

ORDINANCE NO._____

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DALY CITY
ADDING CHAPTER 5.106 TO THE DALY CITY MUNICIPAL CODE TO REQUIRE
GROCERY STORES IN CITY OF DALY CITY TO PAY EMPLOYEES HAZARD PAY
DURING THE NOVEL CORONAVIRUS (COVID-19) PANDEMIC

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF DALY CITY DOES
ORDAIN AS FOLLOWS:

WHEREAS, international, national, state, and local health and governmental authorities are responding to an outbreak of respiratory disease caused by a novel coronavirus named "SARS-CoV-2," and the disease it causes has been named "coronavirus disease 2019," abbreviated COVID-19, ("COVID-19"); and

WHEREAS, on March 19, 2020, the California State Public Health Officer, designated specific sectors and their workers, including grocery stores, as Essential Critical Infrastructure Workers ("essential workers") to ensure the "continuity of functions critical to public health and safety, as well as economic and national security;" and

WHEREAS, according to a November 2020 study by the *Brookings Institution, Windfall Profits and Deadly Risks*, the United States' top retail grocery companies have earned record levels of profits during the pandemic, and this increase in profit has not been reflected in higher earnings for grocery workers, who have borne the hazardous work condition that underpin those record profits; and

WHEREAS, the City of Day City recognizes that essential grocery store workers must be justly compensated for the clear and present dangers of doing their jobs during the pandemic; and

WHEREAS, it is a well-established practice to afford grocery workers supplemental compensation for performing hazardous duty or work involving physical hardship that can cause extreme discomfort and distress; and

WHEREAS, grocery store workers are performing hazardous duty due to the significant risk of exposure to COVID-19; they have been working under these hazardous conditions for months, and they will continue to do so for the foreseeable future as the COVID-19 emergency presents an ongoing threat for an uncertain period, with the potential for subsequent waves of infection; and

WHEREAS, essential grocery workers cannot choose to work from home--they must come to work to do their jobs, which involve heightened risk of exposure and infection of COVID-19 through substantial interaction with customers on an ongoing basis and indoors where there is less air circulation; and

WHEREAS, United Food and Commercial Workers ("UFCW") Locals in Northern California, which represent grocery workers, report that over 700 grocery workers in their ranks have tested positive with COVID-19, and members of their union have been hospitalized or have died from the coronavirus; and

WHEREAS, there are numerous large grocery chains operating in Daly City that employ workers in Daly City and have at least 500 employees nationwide, with workers who are facing the

hazards of COVID-19 in the workplace every day: and

WHEREAS, the continued availability of grocery stores to the public and the ability of their employees to continue working, notwithstanding hazardous conditions, is fundamental to the health and welfare of the community, and establishing hazard pay for grocery store workers protects public health and welfare by insuring the stability of the food supply chain, supports stable incomes and promotes job retention and retention of employees by stores, by ensuring that grocery and workers are compensated for the substantial risks they are undertaking to provide essential services in a safe and uninterrupted manner during the COVID-19 emergency; and

WHEREAS, on January 17, 2021, the California Department of Public Health reported another COVID-19 variant that had grown more common across the state since December, with worrisome signs that this variant may be highly transmissible; and

WHEREAS, a growing list of cities and counties across California, including City of San Mateo, County of San Mateo, South San Francisco, City Daly City, Berkeley, Los Angeles, Long Beach, San Jose, and San Leandro began announcing and adopting legislation for hazard pay for grocery workers during the period where counties are in the Purple, Red, or Orange level of Community Transmission for COVID-19 under State Health orders; and

WHEREAS, the California Constitution, Article XI, Section 7, vests cities and counties with the authority to enact ordinances to protect the health, safety, and general welfare, of their citizens; and

WHEREAS, Labor Code section 1205 vests cities and counties with the authority to set labor standards regarding the payment of wages that are more stringent than state standards: and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF DALY CITY ORDAINS AS FOLLOWS:

SECTION 1. Recitals. The City Council finds the foregoing recitals to be true and correct and hereby incorporates those recitals into this Ordinance.

SECTION 2. Emergency Need. The City Council finds and declares that adoption of this Urgency Ordinance (“Ordinance”) is necessary for preserving the public peace, health, and safety for the following reasons:

- A. The COVID-19 pandemic has led to the current state of emergency in California.
- B. Grocery stores are the primary points of distribution for food and other daily necessities for the residents of the City of Daly City and are therefore essential to the vitality of our community.
- C. To protect the food supply chain and the public health and safety, the City of Daly City must take steps to guard against turnover and ensure that grocery stores in Daly City have well-trained, consistent, and stable staffing.

SECTION 3. Effective Dates. This Ordinance will expire one hundred twenty (120) days after the effective date of this Ordinance.

SECTION 4. Short title. This Ordinance shall constitute the “Hazard Pay for Grocery Workers Ordinance” and may be cited as such.

SECTION 5. Definitions. The definitions set forth in this Section shall govern the construction and meaning of the terms used in this Ordinance:

- A. “Base Wage” means the hourly wage paid to Covered Employees as of the effective date of this Ordinance less Hazard Pay owed under this Ordinance or any other premium hourly rate already paid to compensate Covered Employees for working during the pandemic (referred to herein as “Employer-Initiated Hazard Pay”).
- B. “City” means the City of Daly City.
- C. “Covered Employer” means any Person who (a) directly or indirectly or through an agent or any other Person owns or operates a Grocery Store and employs or exercises control over the wages, hours or working conditions of any Covered Employee; and (b) employs 500 or more employees nationwide regardless of where those employees are employed, or is a Franchisee associated with a Franchisor or a network of Franchises with Franchisees that employ more than 500 employees in the aggregate, regardless of where those employees are employed.
- D. “Covered Employee” means any person who, in a calendar week, performs at least two (2) hours of work for a Covered Employer within the geographic boundaries of the City, is paid by the hour, and qualifies as an employee entitled to payment of a minimum wage from any Covered Employer under the California minimum wage law, as provided under Section 1197 of the California Labor Code and wage orders published by the California Industrial Welfare Commission.
- E. “Covered Employee” does not include managers, supervisors, or confidential employees.
- F. “Employer-Initiated Hazard Pay” means any other premium hourly rate already paid by a Covered Employer solely to compensate Covered Employees for working during the pandemic.
- G. “Franchise” means a written agreement by which:
 - a. A Person is granted the right to engage in the business of offering, selling, or distributing goods or services under a marketing plan prescribed or suggested in substantial part by the grantor or its affiliates; and
 - b. The operation of the business is substantially associated with a trademark, service mark, tradename, advertising, or other commercial symbol; designating, owned by, or licensed by the grantor or its affiliate; and
 - c. The Person pays, agrees to pay, or is required to pay, directly or indirectly, a Franchise fee.
- H. “Franchisee” means a Person to whom a Franchise is offered or granted.
- I. “Franchisor” means a Person who grants a franchise to another Person.

- J. “Grocery Store” means a retail or wholesale store that is at least 12,000 square feet in size that is located within the geographic limits of the City, and that sells primarily household foodstuffs for offsite consumption, including the sale of fresh produce, meats, poultry, fish, deli products, dairy products, canned foods, dry foods, beverages, baked foods, or prepared foods. Other household supplies or other products shall be secondary to the primary purpose of food sales. For the purposes of this Ordinance, “Grocery Store” also means a retail store of any kind located within the geographic limits of the City that devotes 70% or more of its interior space to the sale of household foodstuffs for offsite consumption, including the sale of fresh produce, meats, poultry, fish, deli products, dairy products, canned foods, dry foods, beverages, baked foods, or prepared foods.
- K. “Hazard Pay” means an additional \$5.00 per hour wage bonus in addition to each Covered Employee’s Base Wage or Holiday Premium wage for each hour worked within the City.
- L. “Holiday Premium” means the hourly wage paid to Covered Employees for performing work during a holiday or holiday season.
- M. “Hours Worked” means the time during which a Covered Employee is subject to the control of a Covered Employer, including all the time the employee is suffered or permitted to work, and on-call.
- N. “Person” means any individual, corporation, partnership, limited partnership, limited liability partnership, limited liability company, business trust, estate, trust, association, joint venture, agency, instrumentality, or any other legal or commercial entity, whether domestic or foreign.
- O. “Retaliatory Action” shall mean the failure to hire, or the discharge, suspension, demotion, penalization, lowering of the Base Wage or Holiday Premium wage, or discrimination or any other adverse action against a Covered Employee with respect to the terms and conditions of the Covered Employee’s employment, for opposing any practice proscribed by this Ordinance, for participating in proceedings related to this Ordinance, for seeking to enforce his or her rights under this Ordinance by any lawful means, or for otherwise asserting rights under this Ordinance.

SECTION 6. Payment of Hazard Pay to Covered Employees.

- A. Hazard Pay. Covered Employers shall pay Covered Employees a wage of no less than the hourly rate set under the authority of this Ordinance. The Hazard Pay hourly rate for each Covered Employee shall be an additional five dollars (\$5.00) per hour for all hours worked at a Grocery Store or, in addition to the Covered Employee’s Base Wage or Holiday Premium, whichever applicable at the time of hours worked. The Hazard Pay rate shall not include compensation already owed to Covered Employees, Holiday Premium rates, gratuities, service charge distributions, or other bonuses.
- B. Duration of Hazard Pay. Covered Employers shall pay Hazard Pay to all workers for any and all work performed during the effective period of this Ordinance, not to exceed 120-days from the effective date of the Ordinance.
- C. Credit for Employer-Initiated Hazard Pay. Credits. Covered Employers providing

employer-initiated hazard pay will be credited for doing so in accordance with Section 4. Hazard Pay otherwise required under this Ordinance shall be reduced by the hourly amount of any Employer-Initiated Hazard Pay (e.g. A Covered Employer offering a two dollar (\$2.00) per hour Employer-Initiated Hazard Pay pays an additional three dollar (\$3.00) per hour in Hazard Pay pursuant to this Ordinance.) Such Covered Employer must demonstrate that, for work performed during the effective period of this Ordinance, all Covered Employees are receiving such Employer-Initiated Hazard Pay. No Covered Employer shall be credited for any past payments of Employer- Initiated Hazard Pay. No Covered Employer shall be credited for any hourly premiums already owed to Covered Employees, such as but not limited to, Holiday Premiums. Nothing herein shall be interpreted to prohibit any Covered Employer from paying more than five dollars (\$5.00) per hour in Hazard Pay.

SECTION 7. Waiver. The provisions of this ordinance may not be waived by agreement between an individual Covered Employee and a Covered Employer. All the provisions of this ordinance, or any part thereof, may be waived in a bona fide collective bargaining agreement, but only if the waiver is explicitly set forth in such agreement in clear and unambiguous terms.

SECTION 8. Prohibitions.

- A. No Covered Employer or any other Person shall interfere with, restrain, or deny the existence of, or the attempt to exercise, any rights protected under this Ordinance.
- B. No Covered Employer or any other Person shall take any Retaliatory Action against any Covered Employee exercising the Covered Employee's rights under this Ordinance. Rights protected under this Ordinance include but are not limited to: the right to file a complaint or inform any Person or government agency about any party's alleged noncompliance with this Ordinance; and the right to inform any Person of the Person's potential rights under this Ordinance and to assist the Person in asserting such rights. Protections of this Ordinance shall apply to any Covered Employee who mistakenly, but in good faith, alleges noncompliance with this Ordinance.
- C. Taking adverse action against an employee, including lowering an employee's Base Wage or Holiday Premium Wages or reducing work hours, within 90 days of the employee's exercise of rights protected under this ordinance shall raise a rebuttable presumption of having done so in retaliation for the exercise of such rights.

SECTION 9. Notice and Posting.

- A. Hiring entities shall provide covered designated workers with a written notice of rights established by this Ordinance. The notice of rights shall be in a form and manner sufficient to inform designated workers of their rights under this Ordinance. The notice of rights shall provide information on: The right to premium pay guaranteed by this Ordinance.
- B. The right to be protected from retaliation for exercising in good faith the rights protected by this Ordinance; and
- C. The right to bring a civil action for a violation of the requirements of this Ordinance, including a hiring entity's denial of premium pay as required by this Ordinance and a hiring entity or other person's retaliation against a covered designated worker or other

person for asserting the right to premium pay or otherwise engaging in an activity protected by this Ordinance

SECTION 10. Enforcement.

- A. Any person aggrieved by a violation of this Ordinance, on or after the effective date of this Ordinance, may bring a civil action in a court of competent jurisdiction against the Covered Employer or other person violating this Ordinance and, upon prevailing, shall be awarded reasonable attorneys' fees and costs and shall be entitled to such legal or equitable relief as may be appropriate to remedy the violation including, without limitation, the payment of any Hazard Premium Pay unlawfully withheld.
- B. The remedies, penalties and procedures provided under this Ordinance are not exhaustive and are not intended to be exclusive of any other available remedies, penalties and procedures.

SECTION 11. Prohibitions.

- A. No Covered Employer or any other Person shall interfere with, restrain, or deny the existence of, or the attempt to exercise, any rights protected under this Ordinance.
- B. No Covered Employer or any other Person shall take any Retaliatory Action against any Covered Employee exercising the Covered Employee's rights under this Ordinance. Rights protected under this Ordinance include but are not limited to: the right to file a complaint or inform any Person or government agency about any party's alleged noncompliance with this Ordinance; and the right to inform any Person of the Person's potential rights under this Ordinance and to assist the Person in asserting such rights. Protections of this Ordinance shall apply to any Covered Employee who mistakenly, but in good faith, alleges noncompliance with this Ordinance.
- C. Taking adverse action against a Covered Employee, including but not limited to lowering a Covered Employee's Base Wage or Holiday Premium Wages or reduction of hours, within ninety (90) days of the Covered Employee's exercise of rights protected under this Ordinance shall raise a rebuttable presumption of having done so in retaliation for the exercise of such rights.

SECTION 12. Notice and Posting. Every Covered Employer shall post in a conspicuous place at any workplace or job site where any Covered Employee works, a notice informing Covered Employees of their rights under this Ordinance. Every Covered Employer also shall provide each Covered Employee at the time this Ordinance becomes effective or at the time of hire, whichever is later, the Covered Employer and owner or manager's name; address; telephone number; and whether it is part of a chain, integrated enterprise, or Franchise associated with a franchisor or network of franchises. If the information the Covered Employer provided to the Covered Employee changes, the Covered Employer shall provide the updated information in writing within ten (10) days of the change.

SECTION 13. No Mandatory Duty. Nothing in this Ordinance is intended to create a mandatory duty on the part of the County, County employees, any Cities or City employees, to protect persons

or property from a violation of the provisions of this Ordinance. This Ordinance is not intended to, and does not, create any rights or benefit, substantive or procedural, enforceable at law or equity, against the City.

SECTION 14. Effective Date. This Urgency Ordinance is hereby declared to be an urgency Ordinance and is adopted under the provisions of the Government Code of the State of California, Section 36937, and shall be effective 10 days after its adoption. This ordinance shall automatically expire and no longer be of any effect 120 days after its effective date.

SECTION 15. Urgency Findings. Pursuant to California Government Code Section 36937, this Ordinance is designed to protect the health, safety, and welfare of the citizens of the City of Daly City and shall be effective within 10 days upon adoption of the City Council. The City Council hereby finds that there is an urgent need to adopt these regulations in order to address the current and immediate threats set forth above.

SECTION 16. CEQA. The City Council determines that the adoption of this Urgency Ordinance is exempt from environmental review under the California Environmental Quality Act (“CEQA”) pursuant to the following provisions of the CEQA Guidelines, 14 California Code of Regulations, Chapter 3: this Urgency Ordinance is exempt under CEQA Guidelines Section 15378(b)(5) in that it is not a “project” under CEQA, and will not result in direct or indirect physical changes in the environment.

SECTION 17. Severability. If any section or provision of this Urgency Ordinance is for any reason held to be invalid or unconstitutional by any court of competent jurisdiction, or contravened by reason of any preemptive legislation, the remaining sections and/or provisions of this Urgency Ordinance shall remain valid. The City Council hereby declares that it would have adopted this Urgency Ordinance, and each section or provision thereof, regardless of the fact that any one or more section(s) or provision(s) may be declared invalid or unconstitutional or contravened via legislation.

SECTION 18. Publication. The Mayor shall sign this ordinance and the City Clerk shall attest and certify to the passage and adoption of it, and within fifteen (15) days, publish once in a newspaper of general circulation circulated within the City of Daly City. The City Clerk shall post at City Hall a copy of the full text of this Ordinance in accordance with Government Code Section 65858 and 75090 and posted on the City’s website

The foregoing urgency ordinance was introduced and duly adopted by a four-fifths vote of the City Council of the City of Daly City at a special meeting of the City Council, held on the _____ day of _____, 2021, by the following vote:

AYES, Councilmembers: _____

NOES, Councilmembers: _____

Absent, Councilmembers: _____

CITY CLERK OF THE CITY OF DALY CITY

APPROVED:

MAYOR OF THE CITY OF DALY CITY

DRAFT