



Req. #

DRAFT PROPOSED ORDINANCE NO.

1 AN ORDINANCE relating to employment; establishing a hazard pay requirement
2 for additional compensation for grocery employees working within the
3 corporate boundaries of the City of Tacoma from the effective date of this
4 ordinance through the duration of the Mayor's and City Manager's
proclamation of emergency for the coronavirus disease 2019; providing for
severability, and establishing an effective date.

5 BE IT ORDAINED BY THE CITY OF TACOMA:

6 Section 1. Findings.

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8 A. The Tacoma City Charter grants the City Council the authority to
9 exercise the police power of the City established pursuant to Article XI, Section 11
10 of the State Constitution, to preserve the public peace, health, or safety.

11 B. This ordinance protects and promotes public peace, health, and safety
12 during the coronavirus disease 2019 ("COVID-19") emergency, proclaimed by the
13 the City Manager and Mayor of Tacoma on March 13, 2020, by requiring grocery
14 businesses located within the corporate boundaries of the City of Tacoma to
15 provide hazard pay for grocery employees, thereby compensating those
16 employees for the hazards of working with significant exposure to an infectious
17 disease and increasing retention of employees who provide essential services to
18 local communities.
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21 C. On January 30, 2020, the World Health Organization declared that
22 COVID-19 constituted a public health emergency of international concern, the
23 highest level of alarm.

24 D. On February 29, 2020, Washington Governor Jay Inslee issued
25 proclamation 20-05, proclaiming a state of emergency for all counties throughout
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the state of Washington in response to new cases of COVID-19, and directing state agencies to use all resources necessary to prepare for and respond to the outbreak.

E. On March 13, 2020, the City Manager and Mayor of Tacoma, pursuant to Chapter 1.10 of the Tacoma Municipal Code and Chapter 38.52 of the Revised Code of Washington, proclaimed that an emergency exists caused by COVID-19 in the City of Tacoma.

F. On March 23, 2020, Washington Governor Jay Inslee issued Proclamation 20-25, a "Stay Home - Stay Healthy" order that closed all nonessential workplaces, required people to stay home except to participate in essential activities or to provide essential business services and banned all gatherings for social, spiritual, and recreational purposes. This order was extended through May 31, 2020. The "Stay Home - Stay Healthy" proclamation identified grocery employees as "Essential Critical Infrastructure Workers" performing work to protect communities and ensure continuity of functions critical to public health and safety, as well as economic and national security.

G. In October 2020, The British Medical Journal, Occupational & Environmental Medicine, reported that grocery employees face a serious risk of COVID-19 infection and associated psychological distress. A study of 104 grocery employees at a grocery store in Boston, Massachusetts, found that 20 percent tested positive for COVID-19 despite 91 percent of employees reporting wearing a face mask at work and 77 percent of employees reporting wearing masks outside of work. The positive rate of infection among grocery employees was five times as



likely for those who interacted with customers than for those who did not. The study also found that 76 percent of employees had no symptoms, suggesting that those employees could be a source of asymptomatic infection. Further, 24 of the 99 employees who filled out a related medical health questionnaire also reported experiencing anxiety, and eight employees were deemed depressed from their questionnaire answers.

H. On January 3, 2021, the Centers for Disease Control reported that multiple variants of COVID-19 that are circulating globally appear to spread more easily and quickly than other variations.

I. The Washington State Department of Health reports that two COVID-19 vaccines are authorized for emergency use by United States Food and Drug Administration. In December 2020, the Department of Health published an estimated timeline for vaccine implementation. The initial vaccine timeline indicated that all grocery employees would be eligible for vaccination in February 2021. A modified timeline, published in January 2021, clarified that only grocery employees 50 years old or older would be eligible in February 2021 and grocery employees under 50 years old would be eligible in April 2021.

J. On January 5, 2021, Governor Jay Inslee announced the "Healthy Washington-Roadmap to Recovery," a phased recovery plan beginning on January 11, 2021, that began with every region of the state in Phase 1, which prohibited indoor gatherings with people outside the household, and limited business activity, with retail stores limited to 25 percent capacity. On February 1,



2021, Pierce County moved to Phase 2 of the plan, which retains retail activity to 25 percent capacity.

K. Throughout the COVID-19 emergency, grocery businesses have been operating in Tacoma and relying upon the work of grocery employees who are highly vulnerable to health and safety risks.

L. Grocery employees are essential workers performing services that are fundamental to the economy and health of the community during the COVID-19 emergency. They cannot choose to work from home and must come to work to perform their jobs, which can involve substantial interaction with customers.

M. The United States Centers for Disease Control and Prevention reports that Black and Indigenous people, followed by Pacific Islanders and Latinx people, are disproportionately affected by COVID-19 due to long-standing inequities in social determinants of health, including overrepresentation in jobs that require customer contact, such as grocery stores. Those determinants may increase the risk of COVID-19 exposure, illness, hospitalization, long-term health, and social consequences and death.

N. Hazard pay is defined by the United States Department of Labor as additional pay for performing hazardous duty or work involving physical hardship. Work duty that causes extreme physical discomfort and distress, which is not adequately alleviated by protective devices, is deemed to impose a physical hardship.

O. Ensuring that grocery employees are compensated for the risks of working during the COVID-19 emergency promotes retention of those essential



workers. Retention of grocery employees is fundamental to protecting the health of the community, as those employees directly support public purchase of groceries and facilitate community access to food.

Section 2. The definitions in this section apply throughout this ordinance unless the context clearly requires otherwise.

A. "Adverse action" means reducing compensation, garnishing gratuities, denying a job or promotion, demoting, terminating, failing to rehire after a seasonal interruption of work, threatening, penalizing, retaliating, engaging in unfair immigration-related practices, filing a false report with a government agency or otherwise discriminating against any person for any reason.

B. "Aggrieved party" means an employee or other person who suffers tangible or intangible harm due to an employer or other person's violation of this ordinance.

C. "Compensation" means the payment owed to an employee by reason of employment, including, but not limited to, salaries, wages, tips, service charge distributions, overtime, commissions, piece rate, bonuses, rest breaks, promised or legislatively required pay or paid leave, and reimbursement for employer expenses.

D. "Employ" means to hire or engage the services of a person or persons for compensation.

E. "Employee" means a person who is employed for wages or salary, including, but not limited to, a full-time employee, a part-time employee and a temporary worker. An employer bears the burden of proof that the individual is, as



a matter of economic reality, in business for the individual's self as an independent contractor, rather than employed by the alleged employer.

F. "Employer" means any individual, partnership, association, corporation, business trust or any entity, person or group of persons or a successor thereof, that employs another person and includes any such entity or person acting directly or indirectly in the interest of the employer in relation to the employee.

G. 1. "Grocery business" means a retail store operation located within the corporate boundaries of the City of Tacoma that is either:

a. over 10,000 square feet in size and that is primarily engaged in the retail sale of groceries for offsite consumption, including, but not limited to, the sale of fresh produce, meats, poultry, fish, deli products, dairy products, canned and frozen foods, dry foods, beverages, baked foods or prepared foods. Other household supplies or other products shall be secondary to the primary purpose of groceries sales; or

b. over 85,000 square feet and with 30 percent or more of its sales floor area dedicated to the retail sale of groceries, including, but not limited, to the sale of fresh produce, meats, poultry, fish, deli products, dairy products, canned and frozen foods, dry foods, beverages, baked foods or prepared foods.

2. "Grocery business" does not include convenience stores or food marts primarily engaged in retail sales of a limited line of goods that generally includes milk, bread, soda and snacks. "Grocery business" also does not include farmers' markets or farm stands.



H. "Grocery employee" means a person employed by a grocery employer, and works at a grocery business.

I. "Grocery employer" means an employer that matches the requirements in Section 3 of this ordinance.

J. "Hazard pay" means additional compensation owed to an employee on top of the employee's other compensation, including, but not limited to, salaries, wages, tips, service charge distributions, overtime, commissions, piece rate, bonuses, rest breaks, promised or legislatively required pay or paid leave, and reimbursement for employer expenses.

Section 3.

A. For the purposes of this ordinance, "grocery employers" are those businesses that:

1. Employ at least one grocery employee who works at a grocery business located within the corporate boundaries of the City of Tacoma; and

2. Employ 500 or more employees worldwide regardless of where those employees are employed, including, but not limited to, chains, integrated enterprises, or franchises associated with a franchisor or network of franchises that employ 500 or more employees in aggregate.

B. To determine the number of employees for the current calendar year for the purposes of this section:

1. The calculation is based upon the average number of employees who worked per calendar week during the preceding calendar year for any and all weeks during which at least one employee worked for the grocery employer. For



employers that did not have any employees during the preceding calendar year,
the number of employees for the current calendar year is calculated based upon
the average number of employees who worked during the first 90 calendar days of
the current year in which the grocery employer has engaged in the grocery
business; or

2. All employees shall be counted, including, but not limited to:

- a. grocery employees;
- b. employees who are not grocery employees;
- c. employees who worked outside the City of Tacoma;
- d. employees who worked within the corporate boundaries of
the City of Tacoma; and
- e. employees who worked in full-time employment, part-time
employment, joint employment, temporary employment or through the services of a
temporary services or staffing agency or similar entity.

C. 1. Business entities otherwise treated separately shall be, for the
purposes of this ordinance, considered as:

- a. an integrated enterprise; and
- b. a single employer when one entity controls the operation of
the other entity.

2. The factors to consider in determining the existence of a single
enterprise may include, but are not limited to:

- a. degree of interrelation between the operations of multiple
entities;



- b. degree to which the entities share common management;
- c. centralized control of labor relations;
- d. degree of common ownership or financial control over the entities; and
- e. use of a common brand, trade, business or operating name.

Section 4. This ordinance applies to the time a grocery employee performs work for a grocery employer at a grocery business location. It does not apply to time spent by a grocery employee within the corporate boundaries of the City of Tacoma solely for the purpose of travelling through the City, with no employment-related or commercial stops within the corporate boundaries of the City of Tacoma except for refueling or the grocery employee's personal meals or errands.

Section 5.

A. Grocery employers shall provide each grocery employee with hazard pay at a rate of \$ [REDACTED] dollars per hour for each hour worked at the grocery employers' grocery businesses.

B. Grocery employers shall provide written notice of employment information that includes notice of hazard pay by 30 days after the effective date of this ordinance.

C. Grocery employers shall provide payment for hazard pay on the established, regular pay day on which wages are paid.

D. Grocery employers shall provide written itemization of the hazard pay separately from payment for wages and other compensation.



1 E. Grocery employers shall comply with the hazard pay requirements in this
2 ordinance until the Mayor's and City Manager's March 13, 2020, proclamation of
3 emergency is terminated in accordance with the provisions in the proclamation.

4 Section 6.

5 A. Within 30 days of the effective date of this ordinance, grocery employers
6 shall display a written notice of rights established by this ordinance in a
7 conspicuous and accessible place at all its grocery businesses. Grocery
8 employers shall display the notice of rights in English and in the primary language
9 or languages of the employee or employees at its grocery businesses.
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11 B. The notice of rights shall provide information on:

- 12 1. The right to hazard pay guaranteed by this ordinance;
13 2. The right to be protected from retaliation for exercising in good
14 faith the rights protected by this ordinance; and
15 3. The right to bring a civil action for a violation of this ordinance,
16 including a grocery employer's denial of hazard pay as required by this ordinance
17 and a grocery employer or other person's retaliation against a grocery employee or
18 other person for asserting the right to hazard pay or otherwise engaging in an
19 activity protected by this ordinance.
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21 Section 7.

22 A. Grocery employers shall retain records that document compliance with
23 this ordinance for each grocery employee.
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25 B. Grocery employers shall retain the records required by this section for
26 three years.



1 C. If a grocery employer fails to retain adequate records required under this
2 section, there shall be a presumption, rebuttable by clear and convincing evidence,
3 that the grocery employer violated this ordinance for the periods and for each
4 grocery employee for whom records were not retained.

5 Section 8.

6 A. A grocery employer or any other person shall not interfere with, restrain
7 or deny the exercise of, or the attempt to exercise, any right protected under this
8 ordinance.

9 B. A grocery employer or any other person shall not take any adverse
10 action against any person because the person has exercised in good faith the
11 rights protected under this ordinance. The rights include, but are not limited to:

12 1. The right to make inquiries about the rights protected under this
13 ordinance;
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15 2. The right to inform others about their rights under this ordinance;
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17 3. The right to inform the person's employer, the person's legal
18 counsel, a union or similar organization or any other person about an alleged
19 violation of this ordinance;
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21 4. The right to bring a civil action for an alleged violation of this
22 ordinance;
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24 5. The right to testify in a proceeding under or related to this
25 ordinance;
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27 6. The right to refuse to participate in an activity that would result in a
28 violation of city, state or federal law; and



7. The right to oppose any policy, practice, or act that is unlawful
under this ordinance.

C. A grocery employer or any other person shall not communicate to a person exercising rights protected in this section, directly or indirectly, the willingness to inform a government worker that the person is not lawfully in the United States, or to report, or to make an implied or express assertion of a willingness to report, suspected citizenship or immigration status of an employee or family member of an employee to a federal, state, or local agency because the employee has exercised a right under this ordinance.

D. It shall be a rebuttable presumption of retaliation if a grocery employer or any other person takes an adverse action against a person within 90 days of the person's exercise of rights protected in this section. However, in the case of seasonal work that ended before the close of the 90-day period, the presumption also applies if the grocery employer fails to rehire a former grocery employee at the next opportunity for work in the same position. The grocery employer may rebut the presumption with clear and convincing evidence that the adverse action was taken for a permissible purpose.

E. Proof of retaliation under this section shall be sufficient upon a showing that a grocery employer or any other person has taken an adverse action against a person and the person's exercise of rights protected in this section was a motivating factor in the adverse action, unless the grocery employer can prove that the action would have been taken in the absence of the protected activity.



1 F. The protections afforded under this section shall apply to any person
2 who mistakenly but in good faith alleges violations of this ordinance.

3 G. A complaint or other communication by any person triggers the
4 protections of this section regardless of whether the complaint or communication is
5 in writing or makes explicit reference to this ordinance.

6 Section 9. Any aggrieved party or any entity acting on behalf of an
7 aggrieved party may bring a civil action in a court of competent jurisdiction against
8 the grocery employer or other person violating this ordinance and, upon prevailing,
9 may be awarded reasonable attorney fees and costs and such legal or equitable
10 relief as may be appropriate to remedy the violation including, without limitation:
11 the payment of any unpaid compensation plus interest due to the aggrieved party
12 and liquidated damages in an additional amount of up to twice the unpaid
13 compensation; and a penalty payable to any aggrieved party if the aggrieved party
14 was subject to prohibited retaliation. Interest shall accrue from the date the unpaid
15 compensation was first due at 12 percent per annum, or the maximum rate
16 permitted under RCW 19.52.020.

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19 Section 10. Any waiver by an individual of any provision of this ordinance
20 shall be deemed contrary to public policy and shall be void and unenforceable.

21 Section 11.

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23 A. Nothing in this ordinance shall be construed to discourage or prohibit an
24 employer from the adoption or retention of hazard pay policies more generous than
25 the one required.
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1 B. Nothing in this ordinance shall be construed as diminishing the obligation
2 of the employer to comply with any contract, collective bargaining agreement,
3 employment benefit plan, or other agreement providing more generous hazard pay
4 policies to an employee than required in this ordinance.

5 Section 12.

6 A. This ordinance provides minimum requirements for hazard pay for
7 grocery employees during the COVID-19 emergency and shall not be construed to
8 preempt, limit or otherwise affect the applicability of any other law, regulation,
9 requirement, policy, or standard that provides for hazard pay or that extends other
10 protections to employees; and nothing in this ordinance shall be interpreted or
11 applied so as to create any power or duty in conflict with federal or state law.

12 B. Nothing in this section shall be construed as restricting an employee's
13 right to pursue any other remedies at law or equity for violation of the employee's
14 rights.
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16 Section 13. This ordinance shall be effective at 12:01 a.m. on the [REDACTED] day
17 of [REDACTED], 2021, and shall expire on the termination of the Mayor's and
18 City Manager's March 13, 2020, proclamation of emergency in accordance with the
19 provisions in the proclamation.
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Section 14. If any provision of this ordinance of its application to any person or circumstance is held invalid, the remainder of the ordinance or the application of the provision to other persons or circumstances is not affected.

Passed _____

Mayor

Attest:

City Clerk

Approved as to form:

Chief Deputy City Attorney