



## Staff Report

**Date:** March 30, 2021

**To:** City Council

**From:** Valerie J. Barone, City Manager

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**Subject:** **Considering adoption of an Urgency Ordinance to require large grocery stores in Concord to pay employees an additional wage of up to five dollars per hour in temporary hazard pay during a specified period of time associated with the Covid-19 pandemic by reading of the title only and waiving further reading.**

**CEQA: Exempt/not a project pursuant to Public Resources Code Section 21065, CEQA Guidelines Sections 15060(c)(2), 15061(b)(3), and/or 15378.**

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### Report in Brief

The Policy Development & Internal Operations (PD&IO) committee is recommending the City Council adopt a local ordinance requiring Large Grocery Stores in Concord to pay temporary hazard pay to grocery retail workers during a specified period of time associated with the Covid-19 Pandemic. The Committee is hoping the Council will pass the Ordinance as an “urgency” ordinance, which requires 4/5<sup>ths</sup> of the Council to vote yes; if approved, it would be effective as of March 31, 2021.

If adopted, the ordinance would require grocery stores in Concord with 300 or more employees nationwide to pay covered employees an additional wage of up to five dollars per hour in temporary “hazard pay” for 120 days or until Contra Costa County enters the minimal risk level - Yellow Tier under State Health Orders. PD&IO left the amount of the increased hourly pay - \$3, \$4, or \$5 for discussion and decision by the full City Council.

### **Recommended Action**

Review the information provided in this staff report, consider public comments, and adopt the proposed Urgency Ordinance to require large grocery stores in Concord to pay employees an additional wage of up to five dollars per hour in temporary hazard pay during a specified period of time associated with the Covid-19 pandemic by reading of the title only and waiving further reading.

### **Background**

The City Council referred the proposal of mandating hourly hazard pay to grocery store workers to the PD&IO committee at their February 2, 2021 meeting. The PD&IO committee met on February 12, 2021 and on March 2, 2021 – at both meetings they reviewed available information presented by City staff, took public comments, and on March 2 provided direction to staff to draft an ordinance for City Council consideration.

### **Analysis**

The purpose of this ordinance is to compensate grocery retail workers for the clear and present dangers of doing their jobs as essential workers during the Covid-19 pandemic by requiring their employers to provide hazard pay. The ordinance contains recitals addressing the need for and intent of the ordinance, together with supporting facts and citations.

A proposed ordinance mandating hourly hazard pay to grocery store workers can be adopted by the City of Concord. However, there is a high likelihood the City will be sued by those opposed to such an ordinance.

If adopted, this ordinance would impose a temporary increase (also referred to as “hazard pay”) to the hourly wages earned by covered employees, as defined. It would also require the covered employers to pay hazard pay to workers for any pay period for 120 days from the effective date of the ordinance, or until such time as Contra Costa County enters the minimal risk level - Yellow Tier under State Health Orders, whichever is later.

The ordinance would apply to employees of any Large Grocery Store as defined in the ordinance that employ 300 or more employees nationwide, 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.

Large Grocery Stores or Covered Employers who are already providing a premium hourly rate to compensate their employees for working during the Covid-19 pandemic shall be allowed to credit those payments against the Hazard pay required under the ordinance. For example, if Store X is already paying a \$2 per hour premium to their employees the Hazard pay required by this ordinance will be reduced by \$2 per hour.

Attached to this staff report is a *preliminary draft* list of approximately 13 Concord businesses (See Attachment 1 – Grocery Stores Sorted by Gross Receipts – yellow highlight) that would most likely be impacted by the draft ordinance. The attached list is preliminary, so the ordinance's provisions may not be limited to only the listed businesses and their employees.

### **Environmental Determination**

This item is exempt from California Environmental Quality Act (CEQA) as it does not constitute a "project" within the meaning of Public Resources Code Section 21065, CEQA Guidelines Section 15060(c)(2), and/or 15378 including subsection (b)(4). If this were determined to be a "project" for CEQA analysis, this activity falls within the "Common Sense" CEQA exemption set forth in CEQA Guidelines Section 15061(b)(3). No unusual circumstances exist and none of the exceptions under CEQA Guidelines Section 15300.2 apply. This determination reflects the City's independent judgment and analysis. Individual projects will undergo CEQA analysis as necessary.

### **Financial Impact**

Based on the high likelihood of litigation being filed by the California Grocers Association and/or potentially impacted businesses immediately subsequent to adoption of this ordinance, it is reasonably foreseeable that the City will incur significant legal costs in defense of the ordinance, and potential exposure to payment of attorney's fees if the litigation is successful.

### **Public Contact**

The City Council Agenda was posted.

### **Attachments**

1. List of Concord Grocery Stores Sorted by Gross Receipts
2. Grocery Retail Worker Hazard Pay Urgency Ordinance
3. Correspondence