserving of fair
27 and equitable compensation for their work.

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5.91.010 Short title.

This ordinance shall constitute the “Premium Pay for Grocery Workers Ordinance” and may be cited as such.

5.91.020 Definitions.

For purposes of this Ordinance:

“Adverse action” means reducing the compensation to a grocery worker, garnishing gratuities, temporarily or permanently denying or limiting access to work, incentives, or bonuses, offering less desirable work, demoting, terminating, deactivating, putting a grocery worker on hold status, failing to rehire after a seasonal interruption of work, threatening, penalizing, retaliating, or otherwise discriminating against a covered grocery worker for any reason prohibited by Section 5.91.090.

“Adverse action” also encompasses any action by the hiring entity or a person acting on the hiring entity’s behalf that would dissuade a grocery worker from exercising any right afforded by this ordinance.

“Aggrieved party” means a grocery worker or other person who suffers tangible or intangible harm due to a hiring entity or other person's violation of this ordinance.

“City” means the City of Long Beach.

“Covered grocery worker” means a grocery worker employed directly by a hiring entity who is entitled to premium pay pursuant to this Ordinance.

“Grocery worker” means a worker employed directly by a hiring entity at a grocery store. Grocery worker does not include managers, supervisors or confidential employees.

“Grocery store” means a store that devotes seventy percent (70%) or more of its business to retailing a general range of food products, which may be fresh or packaged. There is a rebuttable presumption that if a store

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receives seventy percent (70%) or more revenue from retailing a general range of food products, then it qualifies as a grocery store.

“Hiring entity” means a grocery store that employs over three hundred (300) grocery workers nationally and employs more than fifteen (15) employees per grocery store in the City of Long Beach.

“Premium pay” means additional compensation owed to a grocery worker that is separate from hiring entity payments for providing services, bonuses, and commissions, as well as tips earned from customers.

“Respondent” means a grocery store, parent company or any person who is alleged or found to have committed a violation of this Ordinance.

5.91.030 Grocery worker coverage.

For the purposes of this Ordinance, covered grocery workers are limited to those who perform work for a hiring entity where the work is performed in the City of Long Beach.

5.91.040 Hiring entity coverage.

A. For purposes of this Ordinance, hiring entities are limited to those who employ three hundred (300) or more grocery workers nationally and employ more than fifteen (15) employees per grocery store in the City of Long Beach.

B. To determine the number of grocery workers employed for the current calendar year:

1. The calculation is based upon the average number per calendar week of grocery workers who worked for compensation during the preceding calendar year for any and all weeks during which at least one (1) grocery worker worked for compensation. For hiring entities that did not have any grocery workers during the preceding calendar year, the number of

1 grocery workers employed for the current calendar year is calculated based
2 upon the average number per calendar week of grocery workers who worked
3 for compensation during the first ninety (90) calendar days of the current year
4 in which the hiring entity engaged in business.

5 2. All grocery workers who worked for compensation shall
6 be counted, including but not limited to:

- 7 a. Grocery workers who are not covered by this
8 Ordinance; and
9 b. Grocery workers who worked in Long Beach.

10
11 5.91.050 Premium pay requirement.

12 A. Hiring entities shall provide each grocery worker with premium
13 pay consisting of an additional Four Dollars (\$4.00) per hour for each hour
14 worked.

15 B. Hiring entities shall provide the pay required by Subsection
16 5.91.050 (A) for a minimum of one hundred twenty (120) days from the
17 effective date of this Ordinance.

18 C. Unless extended by City Council, this ordinance shall expire in
19 one hundred twenty (120) days.

20
21 5.91.060 Grocery worker and consumer protections.

22 A. No hiring entity shall, as a result of this Ordinance going into
23 effect, take any of the following actions:

- 24 1. Reduce a grocery worker's compensation;
25 2. Limit a grocery worker's earning capacity.

26 B. It shall be a violation if this Ordinance is a motivating factor in
27 a hiring entity's decision to take any of the actions in Subsection 5.91.060
28 (A) unless the hiring entity can prove that its decision to take the action(s)

1 would have happened in the absence of this Ordinance going into effect.

2
3 5.91.070 Notice of rights.

4 A. Hiring entities shall provide covered grocery workers with a
5 written notice of rights established by this ordinance. The notice of rights
6 shall be in a form and manner sufficient to inform grocery workers of their
7 rights under this ordinance. The notice of rights shall provide information on:

8 1. The right to premium pay guaranteed by this Ordinance;
9 2. The right to be protected from retaliation for exercising
10 in good faith the rights protected by this ordinance; and

11 3. The right to bring a civil action for a violation of the
12 requirements of this Ordinance, including a hiring entity's denial of premium
13 pay as required by this Ordinance and a hiring entity or other person's
14 retaliation against a covered grocery worker or other person for asserting
15 the right to premium pay or otherwise engaging in an activity protected by
16 this ordinance.

17 B. Hiring entities shall provide the notice of rights required by
18 posting a written notice of rights in a location of the grocery store utilized by
19 employees for breaks, and in an electronic format that is readily accessible
20 to the grocery workers. The notice of rights shall be made available to the
21 grocery workers via smartphone application or an online web portal, in
22 English and any language that the hiring entity knows or has reason to know
23 is the primary language of the grocery worker(s).

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25 5.91.080 Hiring entity records.

26 A. Hiring entities shall retain records that document compliance
27 with this Ordinance for covered grocery workers.

28 B. Hiring entities shall retain the records required by Subsection

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5.91.080 (A) for a period of two (2) years.

C. If a hiring entity fails to retain adequate records required under Subsection 5.91.080 (A), there shall be a presumption, rebuttable by clear and convincing evidence, that the hiring entity violated this Ordinance for each covered grocery worker for whom records were not retained.

5.91.090 Retaliation prohibited.

No hiring entity employing a grocery worker shall discharge, reduce in compensation, or otherwise discriminate against any grocery worker for opposing any practice proscribed by this Ordinance, for participating in proceedings related to this Ordinance, for seeking to exercise their rights under this Ordinance by any lawful means, or for otherwise asserting rights under this Ordinance.

5.91.100 Violation.

The failure of any respondent to comply with any requirement imposed on the respondent under this Ordinance is a violation.

5.91.110 Remedies.

A. The payment of unpaid compensation, liquidated damages, civil penalties, penalties payable to aggrieved parties, fines, and interest provided under this Ordinance is cumulative and is not intended to be exclusive of any other available remedies, penalties, fines, and procedures.

B. A respondent found to be in violation of this Ordinance for retaliation under Section 5.91.090 shall be subject to any appropriate relief at law or equity including, but not limited to reinstatement of the aggrieved party, front pay in lieu of reinstatement with full payment of unpaid compensation plus interest in favor of the aggrieved party under the terms of

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this Ordinance, and liquidated damages in an additional amount of up to twice the unpaid compensation.

5.91.120 Private right of action.

A. Any covered grocery worker that suffers financial injury as a result of a violation of this Ordinance, or is the subject of prohibited retaliation under Section 5.91.090, may bring a civil action in a court of competent jurisdiction against the hiring entity or other person violating this Ordinance and, upon prevailing, may be awarded reasonable attorney fees and costs and such legal or equitable relief as may be appropriate to remedy the violation including, without limitation: the payment of any unpaid compensation plus interest due to the person and liquidated damages in an additional amount of up to twice the unpaid compensation; and a reasonable penalty payable to any aggrieved party if the aggrieved party was subject to prohibited retaliation.

5.91.130 Encouragement of more generous policies.

A. Nothing in this Ordinance shall be construed to discourage or prohibit a hiring entity from the adoption or retention of premium pay policies more generous than the one required herein.

B. Nothing in this Ordinance shall be construed as diminishing the obligation of a hiring entity to comply with any contract or other agreement providing more generous protections to a grocery worker than required by this Ordinance.

5.91.140 Other legal requirements.

This Ordinance provides minimum requirements for premium pay while working for a hiring entity during the COVID-19 emergency and shall

1 not be construed to preempt, limit, or otherwise affect the applicability of any
2 other law, regulation, requirement, policy, or standard that provides for
3 higher premium pay, or that extends other protections to grocery workers;
4 and nothing in this Ordinance shall be interpreted or applied so as to create
5 any power or duty in conflict with federal or state law. Nothing in this
6 Section shall be construed as restricting a grocery worker's right to pursue
7 any other remedies at law or equity for violation of their rights.

8
9 5.91.150 Severability.

10 The provisions of this Ordinance are declared to be separate and
11 severable. If any clause, sentence, paragraph, subdivision, section,
12 subsection, or portion of this ordinance, or the application thereof to any
13 hiring entity, grocery worker, person, or circumstance, is held to be invalid, it
14 shall not affect the validity of the remainder of this Ordinance, or the validity
15 of its application to other persons or circumstances.

16
17 Section 2. Declaration of Urgency. This Ordinance is urgently required
18 to provide economic relief to grocery workers in light of the COVID-19 pandemic and
19 related state and local "Safer at Home" health orders limiting business operations. For
20 these reasons, the establishment of labor standard requirements for premium pay for
21 grocery workers working in Long Beach is immediately necessary.

22
23 Section 3. This Ordinance is an emergency Ordinance duly adopted by
24 the City Council by a vote of five (5) of its members and shall take effect immediately.
25 The City Clerk shall certify to a separate roll call and vote on the question of the
26 emergency of this Ordinance and to its passage by the vote of five (5) members of the
27 City Council of the City of Long Beach, and cause the same to be posted in three (3)
28 conspicuous places in the City of Long Beach, and it shall thereupon take effect and shall

OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
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Long Beach, CA 90802

1 be operative immediately.

2

3 Section 4. This Ordinance shall also be adopted by the City Council as a
4 regular ordinance, to the end that in the event of any defect or invalidity in connection
5 with the adoption of this Ordinance as an emergency Ordinance, the same shall,
6 nevertheless, be and become effective on the thirty-first (31st) day after it is approved by
7 the Mayor. The City Clerk shall certify to the passage of this Ordinance by the City
8 Council of the City of Long Beach and shall cause the same to be posted in three (3)
9 conspicuous places in the City of Long Beach.

10 I hereby certify that on a separate roll call and vote which was taken by the
11 City Council of the City of Long Beach upon the question of emergency of this Ordinance
12 at its meeting of _____, 20____, the Ordinance was declared to be an
13 emergency by the following vote:

14 Ayes: Councilmembers: _____
15 _____
16 _____

17 Noes: Councilmembers: _____
18 _____

19 Absent: Councilmembers: _____
20 _____

21 Recusal(s) Councilmembers: _____
22 _____
23 _____

24
25 I further certify that thereafter, at the same meeting, upon a roll call and
26 vote on the adoption of the Ordinance, it was adopted by the City Council of the City of
27 Long Beach by the following vote:

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OFFICE OF THE CITY ATTORNEY
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Ayes: Councilmembers:

Noes: Councilmembers:

Absent: Councilmembers:

Recusal(s) Councilmembers:

I further certify that the foregoing Ordinance was thereafter adopted on final reading by the City Council of the City of Long Beach at its meeting of _____, 20____, by the following vote:

Ayes: Councilmembers:

Noes: Councilmembers:

Absent: Councilmembers:

Recusal(s) Councilmembers:

City Clerk

Approved: _____
(Date)

Mayor