

**CITY OF ALBANY
CITY COUNCIL AGENDA
STAFF REPORT**

Agenda Date: April 19, 2021
Reviewed by: NA

SUBJECT: Proposed Urgency Ordinance – Grocery, Drug Retail and Certain Retail Workers Premium Pay

REPORT BY: Mala Subramanian, City Attorney

SUMMARY

The City Council will consider an urgency ordinance establishing requirements for premium pay for grocery, drug retail and certain retail workers in the City of Albany.

STAFF RECOMMENDATION

Decide whether to adopt by 4/5ths vote Urgency Ordinance No. 2021-06, establishing requirements for premium pay for grocery, drug retail and certain retail workers in the City of Albany

BACKGROUND/DISCUSSION

On April 5, 2021, the City Council of the City of Albany voted unanimously to adopt an Urgency Ordinance establishing premium pay and associated labor protections for grocery workers working in the City of Albany. The Urgency Ordinance requires that grocery stores, defined as stores that devote 70 percent or more of their business to retailing a general range of food products, provide premium pay of an additional \$5 per hour to their workers in Albany for a minimum of 60 days and until the County of Alameda is in the Yellow Tier of the California Department of Public Health Blueprint for a Safer Economy framework. The ordinance applies to stores if they employ over three hundred (300) workers nationally, and more than fifteen (15) employees per location in the City. The City Council has also provided direction to incorporate these protections for other essential retail workers who are on the frontline of the COVID-19 pandemic, and to return on April 19th with an updated ordinance.

Effective March 31, 2021, Alameda County is now in the Orange Tier under the California Blueprint for a Safer Economy metrics, which means that the County still faces moderate threat from COVID-19. However, as more activities and businesses open indoors and more people from different households mix, the risk of becoming infected increases. In a press release, the Alameda County Health Officer, Dr. Nicholas Moss stated: “Variants of the virus that causes COVID-19 are circulating in our county, case rates are rising in other parts of the country and,

while nearly a quarter of Alameda County residents aged 16 and older have been fully vaccinated, we aren't at the levels required for broad community protection or immunity.”

The justification for the ordinance is set out in the staff report and recitals for the April 5, 2021 item. The same data and justifications for adopting the original ordinance apply to this expanded ordinance. The workers at drug retail stores and large retail stores that sell household goods, groceries and drugs face the same increased hazards as those in grocery stores. They work under the same high-risk, public situations with limited ability to engage in physical distancing and inconsistent access to protective equipment and other safety measures. In January, COVID-19 outbreaks hit several large retail chains in Los Angeles County, infecting 900 workers according to an article published by Business Insider. These retail workers have been deemed essential and continually expose themselves and the public to the spread of disease. Given the urgent nature of the health pandemic and need to provide immediate assistance to those at higher risk of infection, the City Council may choose to adopt the amended Urgency Ordinance, which goes into effect immediately and would repeal and replace the original urgency ordinance from April 5th, 2021.

ANALYSIS

The revised ordinance makes the following changes:

1. Drug Retail

The ordinance has been revised to provide the \$5/hour premium pay and associated labor protections in the original ordinance to drug retail workers. Drug retail is defined as:

“Drug retail store” means a store that sells a variety of prescription and nonprescription medicines and miscellaneous items, including but not limited to, drugs, pharmaceuticals, sundries, produce, meats, poultry, fish, deli products, dairy products, canned foods, dry foods, beverages, prepared foods, and other merchandise (also referred to as drug retail products).

The ordinance applies to stores if they employ over three hundred (300) workers nationally, and more than fifteen (15) employees per location in the City.

Staff believes that this provision will apply locally to CVS.

2. Other Large Retail Stores That Sell Groceries, Beverages and/or Drugs

The ordinance has been revised to provide the \$5/hour premium pay and associated labor protections in the original ordinance to workers at retail stores. Retail store is defined as:

“Retail store” is a store that is over 10,000 square feet, and dedicates 10 percent or more of its sales floor to retailing a general range of food or beverage products, or 10 percent or more of its sales floor to a general range of drug retail products.

The ordinance applies to stores if they employ over three hundred (300) workers nationally, and more than fifteen (15) employees per location in the City.

Staff believes that this provision will apply locally to Target and BevMo.

3. Other clarifications.

The ordinance specifies the minimum 60-day period that will apply to grocery stores compared to drug and retail stores, based on the earlier adoption of Ordinance No. 2021-04.

The ordinance has been revised to clarify that any existing premium pay currently provided by a hiring entity may be included in the calculation of the \$5/hour premium pay required under the ordinance.

Finally, the ordinance provides that collective bargaining agreements may explicitly waive the provisions of the ordinance, although union workers would not automatically be exempt from the provisions of the ordinance.

An urgency ordinance requires a 4/5th vote and will go in the effect immediately.

Attachments

1. Urgency Ordinance No. 2021-06 (redlined)

1 **ORDINANCE NO. 2021-06**

2 **AN URGENCY ORDINANCE OF THE ALBANY CITY COUNCIL AMENDING**
3 **AND EXTENDING PREMIUM PAY FOR GROCERY, DRUG RETAIL AND**
4 **CERTAIN RETAIL WORKERS WORKING IN ALBANY AND SETTING**
5 **FORTH THE FACTS CONSTITUTING SUCH URGENCY**
6

7 **THE ALBANY CITY COUNCIL ORDAINS AS FOLLOWS:**

8 **SECTION 1: FINDINGS.**
9

10 A. The novel coronavirus 19 (“COVID-19”) disease is caused by a virus that
11 spreads easily from person to person and may result in serious illness or death, and is classified
12 by the World Health Organization (“WHO”) as a worldwide pandemic.

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

15 C. The WHO has declared that COVID-19 is a global pandemic, which is
16 particularly severe in high-risk populations such as people with underlying medical conditions
17 and the elderly, and the WHO has raised the health emergency to the highest level, requiring
18 dramatic interventions to disrupt the spread of this disease.

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

22 E. On March 16, 2020, the City Council of the City of Albany proclaimed the
23 existence of a local emergency in response to new cases of COVID-19, authorizing the City
24 Council to exercise the emergency powers necessary to take extraordinary measures to prevent
25 death or injury of persons and to protect the public peace, safety and welfare, and alleviate
26 damage, loss, hardship or suffering.

27 F. On March 19, 2020, Governor Newsom issued a “Stay Home – Stay Healthy”
28 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

1 and emergency services, the “Stay Home – Stay Healthy” proclamation identified grocery stores
2 as essential business sectors critical to protecting the health and well-being of all Californians
3 and designated their workers as essential critical infrastructure workers.

4 G. On March 18, 2020, the Alameda County Public Health Officer issued the
5 “Shelter in Place” Order to control the effects and spread of COVID-19 by closing all non-
6 essential workplaces, requiring people to stay home except to participate in essential activities
7 or to provide essential business services. In addition to healthcare, public health and emergency
8 services, the “Shelter in Place” Order identified grocery stores, pharmacies and other retailers
9 that sell food or beverage products, and animal/pet food as essential business sectors critical to
10 protecting the health and well-being of all Californians and designated their workers as essential
11 critical infrastructure workers.
12

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

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

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

28 K. On January 25, 2021, the California Department of Public Health (CDPH) ended
the Regional Stay at Home Order, lifting the order for all regions statewide, including the Bay
Area. This action allowed all counties to return to the Blueprint for a Safer Economy framework

1 which uses color-coded tiers to indicate which activities and businesses can open based on local
2 case rates and test positivity. At that time, Alameda County was in the strictest tier, the Purple
3 Tier. [Alameda County met the metrics for the Red Tier on March 9, 2021.](#)

4 L. ~~On March 9, 2021, Alameda County met the metrics for the Red Tier where~~
5 ~~many non-essential indoor business operations remain closed and the virus remains a substantial~~
6 ~~threat.~~ ~~On March 30, 2021, Alameda County met the metrics for the Orange Tier where the~~
7 ~~virus remains a moderate threat.~~ As of March 9³⁰, 2021, Alameda County's adjusted daily new
8 case rate is 4.82.6 per 100,000 residents and vaccinations ~~of vulnerable residents and our~~
9 ~~frontline workers~~ are progressing. However, as more activities and businesses open indoors and
10 more people from different households mix, the risk of becoming infected increases. [In a press](#)
11 [release, the Alameda County Health Officer, Dr. Nicholas Moss stated: "Variants of the virus](#)
12 [that causes COVID-19 are circulating in our county, case rates are rising in other parts of the](#)
13 [country and, while nearly a quarter of Alameda County residents aged 16 and older have been](#)
14 [fully vaccinated, we aren't at the levels required for broad community protection or immunity."](#)
15 ~~The majority of Alameda County residents have not been vaccinated and there are reports of~~
16 ~~vaccine shortages and distribution issues.~~ ~~In addition,~~ ~~The~~ new variants of COVID-19 are being
17 studied, and these variants may spread more easily, may have increased risk of death, or may
18 have mutations which could affect the virus' ability to be recognized by antibodies.

19 M. As of ~~March 23~~ April 6, 2021, the WHO reported a global total of
20 ~~123,419,065~~ 131,487,572 cases of COVID-19, including ~~2,719,163~~ 857,702 deaths; California
21 reported ~~3,549,101~~ 583,830 cases of COVID-19, including ~~56,596~~ 58,541 deaths; Alameda
22 County reported ~~82,680~~ 83,864 cases of COVID-19 (with ~~318~~ 327 cases in Albany) including
23 ~~1,369~~ 426 deaths.

24 N. Grocery, [drug retail and certain retail](#) stores are essential businesses operating in
25 Albany during the COVID-19 emergency making ~~grocery~~ ~~these~~ workers highly vulnerable to
26 economic insecurity and health or safety risks.

27 O. ~~Grocery W~~workers working for grocery stores, [drug retail, and certain retail](#)
28 [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

1 inconsistent access to protective equipment and other safety measures; work in [indoors in](#) public
2 situations with limited ability to engage in physical distancing; and continually expose
3 themselves and the public to the spread of disease. A NBC Investigation article from January
4 15, 2021, discovered 146 outbreaks in December alone at supermarkets in the Los Angeles area,
5 according to data obtained from the United Food and Commercial Workers Local 324.¹ On
6 January 10, 2021, the Sacramento Bee reported 342 cases in December among the Raley’s
7 network of 126 stores in Northern California.² [Drug retail and certain retail employees selling
8 grocery, beverage, drug and household products face similar risks since they work under these
9 same conditions. COVID-19 outbreaks hit several large retail chains throughout Los Angeles
10 County infecting over 900 workers during a two week period in January, 2021 following the
11 rush of holiday shopping.](#)³ This, while grocery stores [and retail companies](#) across the country
12 have seen record profits. The Brookings Institute found that top retail companies had a 39%
13 increase in profit, averaging an extra \$16.9 billion in 2020.⁴
14

15 P. Premium pay, paid in addition to regular wages, is an established type of
16 compensation for employees performing hazardous duty or work involving physical hardship
17 that can cause extreme physical discomfort and distress. [Many hiring entities paid premium pay
18 to its workers earlier in the pandemic, which demonstrates that it is an appropriate means of
19 compensating workers for increases hazards at work.](#)

20 Q. Grocery, [drug retail and certain retail](#) workers working during the COVID-19
21 emergency merit additional compensation because they are performing hazardous duty due to
22 the significant risk of exposure to the COVID-19 virus. Grocery, [drug retail and certain retail](#)
23 workers have been working under these hazardous conditions for months. They are working in

24 1 Grover, Joel & Davis, Josh, “COVID Outbreaks Skyrocket at SoCal Supermarkets” NBC4, published 1/15/21,
available at: <https://www.nbclosangeles.com/news/local/ovid-outbreaks-skyrocket-at-social-supermarkets/2507053/>

25 2 Smith, Darrell, “It’s their lives: California’s grocery workers navigate COVID outbreaks, fears” Sacramento
Bee, published 1/10/21, available at: <https://www.sacbee.com/news/coronavirus/article248386620.html>

26 3 Kay, Grace, “Retail giants Target, Amazon, and Home Depot have been hit by COVID-19 outbreaks in Los
Angeles County,” *Business Insider*, published 1/7/2021, available at [https://www.businessinsider.com/target-
amazon-and-home-depot-hit-by-outbreak-2021-1](https://www.businessinsider.com/target-amazon-and-home-depot-hit-by-outbreak-2021-1)

27 4 Kinder, Molly, Stateler, Laura & Du, Julia, “Windfall profits and deadly risks: How the biggest retail
companies are compensating essential workers during the COVID-19 pandemic,” Brookings Institution, published
28 Nov., 2020, available at: <https://www.brookings.edu/essay/windfall-profits-and-deadly-risks/>

1 these hazardous conditions now and will continue to face safety risks as the virus presents an
2 ongoing threat for an uncertain period, potentially resulting in subsequent waves of infection.

3 R. The availability of grocery [drug retail and certain retail](#) stores is fundamental to
4 the health of the community and is made possible during the COVID-19 emergency because
5 grocery, [drug retail and certain retail](#) workers are on the frontlines of this devastating pandemic
6 supporting public health, safety, and welfare by working in hazardous situations. A study of
7 essential workers has also shown an accelerated risk of coronavirus infection faced by workers
8 in customer-centric roles, including retail workers.^{5,6} Another article from CNBC reports how
9 the toll of COVID has been particularly hard on grocery store workers who cannot work from
10 home and often have low pay and limited benefits.⁷ Additionally, new and potentially more
11 contagious variants of the coronavirus that have been detected in California.

12 S. Establishing an immediate requirement for grocery, [drug retail and retail](#) stores
13 to provide premium pay to grocery, [drug retail and certain retail](#) workers protects public health,
14 supports stable incomes, and promotes job retention by ensuring that ~~grocery these~~ workers are
15 compensated for the substantial risks, efforts, and expenses they are undertaking to provide
16 essential services in a safe and reliable manner during the COVID-19 emergency.

17 T. As a result of the COVID-19 pandemic, this Ordinance aims to protect and
18 promote the public health, safety, and welfare during the coronavirus 19 (COVID-19)
19 emergency by requiring grocery, [drug retail and certain retail](#) stores to provide premium pay for
20 ~~grocery their~~ workers performing work in Albany. Requiring grocery, [drug retail and certain](#)
21 [retail](#) stores to provide premium pay to ~~grocery their~~ workers compensates ~~grocery them~~
22 ~~workers~~ for the risks of working during a pandemic. Grocery, [drug retail and certain retail](#)
23 workers face magnified risks of catching or spreading the COVID-19 disease because the nature

24 5 Chen, Yea-Hung et al., Excess mortality associated with the COVID-19 pandemic among Californians 18–65
25 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>

26 6 Lan F, Suharlim C, Kales SN, et al., Association between SARS-CoV-2 infection, exposure risk and mental
27 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>

28 7 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 of their work involves close contact with the public, including members of the public who are
2 not showing symptoms of COVID-19 but who can spread the disease. The provision of
3 premium pay better ensures the retention of these essential workers who are on the frontlines of
4 this pandemic providing essential services and who are needed throughout the duration of the
5 COVID-19 emergency. As such, they are deserving of fair and equitable compensation for their
6 work.
7

8 U. On April 5, 2021, the City Council adopted Ordinance No. 2021-04, an urgency
9 ordinance establishing premium pay and associated labor protections for grocery workers. The
10 City Council also directed that the ordinance be amended to include additional retail workers, as
11 set forth in this Ordinance.

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

21 **SECTION 2: PRIOR ORDINANCE REPEALED.**

22 Ordinance No. 2021-04 is repealed and replaced with the terms of this Ordinance as set forth
23 herein.

24 **SECTION 23: PREMIUM PAY FOR GROCERY, DRUG RETAIL AND CERTAIN**
25 **RETAIL WORKERS.**

26 A. Definitions.

27 For purposes of this Ordinance:
28

1 “Adverse action” means reducing the compensation to a grocery-covered worker,
2 garnishing gratuities, temporarily or permanently denying or limiting access to work,
3 incentives, or bonuses, offering less desirable work, demoting, terminating, deactivating,
4 putting a grocery-covered worker on hold status, failing to rehire after a seasonal
5 interruption of work, threatening, penalizing, retaliating, or otherwise discriminating
6 against a covered grocery-worker for any reason prohibited by this ordinance. “Adverse
7 action” also encompasses any action by the hiring entity or a person acting on the hiring
8 entity’s behalf that would dissuade a grocery-covered worker from exercising any right
9 afforded by this ordinance.
10

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

13 “City” means the City of Albany.

14 “Covered grocery worker” means a grocery-retail worker employed directly by a hiring
15 entity who is entitled to premium pay pursuant to this Ordinance.
16

17 “Drug retail store” means a store that sells a variety of prescription and nonprescription
18 medicines and miscellaneous items, including but not limited to, drugs, pharmaceuticals,
19 sundries, produce, meats, poultry, fish, deli products, dairy products, canned foods, dry
20 foods, beverages, prepared foods, and other merchandise (also referred to as drug retail
21 products).

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

24 “Grocery store” means a store that devotes seventy percent (70%) or more of its business
25 to retailing a general range of food products, which may be fresh or packaged. There is a
26 rebuttable presumption that if a store receives seventy percent (70%) or more revenue
27 from retailing a general range of food products, then it qualifies as a grocery store.
28

1 “Hiring entity” means a grocery store, drug retail store or retail store that employs over
2 three hundred (300) ~~grocery~~ workers nationally and employs more than fifteen (15)
3 employees per ~~grocery~~ store in the City of Albany.
4

5 “Premium pay” means additional compensation owed to a grocery covered worker that is
6 separate from hiring entity payments for providing services, bonuses, and commissions,
7 as well as tips earned from customers. Hiring entities that have already established and
8 are currently paying premium pay due to COVID-19 to covered workers shall be credited
9 for premium pay currently being paid during the effective term of this ordinance.
10

11 “Respondent” means a grocery store, drug retail store or retail store, or the parent company
12 or any person who is alleged or found to have committed a violation of this Ordinance.
13

14 “Retail store” is a store that is over 10,000 square feet, and dedicates 10 percent or more
15 of its sales floor to retailing a general range of food or beverage products, or 10 percent
16 or more of its sales floor to a general range of drug retail products.

17 “Retail worker” means a worker employed directly by a hiring entity at a grocery store,
18 drug retail store, or retail store. Retail worker does not include managers, supervisors or
19 confidential employees.

20 B. Grocery-Retail worker coverage.

21
22 For the purposes of this Ordinance, covered ~~grocery~~ workers are limited to those retail
23 workers who perform work for a hiring entity where the work is performed in the City of
24 Albany.

25 C. Hiring entity coverage.

- 26
27 1. For purposes of this Ordinance, hiring entities are limited to those who employ
28 over three hundred (300) ~~or more grocery-retail~~ workers nationally and employ
more than fifteen (15) employees per ~~grocery~~ store in the City of Albany.

1 2. To determine the number of grocery-retail workers employed for the current
2 calendar year:

3
4 a. The calculation is based upon the average number per calendar week of
5 grocery-retail workers who worked for compensation during the preceding
6 calendar year for any and all weeks during which at least one (1) grocery-retail
7 worker worked for compensation. For hiring entities that did not have any grocery
8 retail workers during the preceding calendar year, the number of grocery-retail
9 workers employed for the current calendar year is calculated based upon the
10 average number per calendar week of grocery-retail workers who worked for
11 compensation during the first ninety (90) calendar days of the current year in
12 which the hiring entity engaged in business.

13
14 b. All grocery-retail workers who worked for compensation shall be
15 counted, including but not limited to:

- 16 i. Grocery-Retail workers who are not covered by this Ordinance; and
- 17 ii. Grocery-Retail workers who worked in Albany.

18
19 D. Premium pay requirement.

20 1. Hiring entities shall provide each grocery-retail worker with premium pay
21 consisting of an additional Five Dollars (\$5.00) per hour for each hour worked.

22
23 2. The premium pay requirement of this Section 32 shall be in effect for a
24 minimum of sixty (60) days as set forth below, and until the County of Alameda
25 is in the Yellow Tier of the California Department of Public Health Blueprint for
26 a Safer Economy framework:

27 a. Grocery Stores: April 6, 2021 through June 5, 2021;

28 b. Drug Retail and Retail Stores: April 20, 2021 through June 19, 2021.

1 E. Grocery-Retail worker and consumer protections.

2
3 1. No hiring entity shall, as a result of this Ordinance going into effect, take any
4 of the following actions:

5 a. Reduce a grocery-retail worker's compensation;

6
7 b. Limit a grocery-retail worker's earning capacity.

8
9 2. It shall be a violation if this Ordinance is a motivating factor in a hiring entity's
10 decision to take any of the actions in Subsection E.1 unless the hiring entity can
11 prove that its decision to take the action(s) would have happened in the absence of
12 this Ordinance going into effect.

13 F. Notice of rights.

14
15 1. Hiring entities shall provide covered grocery-workers with a written notice of
16 rights established by this Ordinance. The notice of rights shall be in a form and
17 manner sufficient to inform grocery-covered workers of their rights under this
18 Ordinance. The notice of rights shall provide information on:

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

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

22 c. The right to bring a civil action for a violation of the requirements of this
23 Ordinance, including a hiring entity's denial of premium pay as required
24 by this Ordinance and a hiring entity or other person's retaliation against a
25 covered grocery-worker or other person for asserting the right to premium
26 pay or otherwise engaging in an activity protected by this Ordinance.

27 2. Hiring entities shall provide the notice of rights required by posting a written
28 notice of rights in a location of the grocery-store utilized by employees for breaks,

1 and in an electronic format that is readily accessible to the grocery-covered
2 workers. The notice of rights shall be made available to the grocery-covered
3 workers via smartphone application or an online web portal, in English and any
4 language that the hiring entity knows or has reason to know is the primary
5 language of the grocery-covered worker(s).
6

7 G. Hiring entity records.

- 8
- 9 1. Hiring entities shall retain records that document compliance with this
10 Ordinance for covered grocery workers.
 - 11 2. Hiring entities shall retain the records required above for a period of two (2)
12 years.
 - 13 3. If a hiring entity fails to retain adequate records required under this Ordinance,
14 there shall be a presumption, rebuttable by clear and convincing evidence, that the
15 hiring entity violated this Ordinance for each covered grocery worker for whom
16 records were not retained.

17

18 H. Retaliation prohibited.

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

24 I. Violation.

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

27 J. Remedies.

28

1 1. The payment of unpaid compensation, liquidated damages, civil penalties,
2 penalties payable to aggrieved parties, fines, and interest provided under this
3 Ordinance is cumulative and is not intended to be exclusive of any other available
4 remedies, penalties, fines, and procedures.
5

6 2. A respondent found to be in violation of this Ordinance for retaliation under
7 Section H above shall be subject to any appropriate relief at law or equity
8 including, but not limited to reinstatement of the aggrieved party, front pay in lieu
9 of reinstatement with full payment of unpaid compensation plus interest in favor
10 of the aggrieved party under the terms of this Ordinance, and liquidated damages
11 in an additional amount of up to twice the unpaid compensation.
12

13 K. Private right of action.

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

24 L. Encouragement of more generous policies.

25 1. Nothing in this Ordinance shall be construed to discourage or prohibit a hiring
26 entity from the adoption or retention of premium pay policies more generous than
27 the one required herein.
28

1 2. Nothing in this Ordinance shall be construed as diminishing the obligation of a
2 hiring entity to comply with any contract or other agreement providing more
3 generous protections to a grocery-retail worker than required by this Ordinance.
4

5 M. Other legal requirements.

6
7 This Ordinance provides minimum requirements for premium pay while working for a
8 hiring entity during the COVID-19 emergency and shall not be construed to preempt,
9 limit, or otherwise affect the applicability of any other law, regulation, requirement,
10 policy, or standard that provides for higher premium pay, or that extends other protections
11 to grocery-retail workers; and nothing in this Ordinance shall be interpreted or applied so
12 as to create any power or duty in conflict with federal or state law. Nothing in this Section
13 shall be construed as restricting a grocery-retail worker's right to pursue any other
14 remedies at law or equity for violation of their rights.

15 N. Exemption for collective bargaining agreement.

16 All of the provisions of this Ordinance, or any part thereof, may be expressly waived in a
17 collective bargaining agreement, but only if the waiver is explicitly set forth in the
18 agreement in clear and unambiguous terms. Unilateral implementation of terms and
19 conditions of employment by either party to a collective bargaining relationship shall not
20 constitute a waiver of all or any of the provisions of this Ordinance.

21
22 O. No waiver of rights.

23 Except for workers covered by a collective bargaining agreement pursuant to Section N,
24 any waiver by a grocery-retail worker of any or all provisions of this Ordinance shall be
25 deemed contrary to public policy and shall be void and unenforceable. Other than in
26 connection with the bona fide negotiation of a collective bargaining agreement, any
27 request by a hiring entity to a grocery-retail worker to waive rights given by this Ordinance
28 shall be a violation of this Ordinance.

1 **SECTION 34: URGENCY FINDINGS.**

2 Pursuant to California Government Code Section 36937, this Ordinance is designed to protect the
3 health, safety and welfare of the citizens of the City of Albany and becomes effective immediately
4 up adoption by a four-fifths (4/5) vote of the City Council. The City Council hereby finds that
5 there is an urgent need to adopt these regulations in order to address the current and immediate
6 threats set forth above. Given the uncertain and evolving nature of the pandemic, the premium
7 pay and associated protections must be immediately implemented to ensure that grocery-retail
8 workers continue working and providing this essential service to the residents of Albany and the
9 region generally. The workers have already been working for many months throughout this
10 pandemic. Grocery-Retail workers face magnified risks of catching or spreading the COVID-19
11 disease because the nature of their work involves close contact with the public, including members
12 of the public who are not showing symptoms of COVID-19 but who can spread the disease. The
13 ordinance is aimed at compensating workers for the increased hazards at work. The provision of
14 premium pay better ensures the retention of these essential workers who are on the frontlines of
15 this pandemic providing essential services and who are needed throughout the duration of the
16 COVID-19 emergency. This urgency ordinance is needed during the emergency in the interest of
17 maintaining access to and continuity in essential grocery services and access to food and drugs
18 through grocery store, drug retail and retail operations. This ordinance must be adopted
19 immediately. Lowest wage workers have been particularly devastated by the pandemic—which
20 is still an immediate hazard to public health. The need for greater financial security is immediate
21 as greater financial strain compounds the longer the pandemic continues. Hazard and premium
22 pay that was original offered by employers have for the most part expired. Higher wages for
23 grocery, drug retail and retail workers in the City promotes overall community health, safety, and
24 welfare. These workers will have greater financial security and greater access to healthcare, and
25 greater ability to stay home when experiencing symptoms or when family members have been
26 exposed (which directly reduces the spread of the virus). Schools remain on modified or hybrid
27 remote schooling schedules and workers with children have to report to work and find the means
28 to provide childcare. Under Government Code Section 8634 and Albany Municipal Code Section

1 2-16, this ordinance is necessary to provide for the protection of life and property for the reasons
2 set out herein. The Council therefore finds and determines that the immediate preservation of the
3 public peace, health and safety, and protection of life and property, require that this Ordinance be
4 enacted as an urgency ordinance pursuant to Government Code section 36937 and take effect
5 immediately upon adoption by four-fifths of the City Council.
6

7 **SECTION 45: CEQA – EXEMPTION.**

8 The City Council determines that the adoption of this Urgency Ordinance is exempt from
9 environmental review under the California Environmental Quality Act (“CEQA”) pursuant to the
10 following provisions of the CEQA Guidelines, 14 California Code of Regulations, Chapter 3: this
11 Urgency Ordinance is exempt under CEQA Guidelines Section 15378(b)(5) in that it is not a
12 “project” under CEQA, and will not result in direct or indirect physical changes in the
13 environment. This ordinance only regulates the pay and protections for grocery workers and those
14 matters would not result in physical changes to the environment.
15

16 **SECTION 56: SEVERABILITY.**

17 If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance or
18 any part thereof is for any reason held to be unconstitutional or invalid or ineffective by any court
19 of competent jurisdiction, such decision shall not affect the validity or effectiveness of the
20 remaining portions of this Ordinance or any part thereof. The City Council of the City of Albany
21 hereby declares that it would have passed each section, subsection, subdivision, paragraph,
22 sentence, clause or phrase thereof irrespective of the fact that any one or more sections,
23 subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional
24 or invalid or ineffective.

25 **SECTION 67: PUBLICATION AND EFFECTIVE DATE.**

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

28 **PASSED AND ADOPTED** by the City Council of the City of Albany at its meeting on
the 19th day of April, 2021 by the following vote:

1 AYES:
2 NOES:
3 ABSENT:
4 ABSTAIN:

GE'NELL GARY, MAYOR

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