

**AN URGENCY ORDINANCE OF THE ALBANY CITY COUNCIL ESTABLISHING
PREMIUM PAY FOR GROCERY WORKERS WORKING IN ALBANY AND
SETTING FORTH THE FACTS CONSTITUTING SUCH URGENCY**

SECTION 1: FINDINGS.

F. On March 19, 2020, Governor Newsom issued a “Stay Home – Stay Healthy” proclamation 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 – Stay Healthy” proclamation identified grocery stores

1 as essential business sectors critical to protecting the health and well-being of all Californians
2 and designated their workers as essential critical infrastructure workers.

3 G. On March 18, 2020, the Alameda County Public Health Officer issued the
4 “Shelter in Place” Order to control the effects and spread of COVID-19 by closing all non-
5 essential workplaces, requiring people to stay home except to participate in essential activities
6 or to provide essential business services. In addition to healthcare, public health and emergency
7 services, the “Shelter in Place” Order identified grocery stores as essential business sectors
8 critical to protecting the health and well-being of all Californians and designated their workers
9 as essential critical infrastructure workers; and
10

11 H. On December 3, 2020, Governor Newsom extended the “Stay Home – Stay
12 Healthy” proclamation using regional availability of intensive care unit (ICU) beds to
13 implement a Regional Stay-At-Home Order. The State’s Order would go into effect when a
14 region’s ICU availability falls below 15 percent and would remain in effect for a minimum of
15 three weeks. Additionally, all private gatherings of any size would be prohibited and non-
16 essential travel restricted. The Order came after many Americans gathered and traveled over
17 the Thanksgiving holiday in the midst of a winter surge of COVID-19 cases and deaths.

18 I. Effective December 7, 2020, the Alameda County Health Officer, along with
19 five other Bay Area Health Officers, moved to implement the State’s Regional Stay-At-Home
20 Order, rather than waiting until ICU bed availability reached critical levels. Nevertheless, as of
21 December 16, 2020, ICU bed capacity in the Bay Area Region fell below the 15 percent
22 threshold. During this time, grocery workers report to work while others are directed to remain
23 home to slow the spread of the virus.

24 J. On January 25, 2021 Governor Newsom lifted the statewide stay-at-home order,
25 returning counties back to a tiered system.

26 K. On January 25, 2021, the California Department of Public Health (CDPH) ended
27 the Regional Stay at Home Order, lifting the order for all regions statewide, including the Bay
28 Area. This action allowed all counties to return to the Blueprint for a Safer Economy framework
which uses color-coded tiers to indicate which activities and businesses can open based on local

1 case rates and test positivity. At that time, Alameda County was in the strictest tier, the Purple
2 Tier.

3 L. On March 9, 2021, Alameda County met the metrics for the Red Tier where
4 many non-essential indoor business operations remain closed and the virus remains a substantial
5 threat. As of March 9, 2021, Alameda County's adjusted daily new case rate is 4.8 per 100,000
6 residents and vaccinations of vulnerable residents and our frontline workers are progressing.
7 However, as more activities and businesses open indoors and more people from different
8 households mix, the risk of becoming infected increases. The majority of Alameda County
9 residents have not been vaccinated and there are reports of vaccine shortages and distribution
10 issues. In addition, new variants of COVID-19 are being studied, and these variants may spread
11 more easily, may have increased risk of death, or may have mutations which could affect the
12 virus' ability to be recognized by antibodies.
13

14 M. As of March 23, 2021, the WHO reported a global total of 123,419,065 cases of
15 COVID-19, including 2,719,163 deaths; California reported 3,549,101 cases of COVID-19,
16 including 56,596 deaths; Alameda County reported 82,680 cases of COVID-19 (with 318 cases
17 in Albany) including 1,369 deaths.

18 N. Grocery stores are essential businesses operating in Albany during the COVID-
19 emergency making grocery workers highly vulnerable to economic insecurity and health or
20 safety risks.

21 O. Grocery workers working for grocery stores are essential workers who perform
22 services that are fundamental to the economy and health of the community during the COVID-
23 19 crisis. They work in high-risk conditions with inconsistent access to protective equipment
24 and other safety measures; work in public situations with limited ability to engage in physical
25 distancing; and continually expose themselves and the public to the spread of disease. A NBC
26 Investigation article from January 15, 2021, discovered 146 outbreaks in December alone at
27 supermarkets in the Los Angeles area, according to data obtained from the United Food and
28 Commercial Workers Local 324.¹ On January 10, 2021, the Sacramento Bee reported 342 cases

1 Grover, Joel & Davis, Josh, "COVID Outbreaks Skyrocket at SoCal Supermarkets" NBC4, published 1/15/21,
available at: <https://www.nbcalosangeles.com/news/local/ovid-outbreaks-skyrocket-at-socal-supermarkets/2507053/>

1 in December among the Raley’s network of 126 stores in Northern California.² This, while
2 grocery stores across the country have seen record profits. The Brookings Institute found that
3 top retail companies had a 39% increase in profit, averaging an extra \$16.9 billion in 2020.³

4 P. Premium pay, paid in addition to regular wages, is an established type of
5 compensation for employees performing hazardous duty or work involving physical hardship
6 that can cause extreme physical discomfort and distress.

7 Q. Grocery workers working during the COVID-19 emergency merit additional
8 compensation because they are performing hazardous duty due to the significant risk of
9 exposure to the COVID-19 virus. Grocery workers have been working under these hazardous
10 conditions for months. They are working in these hazardous conditions now and will continue to
11 face safety risks as the virus presents an ongoing threat for an uncertain period, potentially
12 resulting in subsequent waves of infection.

13 R. The availability of grocery stores is fundamental to the health of the community
14 and is made possible during the COVID-19 emergency because grocery workers are on the
15 frontlines of this devastating pandemic supporting public health, safety, and welfare by working
16 in hazardous situations. A study of essential workers has also shown an accelerated risk of
17 coronavirus infection faced by workers in customer-centric roles, including retail workers.^{4,5}
18 Another article from CNBC reports how the toll of COVID has been particularly hard on
19 grocery store workers who cannot work from home and often have low pay and limited
20 benefits.⁶ Additionally, new and potentially more contagious variants of the coronavirus that
21 have been detected in California.

22 2 Smith, Darrell, “It’s their lives: California’s grocery workers navigate COVID outbreaks, fears” Sacramento
23 Bee, published 1/10/21, available at: <https://www.sacbee.com/news/coronavirus/article248386620.html>

24 3 Kinder, Molly, Stater, Laura & Du, Julia, “Windfall profits and deadly risks: How the biggest retail
25 companies are compensating essential workers during the COVID-19 pandemic,” Brookings Institution, published
26 Nov., 2020, available at: <https://www.brookings.edu/essay/windfall-profits-and-deadly-risks/>

27 4 Chen, Yea-Hung et al., Excess mortality associated with the COVID-19 pandemic among Californians 18–65
28 years of age, by occupational sector and occupation: March through October 2020, medRxiv 2021.01.21.21250266;
doi: available at: <https://doi.org/10.1101/2021.01.21.21250266>

5 Lan F, Suharlim C, Kales SN, et al., Association between SARS-CoV-2 infection, exposure risk and mental
health among a cohort of essential retail workers in the USA. Occupational and Environmental Medicine 2021;
78:237-243. Available at: <https://oem.bmj.com/content/78/4/237>

6 Repko, Melissa, “We Haven’t Learned: Grocery workers face new challenges as Covid worsens, pandemic
fatigue sets in” CNBC, published 11/23/20, available at: <https://www.cnbc.com/2020/11/23/grocery-workers-face-new-challenges-as-covid-worsens-fatigue-sets-in.html>

1 S. Establishing an immediate requirement for grocery stores to provide premium
2 pay to grocery workers protects public health, supports stable incomes, and promotes job
3 retention by ensuring that grocery workers are compensated for the substantial risks, efforts, and
4 expenses they are undertaking to provide essential services in a safe and reliable manner during
5 the COVID-19 emergency.

6 T. As a result of the COVID-19 pandemic, this Ordinance aims to protect and
7 promote the public health, safety, and welfare during the coronavirus 19 (COVID-19)
8 emergency by requiring grocery stores to provide premium pay for grocery workers performing
9 work in Albany. Requiring grocery stores to provide premium pay to grocery workers
10 compensates grocery workers for the risks of working during a pandemic. Grocery workers face
11 magnified risks of catching or spreading the COVID-19 disease because the nature of their work
12 involves close contact with the public, including members of the public who are not showing
13 symptoms of COVID-19 but who can spread the disease. The provision of premium pay better
14 ensures the retention of these essential workers who are on the frontlines of this pandemic
15 providing essential services and who are needed throughout the duration of the COVID-19
16 emergency. As such, they are deserving of fair and equitable compensation for their work.

17 U. This Ordinance is adopted pursuant to the City's police powers and powers
18 afforded to the city in time of national, state, county and local emergency during an
19 unprecedented health pandemic, such powers being afforded by the State Constitution, State law
20 and Section 2-16 of the Albany Municipal Code to protect the peace, health, and safety of the
21 public. The Albany City Council finds that this Ordinance is necessary for the preservation of
22 the public peace, health, and safety of grocery workers working in Albany and finds urgency to
23 approve this Ordinance immediately based on the facts described herein and detailed in the staff
24 report. Under Government Code Section 8634, this ordinance is necessary to provide for the
25 protection of health, life and property.

26 **SECTION 2: PREMIUM PAY FOR GROCERY WORKERS.**

27 A. Definitions.

28 For purposes of this Ordinance:

1 “Adverse action” means reducing the compensation to a grocery worker, garnishing
2 gratuities, temporarily or permanently denying or limiting access to work, incentives, or
3 bonuses, offering less desirable work, demoting, terminating, deactivating, putting a
4 grocery worker on hold status, failing to rehire after a seasonal interruption of work,
5 threatening, penalizing, retaliating, or otherwise discriminating against a covered grocery
6 worker for any reason prohibited by this ordinance. “Adverse action” also encompasses
7 any action by the hiring entity or a person acting on the hiring entity’s behalf that would
8 dissuade a grocery worker from exercising any right afforded by this ordinance.
9

10 “Aggrieved party” means a grocery worker or other person who suffers tangible or
11 intangible harm due to a hiring entity or other person’s violation of this ordinance.
12

13 “City” means the City of Albany.

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

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

18 “Grocery store” means a store that devotes seventy percent (70%) or more of its business
19 to retailing a general range of food products, which may be fresh or packaged. There is a
20 rebuttable presumption that if a store receives seventy percent (70%) or more revenue
21 from retailing a general range of food products, then it qualifies as a grocery store.

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

25 “Premium pay” means additional compensation owed to a grocery worker that is separate
26 from hiring entity payments for providing services, bonuses, and commissions, as well as
27 tips earned from customers.
28

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

3
4 B. Grocery worker coverage.

5 For the purposes of this Ordinance, covered grocery workers are limited to those who
6 perform work for a hiring entity where the work is performed in the City of Albany.
7

8 C. Hiring entity coverage.
9

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

13 2. To determine the number of grocery workers employed for the current calendar
14 year:
15

16 a. The calculation is based upon the average number per calendar week of
17 grocery workers who worked for compensation during the preceding calendar year
18 for any and all weeks during which at least one (1) grocery worker worked for
19 compensation. For hiring entities that did not have any grocery workers during the
20 preceding calendar year, the number of grocery workers employed for the current
21 calendar year is calculated based upon the average number per calendar week of
22 grocery workers who worked for compensation during the first ninety (90)
23 calendar days of the current year in which the hiring entity engaged in business.

24 b. All grocery workers who worked for compensation shall be counted,
25 including but not limited to:

26 i. Grocery workers who are not covered by this Ordinance; and

27 ii. Grocery workers who worked in Albany.
28

1 D. Premium pay requirement.

2
3 1. Hiring entities shall provide each grocery worker with premium pay consisting
4 of an additional Five Dollars (\$5.00) per hour for each hour worked.

5
6 2. The premium pay requirement of this Section 2 shall be in effect for a minimum
7 of sixty (60) days and until the County of Alameda is in the Yellow Tier of the
8 California Department of Public Health Blueprint for a Safer Economy
9 framework.
10

11 E. Grocery worker and consumer protections.

12 1. No hiring entity shall, as a result of this Ordinance going into effect, take any
13 of the following actions:

14
15 a. Reduce a grocery worker's compensation;

16 b. Limit a grocery worker's earning capacity.

17 2. It shall be a violation if this Ordinance is a motivating factor in a hiring entity's
18 decision to take any of the actions in Subsection E.1 unless the hiring entity can
19 prove that its decision to take the action(s) would have happened in the absence of
20 this Ordinance going into effect.

21 F. Notice of rights.

22
23 1. Hiring entities shall provide covered grocery workers with a written notice of
24 rights established by this Ordinance. The notice of rights shall be in a form and
25 manner sufficient to inform grocery workers of their rights under this Ordinance.
26 The notice of rights shall provide information on:

27 a. The right to premium pay guaranteed by this Ordinance;

1 b. The right to be protected from retaliation for exercising in good faith the
2 rights protected by this Ordinance; and

3
4 c. The right to bring a civil action for a violation of the requirements of this
5 Ordinance, including a hiring entity's denial of premium pay as required
6 by this Ordinance and a hiring entity or other person's retaliation against a
7 covered grocery worker or other person for asserting the right to premium
8 pay or otherwise engaging in an activity protected by this Ordinance.
9

10 2. Hiring entities shall provide the notice of rights required by posting a written
11 notice of rights in a location of the grocery store utilized by employees for breaks,
12 and in an electronic format that is readily accessible to the grocery workers. The
13 notice of rights shall be made available to the grocery workers via smartphone
14 application or an online web portal, in English and any language that the hiring
15 entity knows or has reason to know is the primary language of the grocery
16 worker(s).

17 G. Hiring entity records.

18 1. Hiring entities shall retain records that document compliance with this
19 Ordinance for covered grocery workers.

20 2. Hiring entities shall retain the records required above for a period of two (2)
21 years.

22
23 3. If a hiring entity fails to retain adequate records required under this Ordinance,
24 there shall be a presumption, rebuttable by clear and convincing evidence, that the
25 hiring entity violated this Ordinance for each covered grocery worker for whom
26 records were not retained.
27
28

1 H. Retaliation prohibited.

2
3 No hiring entity employing a grocery worker shall discharge, reduce in compensation, or
4 otherwise discriminate against any grocery worker for opposing any practice proscribed
5 by this Ordinance, for participating in proceedings related to this Ordinance, for seeking
6 to exercise their rights under this Ordinance by any lawful means, or for otherwise
7 asserting rights under this Ordinance.
8

9 I. Violation.

10 The failure of any respondent to comply with any requirement imposed on the respondent
11 under this Ordinance is a violation.
12

13 J. Remedies.

14 1. The payment of unpaid compensation, liquidated damages, civil penalties,
15 penalties payable to aggrieved parties, fines, and interest provided under this
16 Ordinance is cumulative and is not intended to be exclusive of any other available
17 remedies, penalties, fines, and procedures.
18

19 2. A respondent found to be in violation of this Ordinance for retaliation under
20 Section H above shall be subject to any appropriate relief at law or equity
21 including, but not limited to reinstatement of the aggrieved party, front pay in lieu
22 of reinstatement with full payment of unpaid compensation plus interest in favor
23 of the aggrieved party under the terms of this Ordinance, and liquidated damages
24 in an additional amount of up to twice the unpaid compensation.

25 K. Private right of action.

26 1. Any covered grocery worker that suffers financial injury as a result of a violation
27 of this Ordinance, or is the subject of prohibited retaliation under Section H, may
28 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

1 reasonable attorney's fees and costs and such legal or equitable relief as may be
2 appropriate to remedy the violation including, without limitation: the payment of
3 any unpaid compensation plus interest due to the person and liquidated damages
4 in an additional amount of up to twice the unpaid compensation; and a reasonable
5 penalty payable to any aggrieved party if the aggrieved party was subject to
6 prohibited retaliation.
7

8 L. Encouragement of more generous policies.
9

10 1. Nothing in this Ordinance shall be construed to discourage or prohibit a hiring
11 entity from the adoption or retention of premium pay policies more generous than
12 the one required herein.
13

14 2. Nothing in this Ordinance shall be construed as diminishing the obligation of a
15 hiring entity to comply with any contract or other agreement providing more
16 generous protections to a grocery worker than required by this Ordinance.
17

18 M. Other legal requirements.
19

20 This Ordinance provides minimum requirements for premium pay while working for a
21 hiring entity during the COVID-19 emergency and shall not be construed to preempt,
22 limit, or otherwise affect the applicability of any other law, regulation, requirement,
23 policy, or standard that provides for higher premium pay, or that extends other protections
24 to grocery workers; and nothing in this Ordinance shall be interpreted or applied so as to
25 create any power or duty in conflict with federal or state law. Nothing in this Section shall
26 be construed as restricting a grocery worker's right to pursue any other remedies at law or
27 equity for violation of their rights.
28

N. No waiver of rights.

Any waiver by a grocery worker of any or all provisions of this Ordinance shall be deemed
contrary to public policy and shall be void and unenforceable. Other than in connection

1 with the bona fide negotiation of a collective bargaining agreement, any request by a hiring
2 entity to a grocery worker to waive rights given by this Ordinance shall be a violation of
3 this Ordinance.
4

5 **SECTION 3: URGENCY FINDINGS.**

6 Pursuant to California Government Code Section 36937, this Ordinance is designed to protect the
7 health, safety and welfare of the citizens of the City of Albany and becomes effective immediately
8 up adoption by a four-fifths (4/5) vote of the City Council. The City Council hereby finds that
9 there is an urgent need to adopt these regulations in order to address the current and immediate
10 threats set forth above. Given the uncertain and evolving nature of the pandemic, the premium
11 pay and associated protections must be immediately implemented to ensure that grocery workers
12 continue working and providing this essential service to the residents of Albany and the region
13 generally. The workers have already been working for many months throughout this pandemic.
14 Grocery workers face magnified risks of catching or spreading the COVID-19 disease because
15 the nature of their work involves close contact with the public, including members of the public
16 who are not showing symptoms of COVID-19 but who can spread the disease. The provision of
17 premium pay better ensures the retention of these essential workers who are on the frontlines of
18 this pandemic providing essential services and who are needed throughout the duration of the
19 COVID-19 emergency. This urgency ordinance is needed during the emergency in the interest of
20 maintaining access to and continuity in essential grocery services and access to food through
21 grocery store operations. Under Government Code Section 8634 and Albany Municipal Code
22 Section 2-16, this ordinance is necessary to provide for the protection of life and property for the
23 reasons set out herein. The Council therefore finds and determines that the immediate preservation
24 of the public peace, health and safety, and protection of life and property, require that this
25 Ordinance be enacted as an urgency ordinance pursuant to Government Code section 36937 and
26 take effect immediately upon adoption by four-fifths of the City Council.

26 **SECTION 4: CEQA – EXEMPTION.**

27 The City Council determines that the adoption of this Urgency Ordinance is exempt from
28 environmental review under the California Environmental Quality Act (“CEQA”) pursuant to the

1 following provisions of the CEQA Guidelines, 14 California Code of Regulations, Chapter 3: this
2 Urgency Ordinance is exempt under CEQA Guidelines Section 15378(b)(5) in that it is not a
3 “project” under CEQA, and will not result in direct or indirect physical changes in the
4 environment. This ordinance only regulates the pay and protections for grocery workers and those
5 matters would not result in physical changes to the environment.
6

7 **SECTION 5: SEVERABILITY.**

8 If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance or
9 any part thereof is for any reason held to be unconstitutional or invalid or ineffective by any court
10 of competent jurisdiction, such decision shall not affect the validity or effectiveness of the
11 remaining portions of this Ordinance or any part thereof. The City Council of the City of Albany
12 hereby declares that it would have passed each section, subsection, subdivision, paragraph,
13 sentence, clause or phrase thereof irrespective of the fact that any one or more sections,
14 subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional
15 or invalid or ineffective.
16

17 **SECTION 6: PUBLICATION AND EFFECTIVE DATE.**

18 This Ordinance shall be posted at three public places within the City of Albany and shall
19 take effect immediately upon its adoption.

20 **PASSED AND ADOPTED** by the City Council of the City of Albany at its meeting on
21 the 5th day of April, 2021 by the following vote:

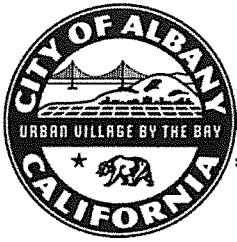
22 AYES: Council Members Jordan, McQuaid, Nason, Tiedemann, and Mayor Gary

23 NOES:

24 ABSENT:

25 ABSTAIN:

26
27 
28 GE'NELL GARY, MAYOR



City of Albany

1000 San Pablo Avenue • Albany, California 94706
(510) 528-5710 • www.albanyca.org

ORDINANCE NO. 2021-04

PASSED AND APPROVED BY THE COUNCIL OF THE CITY OF ALBANY,

The 5th day of April, 2021, by the following votes:

AYES: Council Members Jordan, McQuaid, Nason, Tiedemann and Mayor Gary

NOES: none

ABSENT: none

ABSTAINED: none

RECUSED: none

WITNESS MY HAND AND THE SEAL OF THE CITY OF ALBANY, this 6th
day of April, 2021.

Anne Hsu
CITY CLERK

The City of Albany is dedicated to maintaining its small town ambiance, responding to the needs of a diverse community, and providing a safe, healthy and sustainable community.