

ORDINANCE NO. .
BOARD OF SUPERVISORS, COUNTY OF SAN MATEO,
STATE OF CALIFORNIA

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**UNCODIFIED ORDINANCE OF SAN MATEO COUNTY REQUIRING CERTAIN
GROCERY AND DRUGSTORES LOCATED IN UNINCORPORATED SAN MATEO
COUNTY TO PAY EMPLOYEES AN ADDITIONAL FIVE DOLLARS (\$5.00) PER
HOUR IN HAZARD PAY FOR 120 DAYS**

The Board of Supervisors of the County of San Mateo, State of California, finds and **ORDAINS** as follows:

SECTION 1. Findings.

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 3, 2020, the County of San Mateo Director of Emergency Services issued a proclamation Declaring the Existence of a Local Emergency in the County, and the County of San Mateo Health Officer issued a Declaration of Local Health Emergency Regarding Novel Coronavirus 2019 (COVID-19); and

WHEREAS, on March 10, 2020, the Board of Supervisors of the County of San Mateo adopted a resolution Ratifying and Extending the Declaration of Local Emergency and the Declaration of Local Health Emergency, and both the Declaration of Local Emergency and the Declaration of Local Health Emergency remain in effect; and

WHEREAS, on March 13, 2020, the President of the United States of America declared a national emergency; and

WHEREAS, on March 19, 2020, Governor Newsom issued Executive Order N-33-20, which imposed a State Shelter Order requiring individuals to remain in their places of residence except as needed to maintain continuity of operations of critical infrastructure, access necessities such as food, prescriptions and healthcare, or engage in other authorized activities; and

WHEREAS, acting under the authority of Executive Order N-33-20, the State Public Health Officer designated workers supporting groceries, pharmacies, and other retail stores that sell food or beverage products as Essential Critical Infrastructure Workers;

WHEREAS, on December 3, 2020, the California Department of Public Health issued a Regional Stay at Home Order for regions of the State where Intensive Care Unit bed availability was at less than 15 percent, and the order went into effect in the County of San Mateo on December 17, 2020.

WHEREAS, on January 25, 2021, the California Department of Public Health lifted the Regional Stay at Home order in the County of San Mateo, which at that time entered the “purple” Tier 1 (the most restrictive) of the state’s four-tier system, because COVID-19 is considered “widespread” in the County; and

WHEREAS, since the beginning of the COVID-19 pandemic, grocery and drugstore workers in the County of San Mateo have heroically continued to report to work and serve their communities, despite the ongoing hazards and danger of being exposed to and infected by COVID-19, helping to ensure individuals throughout the County of San Mateo have had uninterrupted access to the food they need during this pandemic; and

WHEREAS, according to the United Food and Commercial Workers Union Local 5, which represents 20,000 grocery workers in Northern California, more than 1,000 of its members have tested positive for COVID-19 as of January 10, 2021; and

WHEREAS, unlike workers in many other sectors, essential grocery and drugstore workers cannot work from home; they must perform their jobs in a grocery or drugstore, which involves heightened risk of exposure and infection of COVID-19 through substantial interaction with customers indoors, where there is less air circulation; and

WHEREAS, a recent study published in *Occupational & Environmental Medicine* found that, within grocery stores, employees with direct customer exposure were five times more likely to test positive for COVID-19, even after adjusting for age, gender, COVID-19 community prevalence where workers live, and other factors; and

WHEREAS, a University of California San Francisco study published in January 2021 found that in California, working adults overall saw a 22 percent increased risk of death during the COVID-19 pandemic, food and agricultural workers saw an increase of 38 percent, and retail workers saw an increase of 18 percent; and

WHEREAS, throughout the pandemic, there have been numerous news reports of COVID-19 outbreaks that trace back to grocery stores, and a November 2020 study published in *Nature* found that the COVID-19 exposure risk is significantly higher at grocery stores located in lower-income areas compared to higher-income areas; and

WHEREAS, likewise, drugstore workers face a particularly high risk of COVID-19 infection and transmission because pharmacies are busier during the pandemic, often attract people who are sick, and do not always take adequate safety measures; and

WHEREAS, grocery and drugstore workers are not highly paid; according to the California Employment Development Department, in the first quarter of 2020, the median hourly wage for a cashier in the San Francisco-Redwood City-South San Francisco region was \$17.18; and

WHEREAS, because, unlike workers in many other sectors who have been able to work from home, an inability to pay for increased childcare costs as a result of school closures and other necessities related to the need to work in person in hazardous environments could become a problem for certain grocery and drugstore workers if they do not receive relief in the form of higher compensation; 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, according to the Brookings study, many top retail grocery companies gave employees hazard pay in the early months of the pandemic, but those payments were modest and stopped more than six months ago, even though the country's COVID-19 case counts and deaths have continued to grow; and

WHEREAS, the County of San Mateo recognizes that essential grocery and drugstore workers must be justly compensated for the clear and present dangers of doing their jobs during the pandemic; and

WHEREAS, increases in grocery and drugstore worker wages will help such workers to mitigate some of the expenses related to being required to work in person – like procuring personal protective equipment and using more expensive but safer modes of transportation – in conditions more hazardous than those borne by many other workers, result in more money being spent to stimulate our local economy, and reduce the risk that these workers will contract or transmit COVID-19; and

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

WHEREAS, grocery and drugstore 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, the continued availability of grocery stores and drugstores 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 and drugstore 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 drugstore 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, 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

SECTION 2. Effective Dates of This Ordinance.

- A. This Grocery and Drugstore Employee Hazard Pay Ordinance (“Ordinance”) is effective thirty (30) days following the date of its adoption.
- B. This Ordinance will expire one hundred twenty (120) days after the effective date of this Ordinance.

SECTION 3. Definitions.

- A. “Base Wage” means the hourly wage paid to Covered Employees as of the effective date of this Ordinance, not including Hazard Pay owed under this Ordinance or any “Employer-Initiated Hazard Pay.”
- B. “County” means the unincorporated areas of the County of San Mateo.
- C. “Covered Employer” means a Grocery Store or Drugstore, as defined herein, located in the unincorporated area of the County, that employs three hundred (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 with franchisees

that employ more than three hundred (300) employees in the aggregate, regardless of where those employees are employed.

The number of employees shall be based upon:

1. The actual number of employees per calendar week who worked for compensation during the pay period preceding the effective date of this Ordinance.
2. All employees who worked for compensation shall be counted, including but not limited to employees who are not covered by this Ordinance, employees who worked inside the County, employees who worked outside the County, and 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.

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 unincorporated area of the County, 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.

1. "Covered Employee" does not include managers, supervisors, or confidential employees.

E. "Drugstore" means a retail pharmacy that sells a variety of prescription and nonprescription medicines, as well as any combination of miscellaneous items, including but not limited to sundries, dry foods, packaged foods, beverages, fresh produce, meats, deli products, dairy products, canned foods, or prepared foods.

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. "Grocery Store" means a retail or wholesale store located within the unincorporated areas of the County that either:

1. Is over 10,000 square feet in size and (i) devotes seventy percent (70%) or more of its sales floor area to retailing a general range of food products, which may be fresh or packaged, or (ii) receives seventy percent (70%) or more revenue from retailing a general range of food products;

2. Is more than 85,000 square feet and devotes ten percent (10%) or more of its sales floor area to the sale of merchandise that is non-taxable pursuant to Section 6359 of the Revenue and Taxation Code, including retail establishments with multiple tenants, so long as consumer goods and nontaxable items are sold under the same roof with shared checkout stands, entrances, and exits.
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- H. "Holiday Premium" means the hourly wage paid to Covered Employees for performing work during a holiday or holiday season.
 - I. "Hazard Pay" means an additional five dollars (\$5.00) per hour wage bonus in addition to each Covered Employee's Base Wage or Holiday Premium wage for each hour worked at a Grocery Store or Drugstore.
 - J. "Hours Worked" means the time during which a Covered Employee is subject to the control of a Covered Employer, including all the time the Covered Employee is suffered or permitted to work, and on-call.
 - K. "Person" shall mean 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.
 - L. "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 4. Payment of Hazard Premium 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 Drugstore, 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.
- C. Credit for Employer-Initiated Hazard Pay. 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.
- D. Waiver. The provisions of this Ordinance may not be waived by agreement between an individual Covered Employee and a Covered Employer. All 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 5. 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 6. 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 shall post notices in English, Spanish, and any other language spoken by at least five percent (5%) of the Covered Employees at the workplace or job site. 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 7. 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, the payment of an additional sum as a civil penalty in the amount of \$50 to each Covered Employee or person whose rights under this Chapter were violated for each day that the violation occurred or continued, reinstatement in employment and/or injunctive relief.
- B. Nothing in this Ordinance shall be interpreted as restricting, precluding, or otherwise limiting a separate or concurrent criminal prosecution under the San Mateo County Ordinance Code or state law. Jeopardy shall not attach as a result of any administrative or civil enforcement action taken pursuant to this Ordinance.
- C. 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 8. 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 County.

SECTION 9. Severability

If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the remainder of this Ordinance and the application of such provision to other persons or circumstances shall not be affected thereby.

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