



AGENDA

REGULAR MEETING

*** * ***

CLAYTON CITY COUNCIL

*** * ***

TUESDAY, June 1, 2021

7:00 P.M.

***** NEW LOCATION*****

This meeting is being held in accordance with the Brown Act as currently in effect under the State Emergency Services Act, the Governor's Emergency Declaration related to COVID-19 and the Governor's Executive Orders N-25-20 and N-29-20 that allow members of the City Council, City staff and the public to participate and conduct a meeting by teleconference, videoconference or both. In order to comply with public health orders, the requirement to provide a physical location for members of the public to participate in the meeting has been suspended.

Mayor: Carl Wolfe

Vice Mayor: Peter Cloven

Council Members

Jim Diaz

Holly Tillman

Jeff Wan

- A complete packet of information containing staff reports and exhibits related to each public item is available for public review on the City's website at www.ci.clayton.ca.us
- Agendas are posted at: 1) City Hall, 6000 Heritage Trail; 2) Library, 6125 Clayton Road; 3) Ohm's Bulletin Board, 1028 Diablo Street, Clayton; and 4) City Website at www.ci.clayton.ca.us
- Any writings or documents provided to a majority of the City Council after distribution of the Agenda Packet and regarding any public item on this Agenda is available for review on the City's website at www.ci.clayton.ca.us
- If you have a physical impairment that requires special accommodations to participate, please call the City Clerk's office at least 72 hours in advance of the meeting at (925) 673-7300.

Instructions for Virtual City Council Meeting – June 1

To protect our residents, officials, and staff, and aligned with the Governor’s executive order to Shelter-at-Home, this meeting is being conducted utilizing teleconferencing means consistent with State order that that allows the public to address the local legislative body electronically.

To follow or participate in the meeting:

1. **Videoconference:** to follow the meeting on-line, click here to register:

https://us02web.zoom.us/webinar/register/WN_8HF1fp4OTkOe8pBgW7LSHQ

After clicking on the URL, please take a few seconds to submit your first and last name, and e-mail address then click “Register”, which will approve your registration and a new URL to join the meeting will appear.

Phone-in: Once registered, you will receive an e-mail with instructions to join the meeting telephonically, and then dial Telephone: 877 853 5257 (Toll Free)

2. using the *Webinar ID* and *Password* found in the e-mail.

E-mail Public Comments: If preferred, please e-mail public comments to the City Clerk, Ms. Calderon at jcalderon@ci.clayton.ca.us by 5 PM on the day of the City Council meeting. All E-mail Public Comments will be forwarded to the entire City Council.

For those who choose to attend the meeting via videoconferencing or telephone shall have 3 minutes for public comments.

Location:

Videoconferencing Meeting (this meeting via teleconferencing is open to the public)

To join this virtual meeting on-line click here:

https://us02web.zoom.us/webinar/register/WN_8HF1fp4OTkOe8pBgW7LSHQ

To join on telephone, you must register in the URL above, which sends an e-mail to your inbox, and then dial (877) 853-5257 using the *Webinar ID* and *Password* found in the e-mail.

*** CITY COUNCIL ***

June 1, 2021

1. **CALL TO ORDER AND ROLL CALL** – Mayor Wolfe.

2. **MEETING PROTOCOL VIDEO**– City Clerk

3. **PLEDGE OF ALLEGIANCE** – led by Councilmember Diaz.

4. **CONSENT CALENDAR**

Consent Calendar items are typically routine in nature and are considered for approval by one single motion of the City Council. Members of the Council, Audience, or Staff wishing an item removed from the Consent Calendar for purpose of public comment, question, discussion or alternative action may request so through the Mayor.

(a) Approve the minutes of the City Council's regular meeting of May 18, 2021.

(City Clerk) ([View Here](#))

(b) Approve the Financial Demands and Obligations of the City. (Finance) ([View Here](#))

(c) Adopting An Ordinance Amending Section 2.04.070 of the Clayton Municipal Code, entitled "Order of Business". (City Manager) ([View Here](#))

5. **RECOGNITIONS AND PRESENTATIONS**

(a) Certificates of Recognition to public school students for exemplifying the "Do the Right Thing" character trait of "Responsibility" during the month of May 2021.

(Mayor Wolfe) ([View Here](#))

(b) Proclamation declaring the month of June as "Portuguese National Heritage Month" in the City of Clayton. (Mayor Wolfe) ([View Here](#))

6. **REPORTS**

(a) City Manager/Staff

(b) City Council - Reports from Council liaisons to Regional Committees, Commissions and Boards.

7. PUBLIC COMMENT ON NON - AGENDA ITEMS

Members of the public may address the City Council on items within the Council's jurisdiction, (which are not on the agenda) at this time. To assure an orderly meeting and an equal opportunity for everyone, each speaker is limited to 3 minutes, enforced at the Mayor's discretion. In accordance with State Law, no action may take place on any item not appearing on the posted agenda. The Council may respond to statements made or questions asked, or may at its discretion request Staff to report back at a future meeting concerning the matter.

Public comment and input on Public Hearing, Action Items and other Agenda Items will be allowed when each item is considered by the City Council.

8. PUBLIC HEARINGS

- (a) Oak Creek Canyon Project, Appeal of Planning Commission Recommendation of Denial. (Interim Community Development Director) ([View Here](#))

9. ACTION ITEMS

- (a) Discussion Regarding Potential Hazard Pay Ordinance. (City Council) ([View Here](#))

10. COUNCIL ITEMS – limited to Council requests and directives for future meetings.

11. CLOSED SESSION – None.

12. ADJOURNMENT

The next regularly scheduled meeting of the City Council will be June 15, 2021.

#

MINUTES
OF THE
REGULAR MEETING
CLAYTON CITY COUNCIL
TUESDAY, May 18, 2021

1. **CALL TO ORDER THE CITY COUNCIL** – The meeting was called to order at 7:00 p.m. by Mayor Wolfe on a virtual web meeting and telephonically (877) 853-5257. Councilmembers present: Mayor Wolfe, Vice Mayor Cloven, and Councilmembers Diaz, Tillman, and Wan. Councilmembers absent: None. Staff present: City Manager Reina Schwartz, City Attorney Mala Subramanian and City Clerk/HR Manager Janet Calderon.
2. **MEETING PROTOCOL VIDEO** – City Clerk.
3. **PLEDGE OF ALLEGIANCE** – led by Councilmember Diaz.
4. **CONSENT CALENDAR**

It was moved by Vice Mayor Cloven, seconded by Councilmember Tillman, to approve the Consent Calendar items as submitted. (Passed 5-0).
 - (a) Approved the minutes of the City Council’s regular meeting of May 4, 2021. (City Clerk)
 - (b) Approved the Financial Demands and Obligations of the City. (Finance)
 - (c) Adopted Resolution No. 21-2021 Ordering the Levying of a Special Tax for FY 2021/22 within the High Street Permanent Road Division for the Repayment of Funds Advanced for the Reconstruction of the Bridge and Future Maintenance Pursuant to the Streets and Highway Code, Article 3, Section 117, et seq. (City Engineer)
 - (d) Adopted Resolution No. 22-2021 Confirming the Levy of Assessments for FY 2021/22 within the Lydia Lane Sewer Assessment District for the Repayment of Bonds Issued for the Construction of Municipal Sanitary Sewers. (City Engineer)
 - (e) Adopted Resolution No. 23-2021 Ordering the Levy of a Special Tax for FY 2021/22 within the Oak Street Permanent Road Division for the Repayment of Funds Advanced for the Reconstruction of the Bridge and Future Maintenance Pursuant to the Streets and Highway Code, Article 3, Section 1173, et seq. (City Engineer)
 - (f) Adopted Resolution No. 24-2021 Confirming the Levying of Assessments for FY 2021/22 within the Oak Street Sewer Assessment District for the Repayment of Bonds Issued for the Construction of Municipal Sanitary Sewers. (City Engineer)
 - (g) Received and Filed the Letter of Support for Assembly Bill 988, known as the Miles Hall Lifeline Act to Implement the National 988 Mental Health Emergency Response System in California. (City Manager)

5. RECOGNITIONS AND PRESENTATIONS

- (a) Proclamation recognizing the month of June as “LGBTQI+ Pride Month” in the City of Clayton. (Mayor Wolfe)

Mayor Wolfe briefly read the proclamation recognizing the month of June as “LGBTQI+ Pride Month” in the City of Clayton.

- (b) Recognition of Clayton Students Qualified for Finals of Odyssey of the Mind Competition. (Mayor Wolfe)

Mayor Wolfe introduced Coach Renee Culp of the Odyssey of the Mind to provide an overview of the program. Mayor Wolfe thanked the Mt. Diablo Elementary School Team consisting of Avila Bennett, Julia Dent, Emma Forrester, Keira Caldwell, Charlotte King and Hannah Laverick for their accomplishment.

6. REPORTS

- (a) Planning Commission – No meeting held.
- (b) Trails and Landscaping Committee – No meeting held.
- (c) City Manager/Staff

City Manager Reina Schwartz provided a brief update relating to COVID-19 restrictions with governing requirements coming from Contra Costa County and Cal-OSHA. Ms. Schwartz also noted the Pride Flag will be raised June 1 at three (3) designated flag poles in Clayton.

- (d) City Council - Reports from Council liaisons to Regional Committees, Commissions and Boards.

Councilmember Tillman attended the Mount Diablo Unified School District Anti-Bias and Anti-Racist (ABAR) subcommittee meeting, the Contra Costa County Mayors’ Conference, the Clayton Business and Community Association, Clayton Bocce Committee’s first bocce ball match, the Clayton Community Library Foundation Board meeting, the Mount Diablo Unified School District Anti-Bias and Anti-Racist (ABAR) goal setting session, the Cal Cities Legislative Session hosted by Assemblymember Tim Grayson.

Councilmember Diaz attended the East Bay Regional Communication System Authority board meeting, the Clayton Garden Club Annual Plant Sale, the White House Briefing via teleconference, acknowledged Clayton Police Officer Jarvis and Clayton Police Sergeant Shaw in assisting an unsheltered individual to a destination which he desired, acknowledged Clayton Police Sergeant Enea with coordinating assistance with various agencies in the search of a missing person who was eventually located in Pleasant Hill, communicated with citizens on various topics and met with the City Manager.

Councilmember Wan indicated “No Report”.

Vice Mayor Cloven attended the Transportation Partnership and Cooperation for Central Contra Costa (TRANSPAC) meeting, and has had several conversations with constituents on a variety of topics including Hazard Pay.

Mayor Wolfe attended the Contra Costa County Mayors' Conference, the grassroots organization meeting regarding SB9, produced a Welcome Video for the upcoming Diablo Valley Relay for Life event, met with the City Manager, met with the Vice Mayor, assisted in the search for the missing person and thanked the citizens that assisted in the search, emailed and called constituents regarding various topics including the safety of bocce ball players and the unsheltered individual who was in town.

7. PUBLIC COMMENT ON NON - AGENDA ITEMS

Ed Hartley Chair of the Clayton Bocce Committee provided a summary of the safety precautions regarding the Clayton Bocce Ball league.

Doug Jones Executive Board Member of Contra Costa Labor Council, expressed support for potential Hazard Pay for Clayton Safeway employees due to the COVID pandemic.

John Gomez member of United Food and Commercial Workers Local 5, also expressed support for potential Hazard Pay for Clayton Safeway employees.

Bambi Marien representative of United Food and Commercial Workers Local 5, requested the City Council to include Hazard Pay for Clayton Safeway employees on a future agenda.

Maria Carlos urged the City Council to consider Hazard Pay for Clayton Safeway employees.

Dee Vieira provided a brief meaning of each color on the new Inclusive Pride Flag.

Claire Courtney organizer with United Food and Commercial Workers Local 5, expressed support for potential Hazard Pay for Clayton Safeway employees.

Kelly Kick also expressed support of potential Hazard Pay for Clayton Safeway employees.

Scott Denslow thanked Officer Jarvis and Sergeant Shaw for the assistance with the unsheltered person. He also expressed support of potential Hazard Pay for Clayton Safeway employees.

Jonathan Lee expressed support of Clayton Bocce Ball and support of potential Hazard Pay for Clayton Safeway employees. He further expressed concerns of actions of a Councilmember.

Frank Gavidia thanked the Clayton Police Department for their service. He urged the City Council to support our police department.

Bassam Altwal thanked the Clayton Police Department and urged the City Council to consider potential Hazard Pay for Clayton Safeway employees.

Mayor Wolfe closed public comment.

8. **PUBLIC HEARINGS** – None.

9. **ACTION ITEMS**

- (a) Adopt a Resolution Awarding a Professional Services Agreement to MIG for Update to Clayton Housing Element and Appropriating up to \$330,000 from the Rainy Day Fund for the Project. (City Manager)

City Manager Reina Schwartz presented the report.

Dana Ayers Interim Community Development Director was available to answer any questions.

Ellie Fiore with MIG was also available to answer questions about the proposal.

Following questions by City Council, Mayor Wolfe opened the item to public comment; no comments were offered.

It was moved by Councilmember Diaz, seconded by Vice Mayor Cloven, to adopt Resolution No. 25-2021 Awarding a Professional Services Agreement to MIG, Inc. to Update to Clayton Housing Element, Authorizing the City Manager to Execute the Agreement and Appropriating up to \$330,000 from the Rainy Day Fund for the Project. (Passed 4-1; Wan, no).

- (b) Introduce and Waive First Reading of an Ordinance Amending Section 2.04.070 of the Clayton Municipal Code, Entitled “Order of Business” and Adopt a Resolution Establishing the Order of Business for City Council Meeting Agendas. (City Manager)

City Manager Reina Schwartz presented the report.

Following questions by City Council, Mayor Wolfe opened the item to public comment.

Frank Gavidia expressed support of this item and suggested no report be made at the Clayton Business and Community Association from the City Council or Planning Commission. He also suggested the City Council to consider adopting a Code of Conduct for the Planning Commission including Social Media platforms.

Bassam Altwal expressed support of this item.

Mayor Wolfe closed public comment.

It was moved by Councilmember Diaz, seconded by Councilmember Tillman, to Adopt Resolution No. 26-2021 Adopting and Amending the Order of Business Taken Up by the City Council at City Council meetings Pursuant to *Clayton Municipal Code* Section 2.04.070. (Passed 5-0).

10. **COUNCIL ITEMS**

Vice Mayor Cloven requested a future agenda item for Council discussion of the Hazard Pay Ordinance recently adopted by the City of Concord; and requested a discussion regarding implementation of a Vacancy Tax in Clayton.

Councilmember Diaz requested a future agenda item concerning the claim filed against the City regarding a tree that fell on a private citizens fence.

11. **CLOSED SESSION** – None.

12. **ADJOURNMENT**– on call by Mayor Wolfe, the City Council adjourned its meeting at 8:47 p.m.

The next regularly scheduled meeting of the City Council will be June 1, 2021.

#

Respectfully submitted,

Janet Calderon, City Clerk

APPROVED BY THE CLAYTON CITY COUNCIL

Carl Wolfe, Mayor

#



STAFF REPORT

TO: HONORABLE MAYOR AND COUNCILMEMBERS

FROM: JENNIFER GIANTVALLEY, ACCOUNTING TECHNICIAN

DATE: 06/01/2021

SUBJECT: FINANCIAL DEMANDS AND OBLIGATIONS OF THE CITY

RECOMMENDATION:

It is recommended the City Council, by minute action, approve the financial demands and obligations of the City for the purchase of services and goods in the ordinary course of operations.

Attached Report	Purpose	Date	Amount
Open Invoice Report	Accounts Payable	5/25/2021	\$ 157,968.09
Cash Requirements Report	Payroll, Taxes	5/19/2021	\$ 78,338.82
	Total Required		\$ 236,306.91

Attachments:

1. Open Invoice Report, dated 05/11/21 (5 pages)
2. Cash Requirements report PPE 05/16/21 (1 page)

City of Clayton

Open Invoice Report

Obligations

Vendor Name	Due Date	Invoice Date	Invoice Number	Invoice Description	Invoice Balance	Potential Discount	Discount Expires On	Net Amount Due
All City Management Services, Inc.								
All City Management Services, Inc.	5/5/2021	5/5/2021	70337	School crossing guard svcs 4/18/21-5/1/21	\$578.64	\$0.00		\$578.64
				<i>Totals for All City Management Services, Inc.</i>	<i>\$578.64</i>	<i>\$0.00</i>		<i>\$578.64</i>
American Fidelity Assurance Company								
American Fidelity Assurance Company	5/16/2021	5/16/2021	051621	FSA PPE 5/16/21	\$128.45	\$0.00		\$128.45
				<i>Totals for American Fidelity Assurance Company</i>	<i>\$128.45</i>	<i>\$0.00</i>		<i>\$128.45</i>
AT&T (CalNet3)								
AT&T (CalNet3)	5/22/2021	5/22/2021	16503355	Phones 4/22/21-5/21/21	\$1,276.35	\$0.00		\$1,276.35
				<i>Totals for AT&T (CalNet3)</i>	<i>\$1,276.35</i>	<i>\$0.00</i>		<i>\$1,276.35</i>
Bassam Atwal								
Bassam Atwal	5/18/2021	5/18/2021	PC4,5-21	Planning Commission Stipend April, May 202	\$240.00	\$0.00		\$240.00
				<i>Totals for Bassam Atwal</i>	<i>\$240.00</i>	<i>\$0.00</i>		<i>\$240.00</i>
Axon Enterprise, Inc								
Axon Enterprise, Inc	5/18/2021	5/18/2021	SI-1738493	Evidence.com licensing	\$16,779.60	\$0.00		\$16,779.60
				<i>Totals for Axon Enterprise, Inc</i>	<i>\$16,779.60</i>	<i>\$0.00</i>		<i>\$16,779.60</i>
Bay Area News Group								
Bay Area News Group	4/30/2021	4/30/2021	290869-043021	Legal ads April 2021	\$502.24	\$0.00		\$502.24
				<i>Totals for Bay Area News Group</i>	<i>\$502.24</i>	<i>\$0.00</i>		<i>\$502.24</i>
Best Best & Kreiger LLP								
Best Best & Kreiger LLP	5/17/2021	5/17/2021	905138	Legal svcs April 2021	\$9,574.00	\$0.00		\$9,574.00
Best Best & Kreiger LLP	5/17/2021	5/17/2021	905139	Project legal svcs April 2021	\$4,500.00	\$0.00		\$4,500.00
Best Best & Kreiger LLP	5/17/2021	5/17/2021	905140	Suppl legal svcs April 2021	\$177.47	\$0.00		\$177.47
Best Best & Kreiger LLP	5/17/2021	5/17/2021	905141	Suppl legal svcs April 2021	\$2,364.30	\$0.00		\$2,364.30
Best Best & Kreiger LLP	5/17/2021	5/17/2021	905142	Suppl legal svcs April 2021	\$899.10	\$0.00		\$899.10
Best Best & Kreiger LLP	5/17/2021	5/17/2021	905143	Suppl legal svcs April 2021	\$333.00	\$0.00		\$333.00
Best Best & Kreiger LLP	5/17/2021	5/17/2021	905144	Project legal svcs April 2021	\$499.50	\$0.00		\$499.50
				<i>Totals for Best Best & Kreiger LLP</i>	<i>\$18,347.37</i>	<i>\$0.00</i>		<i>\$18,347.37</i>
California State Disbursement Unit								
California State Disbursement Unit	5/18/2021	5/18/2021	OMB 0970-0154	Withholding Case # 200000001076542, Mill	\$120.00	\$0.00		\$120.00
				<i>Totals for California State Disbursement Unit</i>	<i>\$120.00</i>	<i>\$0.00</i>		<i>\$120.00</i>
CalPERS Health								
CalPERS Health	5/14/2021	5/14/2021	16433752	Medical June 2021	\$33,700.42	\$0.00		\$33,700.42
				<i>Totals for CalPERS Health</i>	<i>\$33,700.42</i>	<i>\$0.00</i>		<i>\$33,700.42</i>
CalPERS Retirement								
CalPERS Retirement	5/16/2021	5/16/2021	051621	Retirement PPE 5/16/21	\$16,746.47	\$0.00		\$16,746.47

City of Clayton

Open Invoice Report

Obligations

Vendor Name	Due Date	Invoice Date	Invoice Number	Invoice Description	Invoice Balance	Potential Discount	Discount Expires On	Net Amount Due
<i>Totals for CalPERS Retirement</i>					\$16,746.47	\$0.00		\$16,746.47
Caltronics Business Systems, Inc								
Caltronics Business Systems, Inc	5/12/2021	5/12/2021	3251543	Copier usage 4/18/21-5/17/21	\$258.25	\$0.00		\$258.25
<i>Totals for Caltronics Business Systems, Inc</i>					\$258.25	\$0.00		\$258.25
Cash								
Cash	5/5/2021	5/5/2021	050521	Petty cash reimbursement - Office supplies	\$133.98	\$0.00		\$133.98
<i>Totals for Cash.</i>					\$133.98	\$0.00		\$133.98
CCWD								
CCWD	5/6/2021	5/6/2021	K series	Water 3/3/21-5/4/21	\$18,977.82	\$0.00		\$18,977.82
<i>Totals for CCWD.</i>					\$18,977.82	\$0.00		\$18,977.82
Anthony Chippero								
Anthony Chippero	5/18/2021	5/18/2021	PC4,5-21	Planning Commission Stipend April, May 202	\$240.00	\$0.00		\$240.00
<i>Totals for Anthony Chippero</i>					\$240.00	\$0.00		\$240.00
Cintas Corporation								
Cintas Corporation	5/13/2021	5/13/2021	4084133574	PW uniforms through 5/13/21	\$50.72	\$0.00		\$50.72
Cintas Corporation	5/20/2021	5/20/2021	4084877688	PW uniforms through 5/20/21	\$50.72	\$0.00		\$50.72
<i>Totals for Cintas Corporation</i>					\$101.44	\$0.00		\$101.44
City of Concord								
City of Concord	5/6/2021	5/6/2021	88287	Live scan PD	\$114.00	\$0.00		\$114.00
<i>Totals for City of Concord</i>					\$114.00	\$0.00		\$114.00
Clayton Community Church								
Clayton Community Church	5/24/2021	5/24/2021	NP-TUP	Fee refund	\$398.00	\$0.00		\$398.00
<i>Totals for Clayton Community Church</i>					\$398.00	\$0.00		\$398.00
Comcast Business (PD)								
Comcast Business (PD)	5/1/2021	5/1/2021	121212844	PD internet April 2021	\$1,002.94	\$0.00		\$1,002.94
<i>Totals for Comcast Business (PD)</i>					\$1,002.94	\$0.00		\$1,002.94
Contra Costa County Public Works Dept								
Contra Costa County Public Works Dept	5/17/2021	5/17/2021	703931	Traffic signal maintenance April 2021	\$13.04	\$0.00		\$13.04
<i>Totals for Contra Costa County Public Works Dept</i>					\$13.04	\$0.00		\$13.04
CSI Forensic Supply								
CSI Forensic Supply	5/14/2021	5/14/2021	3206	Evidence supplies	\$137.42	\$0.00		\$137.42
<i>Totals for CSI Forensic Supply</i>					\$137.42	\$0.00		\$137.42
De Lage Landen Financial Services, Inc.								
De Lage Landen Financial Services, Inc.	4/23/2021	4/23/2021	72240667	Copier lease May 2021	\$1,004.48	\$0.00		\$1,004.48

City of Clayton

Open Invoice Report

Obligations

Vendor Name	Due Date	Invoice Date	Invoice Number	Invoice Description	Invoice Balance	Potential Discount	Discount Expires On	Net Amount Due
<i>Totals for De Lage Landen Financial Services, Inc.</i>					<u>\$1,004.48</u>	<u>\$0.00</u>		<u>\$1,004.48</u>
Terri Denslow								
Terri Denslow	5/18/2021	5/18/2021	PC4,5-21	Planning commission stipend April, May 202	\$240.00	\$0.00		\$240.00
<i>Totals for Terri Denslow</i>					<u>\$240.00</u>	<u>\$0.00</u>		<u>\$240.00</u>
Dillon Electric Inc								
Dillon Electric Inc	5/18/2021	5/18/2021	4395	Streelight repairs 5/17/21	\$439.88	\$0.00		\$439.88
Dillon Electric Inc	5/21/2021	5/21/2021	4398	Diagnose, repair Clock Tower	\$855.00	\$0.00		\$855.00
<i>Totals for Dillon Electric Inc</i>					<u>\$1,294.88</u>	<u>\$0.00</u>		<u>\$1,294.88</u>
Christopher Easley								
Christopher Easley	5/24/2021	5/24/2021	NP	Fee refund	\$199.00	\$0.00		\$199.00
<i>Totals for Christopher Easley</i>					<u>\$199.00</u>	<u>\$0.00</u>		<u>\$199.00</u>
Evan Felter								
Evan Felter	5/24/2021	5/24/2021	SDP	Fee refund	\$324.00	\$0.00		\$324.00
<i>Totals for Evan Felter</i>					<u>\$324.00</u>	<u>\$0.00</u>		<u>\$324.00</u>
Galaxy Press								
Galaxy Press	5/12/2021	5/12/2021	34378	Printing svcs - forms, envelopes	\$327.28	\$0.00		\$327.28
<i>Totals for Galaxy Press</i>					<u>\$327.28</u>	<u>\$0.00</u>		<u>\$327.28</u>
Frank Gavidia								
Frank Gavidia	5/18/2021	5/18/2021	PC4,5-21	Planning commission stipend April, May 202	\$240.00	\$0.00		\$240.00
<i>Totals for Frank Gavidia</i>					<u>\$240.00</u>	<u>\$0.00</u>		<u>\$240.00</u>
ICMA Retirement Corporation								
ICMA Retirement Corporation	5/16/2021	5/16/2021	051621	457 Plan contributions PPE 5/16/21	\$2,209.62	\$0.00		\$2,209.62
<i>Totals for ICMA Retirement Corporation</i>					<u>\$2,209.62</u>	<u>\$0.00</u>		<u>\$2,209.62</u>
J&R Floor Services								
J&R Floor Services	5/31/2021	5/31/2021	Five2021	Janitorial services May 2021	\$4,988.00	\$0.00		\$4,988.00
<i>Totals for J&R Floor Services</i>					<u>\$4,988.00</u>	<u>\$0.00</u>		<u>\$4,988.00</u>
Jocelyn E Roland, PhD, APBB								
Jocelyn E Roland, PhD, APBB	5/14/2021	5/14/2021	18986	PD pre-employment psychological screening	\$450.00	\$0.00		\$450.00
<i>Totals for Jocelyn E Roland, PhD, APBB</i>					<u>\$450.00</u>	<u>\$0.00</u>		<u>\$450.00</u>
Tatiana McHugh								
Tatiana McHugh	5/24/2021	5/24/2021	SDP	Fee refund	\$331.00	\$0.00		\$331.00
<i>Totals for Tatiana McHugh</i>					<u>\$331.00</u>	<u>\$0.00</u>		<u>\$331.00</u>
Edward Miller III								
Edward Miller III	5/18/2021	5/18/2021	PC4,5-21	Planning commission stipend April, May 202	\$120.00	\$0.00		\$120.00

City of Clayton
Open Invoice Report
Obligations

Vendor Name	Due Date	Invoice Date	Invoice Number	Invoice Description	Invoice Balance	Potential Discount	Discount Expires On	Net Amount Due
Totals for Edward Miller III					\$120.00	\$0.00		\$120.00
Mortensen Roofing And Gutters, Inc								
Mortensen Roofing And Gutters, Inc	5/24/2021	5/24/2021	BP80-2021	C&D refund	\$1,000.00	\$0.00		\$1,000.00
Totals for Mortensen Roofing And Gutters, Inc					\$1,000.00	\$0.00		\$1,000.00
MPA								
MPA	4/30/2021	4/30/2021	April2021	Life/LTD April 2021	\$1,645.18	\$0.00		\$1,645.18
MPA	5/10/2021	5/10/2021	May2021	Life/LTD May 2021	\$1,645.18	\$0.00		\$1,645.18
Totals for MPA.					\$3,290.36	\$0.00		\$3,290.36
Nationwide								
Nationwide	5/16/2021	5/16/2021	051621	457 Plan contributions PPE 5/16/21	\$500.00	\$0.00		\$500.00
Totals for Nationwide					\$500.00	\$0.00		\$500.00
Neopost (add postage)								
Neopost (add postage)	5/14/2021	5/14/2021	051421	Postage	\$300.00	\$0.00		\$300.00
Totals for Neopost (add postage)					\$300.00	\$0.00		\$300.00
Occupational Health Centers of California								
Occupational Health Centers of Califor	5/12/2021	5/12/2021	71331089	PD pre-employment exam	\$688.50	\$0.00		\$688.50
Totals for Occupational Health Centers of California					\$688.50	\$0.00		\$688.50
Michael Orfanos								
Michael Orfanos	5/24/2021	5/24/2021	SDP	Fee refund	\$331.00	\$0.00		\$331.00
Totals for Michael Orfanos					\$331.00	\$0.00		\$331.00
Pacific Office Automation								
Pacific Office Automation	5/19/2021	5/19/2021	215112	Copier usage 4/20/21-5/19/21	\$59.76	\$0.00		\$59.76
Pacific Office Automation	5/13/2021	5/13/2021	214980	Copier lease pmt 50 of 60	\$106.58	\$0.00		\$106.58
Totals for Pacific Office Automation					\$166.34	\$0.00		\$166.34
Paychex								
Paychex	5/5/2021	5/5/2021	1361153	Time and Attendance payroll May 2021	\$130.20	\$0.00		\$130.20
Paychex	5/16/2021	5/16/2021	2021051701	Payroll fees PPE 5/16/21	\$226.54	\$0.00		\$226.54
Totals for Paychex.					\$356.74	\$0.00		\$356.74
Psychological Resources Inc.								
Psychological Resources Inc.	5/2/2021	5/2/2021	8547	PD pre-employment evaluation	\$5,765.00	\$0.00		\$5,765.00
Totals for Psychological Resources Inc.					\$5,765.00	\$0.00		\$5,765.00
Raney Planning & Management, Inc.								
Raney Planning & Management, Inc.	5/11/2021	5/11/2021	2040E-11	Clayton Comm Church services April 2021	\$3,179.82	\$0.00		\$3,179.82
Totals for Raney Planning & Management, Inc.					\$3,179.82	\$0.00		\$3,179.82
Reliance Realty Group								

City of Clayton

Open Invoice Report

Obligations

Vendor Name	Due Date	Invoice Date	Invoice Number	Invoice Description	Invoice Balance	Potential Discount	Discount Expires On	Net Amount Due
Reliance Realty Group	5/24/2021	5/24/2021	CAP0230	C&D refund	\$2,000.00	\$0.00		\$2,000.00
				<i>Totals for Reliance Realty Group</i>	<i>\$2,000.00</i>	<i>\$0.00</i>		<i>\$2,000.00</i>
Site One Landscape Supply, LLC								
Site One Landscape Supply, LLC	5/3/2021	5/3/2021	108673727-001	Irrigation parts	\$176.37	\$0.00		\$176.37
				<i>Totals for Site One Landscape Supply, LLC</i>	<i>\$176.37</i>	<i>\$0.00</i>		<i>\$176.37</i>
Staples Business Credit								
Staples Business Credit	4/25/2021	4/25/2021	1635113761	Office supplies	\$242.84	\$0.00		\$242.84
				<i>Totals for Staples Business Credit</i>	<i>\$242.84</i>	<i>\$0.00</i>		<i>\$242.84</i>
Texas Life Insurance Company								
Texas Life Insurance Company	5/17/2021	5/17/2021	SM0F1B2021041300	Supplemental life insurance	\$53.00	\$0.00		\$53.00
				<i>Totals for Texas Life Insurance Company</i>	<i>\$53.00</i>	<i>\$0.00</i>		<i>\$53.00</i>
US Bank - Corp Pmt System CalCard								
US Bank - Corp Pmt System CalCard	4/22/2021	4/22/2021	042221	Stmt end 4/22/21	\$8,254.86	\$0.00		\$8,254.86
				<i>Totals for US Bank - Corp Pmt System CalCard</i>	<i>\$8,254.86</i>	<i>\$0.00</i>		<i>\$8,254.86</i>
Voyager - CalCard								
Voyager - CalCard	5/24/2021	5/24/2021	052421	Fuel - stmt end 5/24/21	\$3,991.83	\$0.00		\$3,991.83
Voyager - CalCard	4/24/2021	4/24/2021	042421	Fuel - stmt end 4/24/21	\$3,590.50	\$0.00		\$3,590.50
				<i>Totals for Voyager - CalCard</i>	<i>\$7,582.33</i>	<i>\$0.00</i>		<i>\$7,582.33</i>
Workers.com								
Workers.com	5/14/2021	5/14/2021	129839	Seasonal workers week end 5/9/21	\$2,439.51	\$0.00		\$2,439.51
				<i>Totals for Workers.com</i>	<i>\$2,439.51</i>	<i>\$0.00</i>		<i>\$2,439.51</i>
Zee Medical Company								
Zee Medical Company	5/14/2021	5/14/2021	724607489	PW Restock, organize first aid cabinet	\$116.73	\$0.00		\$116.73
				<i>Totals for Zee Medical Company</i>	<i>\$116.73</i>	<i>\$0.00</i>		<i>\$116.73</i>
GRAND TOTALS:					\$157,968.09	\$0.00		\$157,968.09

CASH REQUIREMENTS

CASH REQUIRED FOR NEGOTIABLE CHECKS &/OR ELECTRONIC FUNDS TRANSFERS (EFT) FOR CHECK DATE 05/19/21: \$78,338.82

IMPORTANT COVID-19 INFORMATION: If you filed IRS Form 7200, please notify your Paychex representative to avoid owing a balance at the end of the quarter and ensure your Form 941 is accurate.

TRANSACTION SUMMARY

SUMMARY BY TRANSACTION TYPE -	TOTAL ELECTRONIC FUNDS TRANSFER (EFT)	78,338.82
	CASH REQUIRED FOR NEGOTIABLE CHECKS &/OR EFT	78,338.82
	TOTAL REMAINING DEDUCTIONS / WITHHOLDINGS / LIABILITIES	14,694.97
	CASH REQUIRED FOR CHECK DATE 05/19/21	93,033.79

TRANSACTION DETAIL

ELECTRONIC FUNDS TRANSFER - Your financial institution will initiate transfer to Paychex **at or after 12:01 A.M.** on transaction date.

<u>TRANS. DATE</u>	<u>BANK NAME</u>	<u>ACCOUNT NUMBER</u>	<u>PRODUCT</u>	<u>DESCRIPTION</u>		BANK DRAFT AMOUNTS & OTHER TOTALS
05/18/21	BANK OF AMERICA, NA	xxxxxxx799	Direct Deposit	Net Pay Allocations	58,458.99	
05/18/21	BANK OF AMERICA, NA	xxxxxxx799	Direct Deposit	Deductions with Direct Deposit	603.50	59,062.49
05/18/21	BANK OF AMERICA, NA	xxxxxxx799	Readychex®	Check Amounts	1,485.50	1,485.50
				EFT FOR 05/18/21		60,547.99
05/19/21	BANK OF AMERICA, NA	xxxxxxx799	Taxpay®	Employee Withholdings		
				Medicare	1,254.83	
				Fed Income Tax	11,210.77	
				CA Income Tax	4,070.41	
				Total Withholdings	16,536.01	
				Employer Liabilities		
				Medicare	1,254.82	
				Total Liabilities	1,254.82	17,790.83
				EFT FOR 05/19/21		17,790.83
				TOTAL EFT		78,338.82

REMAINING DEDUCTIONS / WITHHOLDINGS / LIABILITIES - Paychex does not remit these funds. You must ensure accurate and timely payment of applicable items.

<u>TRANS. DATE</u>	<u>BANK NAME</u>	<u>ACCOUNT NUMBER</u>	<u>PRODUCT</u>	<u>DESCRIPTION</u>		<u>TOTAL</u>
05/19/21	Refer to your records for account information		Payroll	Employee Deductions		
				1959 Surv. Ben.	9.30	
				414h2 EE PD ER Cont.	272.27	
				414h2 Pretax	6,611.66	
				457 EE Catch Up	484.62	
				Accident Post	16.83	
				Accident Pre	123.09	



AGENDA REPORT

TO: HONORABLE MAYOR AND COUNCIL MEMBERS

FROM: REINA J. SCHWARTZ, CITY MANAGER

DATE: JUNE 1, 2021

SUBJECT: ADOPTING AN ORDINANCE AMENDING SECTION 2.04.070 OF THE CLAYTON MUNICIPAL CODE, ENTITLED "ORDER OF BUSINESS"

RECOMMENDATION

Staff recommends that the City Council conduct a Second Reading and Adoption of an Ordinance Amending Section 2.04.070 of the Clayton Municipal Code, entitled "Order of Business".

BACKGROUND

On a periodic basis, city staff and the City Attorney review the Clayton Municipal Code to determine areas that may need to be updated. Earlier this year, the City Manager brought forward at Council's request a discussion of where in the City Council meeting agenda was the best place for Public Comment on Matters Not on the Agenda. At that time, the Council did not direct any specific changes to the order of items in the Agenda. However, as a result of that question, both staff and the City Attorney have reviewed that section of the Clayton Municipal Code (2.040.070) and recommend some clean-up and process improvement changes.

DISCUSSION

At the City Council meeting on May 18, 2021, the City Council introduced and waived the First Reading of an Ordinance making amendments to Clayton Municipal Code related to the Order of Business for City Council Agendas. The change to the Ordinance involved removing the language regarding the specific Order of Business for Agendas and substituting language indicating that the Order of Business will be adopted by Resolution going forward. At that same meeting, the City Council adopted a Resolution establishing the current Order of Business for Agendas.

While the Ordinance amending Section 2.04.070 of the Clayton Municipal Code was introduced at the May 18, 2021 meeting, it must now have a Second Reading and be adopted in order to become effective. Staff recommends approval of the Ordinance revising Section 2.04.070.

FISCAL IMPACTS

No fiscal impact.

ATTACHMENTS

Attachment 1: Ordinance

ORDINANCE NO. _____

**AN ORDINANCE AMENDING SECTION 2.04.070 OF THE CLAYTON
MUNICIPAL CODE, ENTITLED "ORDER OF BUSINESS"**

**THE CITY COUNCIL
City of Clayton, California**

**THE CITY COUNCIL OF THE CITY OF CLAYTON DOES HEREBY FIND AS
FOLLOWS:**

WHEREAS Clayton Municipal Code section 2.04.070 authorizes the City Council to formally change the order that it takes up its business at a Council meeting, by duly authorized resolution of the Council; and

WHEREAS the Council wishes to formally change the order of business set forth in section 2.04.070 to more accurately reflect the current priorities and needs of the Council and the departments and groups that report at meetings.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CLAYTON,
CALIFORNIA DOES ORDAIN AS FOLLOWS:**

SECTION 1. The above recitals are true and correct and are hereby incorporated into this Ordinance.

SECTION 2. **Amendment to Clayton Municipal Code Section 2.04.070**
Clayton Municipal Code section 2.04.070, entitled "Order of Business," is hereby amended to read in its entirety as follows:

All meetings of the council shall be open to the public. The business of the council shall be taken up for consideration and disposition as set forth by duly adopted resolution of the City Council.

SECTION 3. Severability. If any section, subsection, sentence, clause, or phrase of this Ordinance, or the application thereof to any person or circumstances, is held to be unconstitutional or to be otherwise invalid by any court of competent jurisdiction, such invalidity shall not affect other provisions or clauses of this Ordinance or application thereof which can be implemented without the invalid provisions, clause, or application, and to this end such provisions and clauses of the Ordinance are declared to be severable.

SECTION 4. Conflicting Ordinances Repealed. Any Ordinance or part thereof, or regulations in conflict with the provisions of this Ordinance, are hereby repealed. The provisions of this Ordinance shall control with regard to any provision of the Clayton Municipal Code that may be inconsistent with the provisions of this Ordinance.

SECTION 5. Effective Date and Publication. This Ordinance shall become effective thirty (30) days from and after its passage. Within fifteen (15) days after the

passage of the Ordinance, the City Clerk shall cause it to be posted in three (3) public places heretofore designated by resolution by the City Council for the posting of ordinances and public notices. Further, the City Clerk is directed to cause the amendments adopted in Section 2 of this Ordinance to be codified into the City of Clayton Municipal Code.

The foregoing Ordinance was introduced and first read at a regular noticed public meeting of the City Council of the City of Clayton held on May 18, 2021.

Passed, adopted, and ordered posted by the City Council of the City of Clayton at a regular public meeting held on June 1, 2021 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

THE CITY COUNCIL OF CLAYTON, CA

Carl Wolfe, Mayor

ATTEST:

Janet Calderon, City Clerk

APPROVED AS TO FORM

APPROVED BY ADMINISTRATION

Malathy Subramanian, City Attorney

Reina Schwartz, City Manager

SUMMER CONTRERAS
for
"Doing the Right Thing"
at
Mt. Diablo Elementary School
by exemplifying great "Responsibility"
May 2021

PARKER GABRIEL
for
"Doing the Right Thing"
at
Mt. Diablo Elementary School
by exemplifying great "Responsibility"
May 2021

MALIA QUESADA
for
"Doing the Right Thing"
at
Diablo View Middle School
by exemplifying great "Responsibility"
May 2021

BROOKE ROONEY
for
"Doing the Right Thing"
at
Diablo View Middle School
by exemplifying great "Responsibility"
May 2021

declaring

June

as

"Portuguese National Heritage Month"

WHEREAS, in September 1542, Portuguese explorer Juan Rodriguez Cabrillo sailed a ship into San Diego Bay and became the first European to explore the land now known as California and is credited with numerous coastal discoveries; and

WHEREAS, the first Portuguese settlers came from the Azores Islands; contributing substantially to setting up agricultural operations, especially dairy, vegetable, and fruit farms; and

WHEREAS, historically, California has been a popular destination for immigrants from the Azores Islands, creating strong cultural ties between the two regions; and

WHEREAS, in 1979, the Center for Portuguese Studies at the University of California, Santa Barbara, was founded for the purpose of promoting and developing Portuguese studies in California and the United States; and

WHEREAS, among the great Portuguese Americans who have contributed significantly to this country are: composer John Philip Sousa, best known for composing "Stars and Stripes Forever"; poet Emma Lazarus best known for her sonnet about the Statue of Liberty, "The New Colossus"; architect William L. Pereira, best known for designing the Transamerica Pyramid in San Francisco; singer and actress Carmen Miranda, and including the entertainment industry, the most notable of whom are Mary Astor, Tom Hanks, Joe Perry and James Franco; and

WHEREAS, The Portuguese Heritage Society of California designated the second Saturday of June as a day to celebrate Portuguese culture through music, dance, art, cooking, parades, and other festivities.

Now, Therefore, I, Carl Wolfe, Mayor, and on behalf of the entire Clayton City Council, proclaim June, as "Portuguese National Heritage Month" in Clayton, CA and I call this observance to the attention of all of our citizens.



AGENDA REPORT

TO: HONORABLE MAYOR AND COUNCIL MEMBERS

FROM: Dana Ayers, AICP, Interim Community Development Director

DATE: June 1, 2021

**SUBJECT: OAK CREEK CANYON PROJECT, APPEAL OF PLANNING COMMISSION
RECOMMENDATION OF DENIAL**

RECOMMENDATION

Staff recommends that the City Council continue the public hearing on this item to June 29, 2021.

BACKGROUND

On February 23, 2021, the Planning Commission held a public hearing and considered written and spoken testimony on the Oak Creek Canyon Project, a proposed residential development of six single-family houses on 9 acres in Clayton (Project). Land use approvals requested by West Coast Home Builders, Inc. (Applicant), for the Project include a General Plan Map Amendment (GPA-02-18), Zoning Map Amendment (ZOA-01-18), Marsh Creek Road Specific Plan Map Amendment (SPA-01-18), Vesting Tentative Map (MAP-01-16), Development Plan Review (DP-01-19) and Tree Removal Permit (TRP-31-19). The 9-acre site of the proposed Project is on the north side of Marsh Creek Road at its intersection with Diablo Parkway, Assessor's Parcel No. 119-070-008.

On March 9, 2021, Planning Commission adopted Resolution No. 01-2021, making findings and recommending that the City Council deny without prejudice the Applicant's request for land use approvals to construct the Project. The Applicant subsequently filed an appeal of the Planning Commission's decision.

DISCUSSION

Staff and the Applicant have been working to resolve questions and concerns raised by the Planning Commission at their public hearing on the Project. To allow additional time for these discussions to occur, Staff and the Applicant are amenable to a continuance of the item to the special City Council meeting of June 29, 2021. Other than continuing the item, no other discussion or action is requested of the City Council at this time.

ATTACHMENTS

None



AGENDA REPORT

TO: HONORABLE MAYOR AND COUNCIL MEMBERS

FROM: REINA J. SCHWARTZ, CITY MANAGER

DATE: JUNE 1, 2021

SUBJECT: DISCUSSION REGARDING POTENTIAL HAZARD PAY ORDINANCE

RECOMMENDATION

Staff recommends that the City Council discuss and provide direction to staff as needed.

BACKGROUND

At the City Council meeting of May 18, 2021, Vice Mayor Cloven requested that information be brought back to the City Council for discussion regarding a potential Hazard Pay Ordinance.

DISCUSSION

Attached for the City Council's information is the Staff Report and adopted Ordinance from the City of Concord. Concord approved a hazard pay requirement for large grocery stores on March 30, 2021.

FISCAL IMPACTS

Unknown.

ATTACHMENTS

Attachment 1: Concord Staff Report on Hazard Pay Ordinance

Attachment 2: Concord Adopted Hazard Pay Ordinance



Staff Report

Date: March 30, 2021

To: City Council

From: Valerie J. Barone, City Manager

Prepared by: Guy Bjerke, Director – Economic Development & Base Reuse
Guy.Bjerke@cityofconcord.org
(925) 671-3076

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.

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^{ths} 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

Concord Grocery Stores - Sorted by Gross Receipts - 2021

DBA	Business name	Owner Name 1	Bus address
Safeway Stores, Inc. #1192		Denningham, Wayne	4309 CLAYTON RD
Safeway Stores, Inc. #955		Denningham, Wayne	2600 WILLOW PASS RD
Trader Joes #60		Bane, Dan	1150 CONCORD AVE 200
Trader Joes #83		Bane, Dan	785 OAK GROVE RD
Lucky #705	Save Mart Supermarkets	Pesco, Nicole	5190 CLAYTON RD
99 Ranch Market	Welcome Market Inc	Chen, Ho Yuan	1795 WILLOW PASS RD
Food Maxx #481	Save Mart Supermarkets	McGarry, Christopher	1751 MONUMENT BLVD
Food Maxx #418	Savemart Supermarkets	Junquero, Steven	4505 CLAYTON RD
365 By Whole Foods Market	Whole Foods Market California, Inc.	Whole Foods Market California, Inc.	2085 DIAMOND BLVD SUITE 125
Smart Foodservice Warehouse Stores # 510	Cash & Carry Stores LLC	Cash & Carry Stores LLC	2050 MONUMENT BLVD
D&T Market Inc	Clayton Valley Grocery Outlet	Smith, Darrell	5410 YGNACIO VALLEY RD
Las Montanas Supermarket	Manuel Gomez Corporation	Gomez, Manuel	2691 MONUMENT BLVD A
Concord Grocery Outlet	Concord Grocery Outlet	Sharma, Rakivash	1840 WILLOW PASS RD
Bonfare Market #32	Ramana, Inc	Ramana, Inc	3598 WILLOW PASS RD
S & S Fast & Easy		S & S Fast & Easy	3200 WILLOW PASS RD
Concord Han-kook Market	Concord Korean Market Inc	Yi, Jin Hee	1450 MONUMENT BLVD C
Super Tehran Market Inc		Rouhani, Ellie	1112 MEADOW LN
Afghan Market	Afghan Market	Tamim, Mojaddidi Mohammad	1500 MONUMENT BLVD F12
Panjabi Bazaar		Ark, Jasvir	1810 SALVIO ST
Fast And Easy Liquor	Asad And Dilshad Mohammadali	Mohammadali, Asad A	3200 WILLOW PASS RD
Prime Time Nutrition #573	Nutrition Fundamental	Castaneda, Manuel	1955 MONUMENT BLVD # 4F
Bonfare Market#28		Bonfare Market#28	2800 GRANT ST
Concord Han-kook Market		Yi, Jin Hee & Kwang	1450 MONUMENT BLVD D
Mas Primos Market		Saleh, Kayed M	1301 GALINDO ST
Mera Khana	Brilsam Inc.	Boustani Banga, Sana	4743 Clayton RD # 5
Food Source Arbat LLC		Food Source Arbat LLC	4375 Clayton RD # H
Concord Craft	Concord Craft	Gowani, Mansoor	1701 FARM BUREAU RD
Cedar Market & Bakery		Dennawi, Samir	3509 CLAYTON RD
Oriental Food Market		Gaerlan, Sherrie	3428 CLAYTON RD
S. T. & T.		Tomasz, Szarmach	1984 MONUMENT BLVD
One 99		Ivanov, Iouri	2718 RICHARD AVE

ORDINANCE NO. 21-XX**AN URGENCY ORDINANCE ESTABLISHING HAZARD PAY
FOR GROCERY STORE RETAIL WORKERS**

WHEREAS, the COVID-19 pandemic has led to the current state of emergency in local emergency in the City of Concord (“City”).

WHEREAS, on March 10, 2020, due to the COVID-19 pandemic, the Contra Costa County Board of Supervisors proclaimed the existence of a local emergency throughout Contra Costa County (County Resolution No. 2020/92). On March 13, 2020 the Director of Emergency Services of the City of Concord, designated as the City Manager, proclaimed a local emergency, which the City Council of the City of Concord (“City Council”) ratified via Resolution No. 20-12 on March 19, 2020 (“City Emergency Order”).

WHEREAS, on March 19, 2020, California Governor Gavin Newsom issued a “Stay Home - Stay Healthy” 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 and emergency services, the “Stay Home - Stay Healthy” proclamation identified grocery stores as essential business sectors critical to protecting the health and well-being of all Californians and designated their workers as essential critical infrastructure workers; and Governor Newsom extended the “Safer at Home” emergency order on December 3, 2020 as a result of the critically low availability of Intensive Care Unit beds.

WHEREAS, the COVID-19 virus has broadly spread throughout California and remains a significant health risk to the community, especially members of our most vulnerable populations; as of March 9, 2021, there have been over 524,000 deaths due to COVID-19 across the country, including 125 in the City of Concord and 712 in Contra Costa County.

WHEREAS, the virus is spreading rapidly across the region with many clusters arising within grocery retail stores. Grocery retail stores remain a critical piece of infrastructure in the fight against the COVID-19 virus and in protecting the City’s food supply chain.

WHEREAS, grocery retail stores are the primary points of distribution for food and other daily necessities for the residents of the City of Concord and are therefore essential to the vitality of our community.

WHEREAS, the availability of grocery retail stores is fundamental to the health of the community and is made possible during the COVID-19 emergency because grocery retail workers are on the frontlines of this devastating pandemic supporting public health, safety, and welfare by working in hazardous situations.

WHEREAS, grocery retail workers have been unable to work from home, including those with children engaged in distance learning, and have therefore likely incurred additional childcare expenses; and turnover, inability to pay for housing and increased childcare costs as a result of school closures and other necessities could become an immediate problem for certain grocery retail workers if they are not given immediate financial relief.

WHEREAS, according to an October 29, 2020 study published in the journal Occupational and Environmental Medicine, a comprehensive test of workers at one grocery store resulted in 20 percent of grocery retail workers testing positive for COVID-19, even though three of four workers were asymptomatic.

WHEREAS, according to an August 2020 article in The Washington Post, at least 130 U.S. grocery retail workers had died from COVID-19, and more than 8,200 have tested positive for the virus.

WHEREAS, according to a January 2021 article in The Washington Post, the United Food and Commercial Workers estimates 109 of its members have died to from COVID-19 and more than 20,000 have tested positive.

WHEREAS, despite the efforts of grocery stores to take precautions and keep customers and employees safe, including requiring masks, social distancing, and sanitizing cash registers, food conveyor belts, and shopping carts, there have been highly publicized outbreaks of COVID-19 among grocery retail workers in the San Francisco Bay Area, and the health threats that these grocery retail workers face cannot be overstated.

WHEREAS, grocery retail workers face increased exposure risk due to inability to consistently practice physical distancing in the workplace, with a November 2020 Brookings Institution analysis¹ reporting that grocery retail workers with direct customer exposure were five times more likely to test positive for the COVID-19 virus than those employees without such exposure.

WHEREAS, the United States' largest grocery retail companies have earned record profits during the pandemic, and this increase in profit has not transferred to workers, according to the above-referenced Brookings Institution analysis.

WHEREAS, during the early stages of the COVID-19 pandemic, many grocery companies provided "Hero Pay" which was generally implemented as either a temporary hourly wage increase or a one-time bonus for certain grocery retail workers.

WHEREAS, Hero Pay has generally phased out or terminated; however, according to the Brookings Institute, the top grocery retail companies earned on average an extra \$16.7 billion in profit in 2020 compared to 2019.

WHEREAS, premium pay, paid in addition to regular wages, is an established type of compensation for employees performing hazardous duty or work involving physical hardship that can cause extreme physical discomfort and distress.

WHEREAS, grocery retail workers working during the COVID-19 pandemic merit additional compensation because they are performing hazardous duty due to the significant risk of exposure to the COVID-19 virus, have been working under these hazardous conditions for months, and will continue to face safety risks as the virus presents an ongoing threat for an uncertain period, potentially resulting in subsequent waves of infection.

WHEREAS, establishing an immediate requirement for grocery stores to provide premium pay to grocery retail workers protects public health, supports stable incomes, and promotes job retention by ensuring that grocery retail workers are compensated for the substantial risks, efforts,

¹ 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." The Brookings Institution. <https://www.brookings.edu/essay/windfall-profits-and-deadly-risks/> (date of access: 3/10/2021).

and expenses they are undertaking to provide essential services in a safe and reliable manner during the COVID-19 pandemic.

WHEREAS, this Ordinance is a temporary Hazard Pay ordinance intended to compensate certain grocery retail workers at high risk of COVID-19 infection within the workplace during the COVID-19 pandemic outbreak, and thus to serve the public peace, health, safety, and public welfare.

WHEREAS, to protect the food supply chain and the public health and safety, the City of Concord must take steps to guard against turnover and ensure that grocery stores in Concord have well-trained, consistent, and stable staffing.

WHEREAS, Government Code Section 36937 authorizes the adoption of an urgency ordinance for the “immediate preservation of public peace, health or safety,” as long as such ordinance contains a declaration of the facts constituting the urgency and it is passed by a four-fifths (4/5) vote of the City Council; and,

WHEREAS, for reasons set forth above, this Ordinance is declared by the City Council to be necessary for preserving the public peace, health, safety, welfare and to avoid a current, immediate and direct threat thereto, and the recitals above taken together constitute the City Council’s statements of the reasons constituting such necessity and urgency; and

WHEREAS, by the staff report, public testimony, and documentary evidence presented at the February 2, 2021 regular City Council meeting, the City Council referred the issue to the Policy Development and Internal Operations Committee (PD&IO); and the PD&IO Committee met on February 12, 2021 and March 2, 2021 to discuss the issue, took public comment, and formulated a recommendation for consideration by the City Council.

WHEREAS, by the staff report, public testimony, and documentary evidence presented at the March 30, 2021 special City Council meeting, the City Council has been provided with information upon which the findings and actions set forth in this Ordinance is based.

THE CITY COUNCIL OF THE CITY OF CONCORD DOES ORDAIN AS FOLLOWS:

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

SECTION 2. CEQA. Adoption of this Ordinance is exempt from review under the California Environmental Quality Act (“CEQA”) pursuant to the following, each a separate and independent basis: California Public Resources Code Section 21080(b)(4) and CEQA Guidelines Section 15269(c) because adoption of this Ordinance is to prevent or mitigate an emergency; CEQA Guidelines Section 15061(b)(3) because it because this Ordinance only regulates evictions and rents and it can be seen with certainty that is no potential for it to cause a significant effect on the environment; CEQA Guidelines Section 15183 because this Ordinance is consistent with the City’s General Plan policies and goals and/or CEQA Guidelines Section 15378(b) because this Ordinance is not a project but an administrative action that will not result in direct or indirect physical changes to the environment.

SECTION 3. Authority; Term; Extension. This Ordinance is enacted pursuant to the City of Concord’s general police powers, Section 7 of Article XI of the California Constitution, and California Government Code Sections 8634, 36934 and 36937, the Governor’s Proclamation of a State Emergency dated March 4, 2020, City Emergency Order, and any other rights or obligations under local, Contra Costa County, State of California, and Federal law, including the State and federal constitutions. This Ordinance is effective immediately and shall expire as set forth in Section 8(b) (Duration of Hazard Pay). All references to the “term” of this Ordinance shall mean the effective date hereof through the expiration hereof as set forth in Section 8(b) (Duration of Hazard Pay).

SECTION 4. Title and Purpose.

a. This Ordinance shall be known as the “Grocery Retail Worker Hazard Pay Ordinance.” Large Grocery Stores are a vibrant and integral part of the public infrastructure during the ongoing pandemic.

b. The grocery retail workers of Concord have continued to report to work and to serve their communities in the face of an unprecedented pandemic. Each day these workers risk their lives and the health of their families without any extra benefits or wages in order to keep the food supply chain operating.

c. The purpose of this Ordinance is to justly compensate grocery retail workers for the clear and present dangers of doing their jobs as essential workers during the pandemic by requiring their employers to provide hazard pay. The City has an interest in ensuring the welfare of its workers and the continued operation of its food supply chain.

d. Through this Ordinance, the City seeks to sustain the stability of the food and health supply chain through supporting the grocery retail workers who continue to work during the pandemic.

SECTION 5. Definitions. The following shall apply to this Ordinance:

“**Base Wage**” shall mean the hourly wage paid to Covered Employees as of the effective date of this Ordinance less Hazard Pay owed under this Ordinance or other premium hourly rate already paid to compensate Covered Employees for working during the pandemic (referred to herein as “employer-initiated hazard pay”).

“**City**” shall mean the City of Concord.

“**Covered Employer**” shall mean:

a. Any Person who (a) directly or indirectly or through an agent or any other Person owns or operates a Large Grocery Store and employs or exercises control over the wages, hours or working conditions of any Covered Employee; and (b) employs 300 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 300 employees in the aggregate, regardless of where those employees are employed. .

b. To determine the number of employees, the calculation shall be based upon:

1. The actual number per calendar week of employees who worked for compensation during the pay period preceding the effective date of this Ordinance; and

2. All employees who worked for compensation shall be counted, including but not limited to:

- i. Employees who are not covered by this Ordinance;
- ii. Employees who worked within the geographic limits of the City;

- iii. Employees who worked outside the geographic limits of the City; and
- iv. 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.

“Covered Employee” shall mean any person who: (a) in a calendar week performs at least two hours of work within the geographic boundaries of the City for a Covered Employer; and (b) qualifies as an employee entitled to payment of a minimum wage from any 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, and the City of Concord’s Minimum Wage Ordinance. It is a Covered Employer’s responsibility to demonstrate, through factual support and accompany evidence that a Complainant can understand, whether or not certain employees do not qualify as Covered Employees (**“Coverage Records”**).

“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.

"Franchisee" means a Person to whom a Franchise is offered or granted.

"Franchisor" means a Person who grants a franchise to another Person.

“Holiday Premium” shall mean the hourly wage paid to Covered Employees for performing work during a holiday or holiday season.

“Hazard Pay” shall mean an additional **\$XX.00** per hour wage bonus in addition to the Covered Employee’s Base Wage or Holiday Premium wage for each hour worked for any pay period during the duration of this Ordinance.

“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 (California Code of Regulations, Title 8, Section 11040).

“**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.

“**Large Grocery Store**” shall mean a retail grocery store located within the geographic limits of the City of Concord that is operated by a Covered Employer and 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 and/or prepared foods. Other household supplies or other products shall be secondary to the primary purpose of food sales. This definition expressly excludes convenience stores or food marts primarily engaged in retailing a limited line of goods that generally includes milk, bread, soda, and snacks; and further excludes membership based stores, club stores, and certified farmers’ markets.

“**Retaliatory Action**” shall mean 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 their 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 premium hourly rate set under the authority of this Ordinance. The premium hourly rate for each Covered Employee shall be the Hazard Pay per hour for all hours worked on top of the Covered Employee’s Base Wage or Holiday Premium Wage, whichever is 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. Covered Employers providing employer-initiated hazard pay will be credited for doing so in accordance with Sections 5 (Definitions) and 11 (Credit For Employer-Initiated Hazard Pay).

b. **Duration of Hazard Pay.** Covered Employers shall pay Hazard Pay to all Covered Employees for any pay period for a minimum of 120 days from the effective date of this Ordinance, i.e., during which the City of Concord is within a Widespread (purple), Substantial (red) or Moderate (orange) Risk Level, or until such time as risk levels return to Minimal (yellow) under State Health Orders, whichever is later.

SECTION 7. 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 the top three languages spoken in Concord as determined by the last U.S. Census. Every Covered Employer 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 days of the change.

SECTION 8. Retaliation Prohibited. It shall be unlawful for a Covered Employer or any other party to discriminate in any manner or take adverse action against any Covered Employee in retaliation for exercising rights protected under this Ordinance. Rights protected under this Ordinance include, but are not limited to the right to file a complaint or inform any person about any party's alleged noncompliance with this Ordinance; and the right to inform any person of their potential rights under this Ordinance and to assist him or her in asserting such rights.

SECTION 9. Records. Covered Employers shall keep records necessary to demonstrate compliance with this Ordinance, including but not limited to payroll records that specify the amount of compensation paid to employees under Sections 6 (Payment of Hazard Pay To Covered Employees) and 7 (Notice and Posting) of this Ordinance and Coverage Records. Covered Employers shall retain such records at the place of employment or in a central records office for a period of four years, and shall allow the Complainant access to such records, with appropriate notice

and at a mutually agreeable time, to monitor compliance with the requirements of this Ordinance. When an issue arises as to a Covered Employer's compliance with this Ordinance, if the Covered Employer does not maintain or retain adequate records documenting compliance or does not allow the Complainant reasonable access to such records within 30 days of the Complainant's request, it shall be presumed that the Covered Employer has violated the Ordinance, absent clear and convincing evidence otherwise.

SECTION 10. Covered Employee Remedies for Violations.

a. Damages and Restitution. Every Covered Employer who violates this Ordinance, or any portion thereof shall be liable to the Covered Employee whose rights were violated for any and all relief, including, but not limited to:

1. Legal and equitable relief including but not limited to reinstatement, rescission, the payment of Hazard Pay unlawfully withheld, and the payment of all penalties and fines imposed pursuant to other provisions of this Ordinance or State law. For retaliatory action by the Covered Employer, the Covered Employee shall be entitled to a trebling of lost wages and penalties owed in addition to reinstatement.

2. Interest on all due and unpaid wages at the rate of interest specified in California Civil Code Section 3289(b)², which shall accrue from the date that the wages were due and payable as provided in California Labor Code Division 2 Part 1 (commencing with Section 200³) to the date the wages are paid in full.

b. Civil Enforcement. Any Covered Employee (or any employee who in good faith asserts they are a Covered Employee despite their employer's assertion to the contrary) aggrieved by a violation of this Ordinance or any other person or entity acting on behalf of the public as provided

² Cal Civ. Code §3289: (a) Any legal rate of interest stipulated by a contract remains chargeable after a breach thereof, as before, until the contract is superseded by a verdict or other new obligation. (b) If a contract entered into after January 1, 1986, does not stipulate a legal rate of interest, the obligation shall bear interest at a rate of 10 percent per annum after a breach. For the purposes of this subdivision, the term contract shall not include a note secured by a deed of trust on real property.

³ Labor Code § 200. As used in this Ordinance: (a) "Wages" includes all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation. (b) "Labor" includes labor, work, or service whether rendered or performed under contract, subcontract, partnership, station plan, or other agreement if the labor to be paid for is performed personally by the person demanding payment.

for under applicable law, may institute a civil proceeding for injunctive relief, money damages, and whatever other relief the court deems appropriate. The remedy available under this Section shall be in addition to any other existing remedies which may be available under local, state or federal law. A Covered Employee (or any employee who in good faith asserts they are a Covered Employee despite their employer's assertion to the contrary), upon prevailing, shall be entitled to such legal or equitable relief as may be appropriate to remedy the violation including but not limited to monies to be paid pursuant to this Ordinance, back pay, reinstatement, rescission, and reasonable attorneys' fees and costs. Any other person or entity enforcing this Ordinance on behalf of the public as provided for under applicable, upon prevailing, shall be entitled only to equitable, injunctive and/or restitutionary relief, and reasonable attorneys' fees and costs. The foregoing are individually and collectively referred to herein as "**Complainant.**" Nothing in this Ordinance shall be interpreted as restricting, precluding, or otherwise limiting a separate or concurrent criminal prosecution under applicable law. Jeopardy shall not attach as a result of any administrative or civil enforcement action taken pursuant to this Ordinance.

SECTION 11. Credit for Covered Employer-Initiated Hazard Pay.

a. Any Covered Employer already providing a premium hourly rate to compensate Covered Employees for working during the pandemic (hereinafter "employer- initiated hazard pay") shall be credited against the Hazard Pay for the hourly amount paid to each Covered Employee (e.g. a Covered Employer offering a \$2.00 per hour employer-initiated hazard pays an additional \$XX.00 per hour in Hazard Pay per this Ordinance). Such Covered Employer must demonstrate that, as of the effective date of this Ordinance and in any subsequent covered pay periods, all Covered Employees are receiving such employer-initiated hazard pay. No Covered Employer shall be credited prospectively for any past payments. 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 employer from maintaining or offering additional employer- initiated hazard pay that is more than the Hazard Pay amount.

b. To receive credit for employer-initiated hazard pay policies, Covered Employers must

offer the following showings of proof to the Complainant:

1. A copy of the Covered Employer's employer- initiated hazard pay policy.
2. A concise statement explaining Covered Employees' hourly base wages, hourly Holiday Premiums, hourly employer-initiated hazard pay, and any other wage bonuses received during the last 12 months.
3. Evidence that, since the effective date of the Ordinance and for so long as this Ordinance is applicable, each and every Covered Employee has received employer-initiated hazard pay.
4. Evidence that allows the Complainant to review for compliance by assessing wages for the past 12 months and that is itemized in such a way that the Complainant can understand a Covered Employee's Base Wage distinguished from Holiday Premiums and other bonuses or pay increases that are separate and distinct from employer-initiated hazard pay. Accepted evidence of employer-initiated hazard pay wage described in this Section (b)(4) includes a spreadsheet, of all Covered Employees and their wages for each pay period for the last 12 months, which allows the Complainant to distinguish Base Wage from Holiday Pay and other bonuses or pay increases that are separate and distinct from employer-initiated hazard pay (provided, however, that the foregoing does not exempt any Covered Employer from maintaining, and providing access to, the underlying payroll records described above.
5. Any offer of proof under subparagraph (b) shall be accompanied by a written acknowledgement that it was so submitted under penalty of perjury.

SECTION 12. Waiver Through Collective Bargaining. To the extent required by Federal law, all or any portion of the applicable requirements of this Ordinance may be waived in a bona fide collective bargaining agreement, employment agreement, or similar agreement, provided that such waiver is explicitly set forth in such agreement in clear and unambiguous terms. Nothing in this Ordinance is intended or shall be construed to affect substantive labor standards under the National Labor Relations Act, or interfere with existing collective bargaining agreements, employment agreements, or similar agreements.

SECTION 13. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council declares that it would have adopted this Ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more section, subsection, sentence, clause, or phrase be declared invalid.

SECTION 14. Codification. This Ordinance is effective immediately pursuant to Government Code Section 36937(b) and shall NOT be codified.

AYES:

NOES:

ABSTAIN:

ABSENT:

I HEREBY CERTIFY that the foregoing is a true and correct copy of an Ordinance duly and regularly introduced, passed, and adopted by the City Council of the City of Concord, California.

By: _____
Joelle Fockler, MMC, City Clerk

**Attachment 3
Correspondence
Agenda Item No. 2.b
March 26, 2021**

From: Jason Lindsey <Jasonl@iwlocal378.org>
Date: March 24, 2021 at 3:33:31 PM PDT
To: "Obringer, Carlyn" <Carlyn.Obringer@cityofconcord.org>, "Aliano, Dominic" <Dominic.Aliano@cityofconcord.org>, "Birsan, Edi" <Edi.Birsan@cityofconcord.org>, "McGallian, Tim" <Tim.McGallian@cityofconcord.org>, "Hoffmeister, Laura" <Laura.Hoffmeister@cityofconcord.org>
Subject: Hazard Pay for Essential Workers

Good afternoon Mayor and council members.

Grocery store workers are 20 times more likely to contract COVID-19 than the average worker because of the numerous people they come in contact with.

If that doesn't constitute a hazardous job I don't know what does.

Please join smaller communities such as Napa and American Canyon, and vote to institute hazard pay for these people that risk their health and life so that we can eat.

Kind Regards,

Jason Lindsey
Business Agent
Iron Workers Union Local 378 Oakland
3120 Bayshore Rd.
Benicia, CA 94510
Office: (707) 746-6100
Cell: (707) 333-0895



Urgency Ordinance Hazard Pay for Grocery Workers

GUY BJERKE, DIRECTOR-ECONOMIC DEVELOPMENT & BASE REUSE

MARCH 30, 2021



Background

- City Council referred issue of Hazard Pay for Grocery Workers to the Policy Development and Internal Operations (PD&IO) consisting of Mayor McGallian and Vice-Mayor Aliano on February 2, 2021
- Hazard pay means additional compensation for performing hazardous duty or work.
- PD&IO met twice to discuss the merits of requiring hazard pay, took public comment, and directed staff to draft an urgency ordinance and return the matter to the City Council.

Purpose

To compensate grocery 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.

Numerous Cities and Counties throughout the Nation have adopted Hazard pay ordinances.

Legality

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.

The California Grocers Association has filed suit against several California cities that have adopted Hazard Pay Ordinances including Oakland, San Leandro, and Long Beach, among others.

Proposed Ordinance

- Imposes temporary increase to the hourly wages earned by grocery workers. Amount to be set by Council in this ordinance.
- Covers pay periods for 120 days from ordinance effectiveness or until Contra Costa reaches “Yellow Tier” under State Health Orders, whichever is later.
- Applies to workers in stores or franchisees that employ 300 or more employees nationwide.
- Provides credit to employers who are already providing a premium hourly rate to compensate their employees for Covid—19 service.
- An Urgency Ordinance requires a 4/5ths vote of the City Council.

Concord Grocery Stores - Sorted by Gross Receipts - 2021

DBA	Business name	Owner Name 1	Bus address
Safeway Stores, Inc. #1192		Denningham, Wayne	4309 CLAYTON RD
Safeway Stores, Inc. #955		Denningham, Wayne	2600 WILLOW PASS RD
Trader Joes #60		Bane, Dan	1150 CONCORD AVE 200
Trader Joes #83		Bane, Dan	785 OAK GROVE RD
Lucky #705	Save Mart Supermarkets	Pesco, Nicole	5190 CLAYTON RD
99 Ranch Market	Welcome Market Inc	Chen, Ho Yuan	1795 WILLOW PASS RD
Food Maxx #481	Save Mart Supermarkets	McGarry, Christopher	1751 MONUMENT BLVD
Food Maxx #418	Savemart Supermarkets	Junquero, Steven	4505 CLAYTON RD
365 By Whole Foods Market	Whole Foods Market California, Inc.	Whole Foods Market California, Inc.	2085 DIAMOND BLVD SUITE 125
Smart Foodservice Warehouse Stores # 510	Cash & Carry Stores LLC	Cash & Carry Stores LLC	2050 MONUMENT BLVD
D&T Market Inc	Clayton Valley Grocery Outlet	Smith, Darrell	5410 YGNACIO VALLEY RD
Las Montanas Supermarket	Manuel Gomez Corporation	Gomez, Manuel	2691 MONUMENT BLVD A
Concord Grocery Outlet	Concord Grocery Outlet	Sharma, Rakivash	1840 WILLOW PASS RD
Bonfare Market #32	Ramana, Inc	Ramana, Inc	3598 WILLOW PASS RD
S & S Fast & Easy		S & S Fast & Easy	3200 WILLOW PASS RD
Concord Han-kook Market	Concord Korean Market Inc	Yi, Jin Hee	1450 MONUMENT BLVD C
Super Tehran Market Inc		Rouhani, Ellie	1112 MEADOW LN
Afghan Market	Afghan Market	Tamim, Mojaddidi Mohammad	1500 MONUMENT BLVD F12
Panjabi Bazaar		Ark, Jasvir	1810 SALVIO ST
Fast And Easy Liquor	Asad And Dilshad Mohammadali	Mohammadali, Asad A	3200 WILLOW PASS RD
Prime Time Nutrition #573	Nutrition Fundamental	Castaneda, Manuel	1955 MONUMENT BLVD # 4F
Bonfare Market#28		Bonfare Market#28	2800 GRANT ST
Concord Han-kook Market		Yi, Jin Hee & Kwang	1450 MONUMENT BLVD D
Mas Primos Market		Saleh, Kayed M	1301 GALINDO ST
Mera Khana	Brilsam Inc.	Boustani Banga, Sana	4743 Clayton RD # 5
Food Source Arbat LLC		Food Source Arbat LLC	4375 Clayton RD # H
Concord Craft	Concord Craft	Gowani, Mansoor	1701 FARM BUREAU RD
Cedar Market & Bakery		Dennawi, Samir	3509 CLAYTON RD
Oriental Food Market		Gaerlan, Sherrie	3428 CLAYTON RD
S. T. & T.		Tomasz, Szarmach	1984 MONUMENT BLVD
One 99		Ivanov, Iouri	2718 RICHARD AVE

Amount of Hazard Pay?

The PD&IO Committee decide the amount of Hazard Pay to be included in the ordinance should be discussed and decided by the entire City Council.

- \$3
- \$4
- \$5
- Or another amount?

Other adopted ordinances range from \$3 to \$5 with most landing at \$5 per hour.

Questions?

ORDINANCE NO. 21-1
AN URGENCY ORDINANCE ESTABLISHING HAZARD PAY
FOR GROCERY STORE RETAIL WORKERS

RECITALS

WHEREAS, the COVID-19 pandemic has led to the current state of emergency in local emergency in the City of Concord (“City”).

WHEREAS, on March 10, 2020, due to the COVID-19 pandemic, the Contra Costa County Board of Supervisors proclaimed the existence of a local emergency throughout Contra Costa County (County Resolution No. 2020/92). On March 13, 2020, the Director of Emergency Services of the City of Concord, designated as the City Manager, proclaimed a local emergency, which the City Council of the City of Concord (“City Council”) ratified via Resolution No. 20-12 on March 19, 2020 (“City Emergency Order”).

WHEREAS, on March 19, 2020, California Governor Gavin Newsom issued a “Stay Home - Stay Healthy” 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 and emergency services, the “Stay Home - Stay Healthy” proclamation identified grocery stores as essential business sectors critical to protecting the health and well-being of all Californians and designated their workers as essential critical infrastructure workers; and Governor Newsom extended the “Safer at Home” emergency order on December 3, 2020 as a result of the critically low availability of Intensive Care Unit beds.

WHEREAS, the COVID-19 virus has broadly spread throughout California and remains a significant health risk to the community, especially members of our most vulnerable populations; as of March 9, 2021, there have been over 524,000 deaths due to COVID-19 across the country, including 125 in the City of Concord and 712 in Contra Costa County.

WHEREAS, the virus is spreading rapidly across the region with many clusters arising within grocery retail stores. Grocery retail stores remain a critical piece of infrastructure in the fight against the COVID-19 virus and in protecting the City’s food supply chain.

WHEREAS, grocery retail stores are the primary points of distribution for food and other daily necessities for the residents of the City of Concord and are therefore essential to the vitality of our community.

WHEREAS, the availability of grocery retail stores is fundamental to the health of the community and is made possible during the COVID-19 emergency because grocery retail workers are on the frontlines of this devastating pandemic supporting public health, safety, and welfare by working in hazardous situations.

WHEREAS, grocery retail workers have been unable to work from home, including those with children engaged in distance learning, and have therefore likely incurred additional childcare expenses; and turnover, inability to pay for housing and increased childcare costs as a result of school closures and other necessities could become an immediate problem for certain grocery retail workers if they are not given immediate financial relief.

WHEREAS, according to an October 29, 2020 study published in the journal Occupational and Environmental Medicine, a comprehensive test of workers at one grocery store resulted in 20 percent of grocery retail workers testing positive for COVID-19, even though three of four workers were asymptomatic.

WHEREAS, according to an August 2020 article in The Washington Post, at least 130 U.S. grocery retail workers had died from COVID-19, and more than 8,200 have tested positive for the virus.

WHEREAS, according to a January 2021 article in The Washington Post, the United Food and Commercial Workers estimates 109 of its members have died to from COVID-19 and more than 20,000 have tested positive.

WHEREAS, despite the efforts of grocery stores to take precautions and keep customers and employees safe, including requiring masks, social distancing, and sanitizing cash registers, food conveyor belts, and shopping carts, there have been highly publicized outbreaks of COVID-19 among grocery retail workers in the San Francisco Bay Area, and the health threats that these grocery retail workers face cannot be overstated.

WHEREAS, grocery retail workers face increased exposure risk due to inability to consistently practice physical distancing in the workplace, with a November 2020 Brookings Institution analysis¹ reporting that grocery retail workers with direct customer exposure were five times more likely to test positive for the COVID-19 virus than those employees without such exposure.

WHEREAS, the United States' largest grocery retail companies have earned record profits during the pandemic, and this increase in profit has not transferred to workers, according to the above-referenced Brookings Institution analysis.

WHEREAS, during the early stages of the COVID-19 pandemic, many grocery companies provided "Hero Pay" which was generally implemented as either a temporary hourly wage increase or a one-time bonus for certain grocery retail workers.

WHEREAS, Hero Pay has generally phased out or terminated; however, according to the Brookings Institute, the top grocery retail companies earned on average an extra \$16.7 billion in profit in 2020 compared to 2019.

WHEREAS, premium pay, paid in addition to regular wages, is an established type of compensation for employees performing hazardous duty or work involving physical hardship that can cause extreme physical discomfort and distress.

WHEREAS, grocery retail workers working during the COVID-19 pandemic merit additional compensation because they are performing hazardous duty due to the significant risk of exposure to the COVID-19 virus, have been working under these hazardous conditions for months, and will continue to face safety risks as the virus presents an ongoing threat for an uncertain period, potentially resulting in subsequent waves of infection.

WHEREAS, establishing an immediate requirement for grocery stores to provide premium pay to grocery retail workers protects public health, supports stable incomes, and promotes job retention by ensuring that grocery retail workers are compensated for the substantial risks, efforts,

¹ Kinder, Molly; Stater, Laura; Du, Julia. "Windfall profits and deadly risks: How the biggest retail companies are compensating essential workers during the COVID-19 pandemic." The Brookings Institution. <https://www.brookings.edu/essay/windfall-profits-and-deadly-risks/> (date of access: 3/10/2021).

and expenses they are undertaking to provide essential services in a safe and reliable manner during the COVID-19 pandemic.

WHEREAS, this Ordinance is a temporary Hazard Pay ordinance intended to compensate certain grocery retail workers at high risk of COVID-19 infection within the workplace during the COVID-19 pandemic outbreak, and thus to serve the public peace, health, safety, and public welfare.

WHEREAS, to protect the food supply chain and the public health and safety, the City of Concord must take steps to guard against turnover and ensure that grocery stores in Concord have well-trained, consistent, and stable staffing.

WHEREAS, Government Code Section 36937 authorizes the adoption of an urgency ordinance for the “immediate preservation of public peace, health or safety,” as long as such ordinance contains a declaration of the facts constituting the urgency and it is passed by a four-fifths (4/5) vote of the City Council; and

WHEREAS, for reasons set forth above, this Ordinance is declared by the City Council to be necessary for preserving the public peace, health, safety, welfare and to avoid a current, immediate and direct threat thereto, and the recitals above taken together constitute the City Council’s statements of the reasons constituting such necessity and urgency; and

WHEREAS, by the staff report, public testimony, and documentary evidence presented at the February 2, 2021 regular City Council meeting, the City Council referred the issue to the Policy Development and Internal Operations Committee (PD&IO); and the PD&IO Committee met on February 12, 2021 and March 2, 2021 to discuss the issue, took public comment, and formulated a recommendation for consideration by the City Council.

WHEREAS, by the staff report, public testimony, and documentary evidence presented at the March 30, 2021 special City Council meeting, the City Council has been provided with information upon which the findings and actions set forth in this Ordinance is based.

THE CITY COUNCIL OF THE CITY OF CONCORD DOES ORDAIN AS FOLLOWS:

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

SECTION 2. CEQA. Adoption of this Ordinance is exempt from review under the California Environmental Quality Act (“CEQA”) pursuant to the following, each a separate and independent basis: California Public Resources Code Section 21080(b)(4) and CEQA Guidelines Section 15269(c) because adoption of this Ordinance is to prevent or mitigate an emergency; CEQA Guidelines Section 15061(b)(3) because it because this Ordinance only regulates evictions and rents and it can be seen with certainty that is no potential for it to cause a significant effect on the environment; CEQA Guidelines Section 15183 because this Ordinance is consistent with the City’s General Plan policies and goals and/or CEQA Guidelines Section 15378(b) because this Ordinance is not a project but an administrative action that will not result in direct or indirect physical changes to the environment.

SECTION 3. Authority; Term; Extension. This Ordinance is enacted pursuant to the City of Concord’s general police powers, Section 7 of Article XI of the California Constitution, and California Government Code Sections 8634, 36934 and 36937, the Governor’s Proclamation of a State Emergency dated March 4, 2020, City Emergency Order, and any other rights or obligations under local, Contra Costa County, State of California, and Federal law, including the State and federal constitutions. This Ordinance is effective immediately and shall expire as set forth in Section 8(b) (Duration of Hazard Pay). All references to the “term” of this Ordinance shall mean the effective date hereof through the expiration hereof as set forth in Section 8(b) (Duration of Hazard Pay).

SECTION 4. Title and Purpose.

a. This Ordinance shall be known as the “Grocery Retail Worker Hazard Pay Ordinance.” Large Grocery Stores are a vibrant and integral part of the public infrastructure during the ongoing pandemic.

b. The grocery retail workers of Concord have continued to report to work and to serve their communities in the face of an unprecedented pandemic. Each day these workers risk their lives and the health of their families without any extra benefits or wages in order to keep the food supply chain operating.

//

c. The purpose of this Ordinance is to justly compensate grocery retail workers for the clear and present dangers of doing their jobs as essential workers during the pandemic by requiring their employers to provide hazard pay. The City has an interest in ensuring the welfare of its workers and the continued operation of its food supply chain.

d. Through this Ordinance, the City seeks to sustain the stability of the food and health supply chain through supporting the grocery retail workers who continue to work during the pandemic.

SECTION 5. Definitions. The following shall apply to this Ordinance:

“**Base Wage**” shall mean the hourly wage paid to Covered Employees as of the effective date of this Ordinance less Hazard Pay owed under this Ordinance or other premium hourly rate already paid to compensate Covered Employees for working during the pandemic (referred to herein as “employer-initiated hazard pay”).

“**City**” shall mean the City of Concord.

“**Covered Employer**” shall mean:

a. Any Person who (a) directly or indirectly or through an agent or any other Person owns or operates a Large Grocery Store and employs or exercises control over the wages, hours or working conditions of any Covered Employee; and (b) employs 300 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 300 employees in the aggregate, regardless of where those employees are employed.

b. To determine the number of employees, the calculation shall be based upon:

1. The actual number per calendar week of employees who worked for compensation during the pay period preceding the effective date of this Ordinance; and

2. All employees who worked for compensation shall be counted, including but not limited to:

i. Employees who are not covered by this Ordinance;

ii. Employees who worked within the geographic limits of the City;

- iii. Employees who worked outside the geographic limits of the City; and
- iv. 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.

“Covered Employee” shall mean any person who: (a) in a calendar week performs at least two hours of work within the geographic boundaries of the City for a Covered Employer; and (b) qualifies as an employee entitled to payment of a minimum wage from any 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, and the City of Concord’s Minimum Wage Ordinance. It is a Covered Employer’s responsibility to demonstrate, through factual support and accompany evidence that a Complainant can understand, whether or not certain employees do not qualify as Covered Employees (**“Coverage Records”**).

“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.

“Franchisee” means a Person to whom a Franchise is offered or granted.

“Franchisor” means a Person who grants a franchise to another Person.

“Holiday Premium” shall mean the hourly wage paid to Covered Employees for performing work during a holiday or holiday season.

“Hazard Pay” shall mean an additional \$5.00 per hour wage bonus in addition to the Covered Employee’s Base Wage or Holiday Premium wage for each hour worked for any pay period during the duration of this Ordinance.

“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 (California Code of Regulations, Title 8, Section 11040).

“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.

“Large Grocery Store” shall mean a retail grocery store located within the geographic limits of the City of Concord that is operated by a Covered Employer and 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 and/or prepared foods. Other household supplies or other products shall be secondary to the primary purpose of food sales. This definition expressly excludes convenience stores or food marts primarily engaged in retailing a limited line of goods that generally includes milk, bread, soda, and snacks; and further excludes membership based stores, club stores, and certified farmers’ markets.

“Retaliatory Action” shall mean 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 their 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 premium hourly rate set under the authority of this Ordinance. The premium hourly rate for each Covered Employee shall be the Hazard Pay per hour for all hours worked on top of the Covered Employee’s Base Wage or Holiday Premium Wage, whichever is 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. Covered Employers providing employer-initiated hazard pay will be credited for doing so in accordance with Sections 5 (Definitions) and 11 (Credit For Employer-Initiated Hazard Pay).

b. Duration of Hazard Pay. Covered Employers shall pay Hazard Pay to all Covered Employees for any pay period for a minimum of 120 days from the effective date of this Ordinance, i.e., during which the City of Concord is within a Widespread (purple), Substantial (red) or Moderate (orange) Risk Level, or until such time as risk levels return to Minimal (yellow) under State Health Orders, whichever is later.

SECTION 7. 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 the top three languages spoken in Concord as determined by the last U.S. Census. Every Covered Employer 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 days of the change.

SECTION 8. Retaliation Prohibited. It shall be unlawful for a Covered Employer or any other party to discriminate in any manner or take adverse action against any Covered Employee in retaliation for exercising rights protected under this Ordinance. Rights protected under this Ordinance include, but are not limited to the right to file a complaint or inform any person about any party's alleged noncompliance with this Ordinance; and the right to inform any person of their potential rights under this Ordinance and to assist him or her in asserting such rights.

SECTION 9. Records. Covered Employers shall keep records necessary to demonstrate compliance with this Ordinance, including but not limited to payroll records that specify the amount of compensation paid to employees under Sections 6 (Payment of Hazard Pay To Covered Employees) and 7 (Notice and Posting) of this Ordinance and Coverage Records. Covered Employers shall retain such records at the place of employment or in a central records office for a period of four years, and shall allow the Complainant access to such records, with appropriate notice

and at a mutually agreeable time, to monitor compliance with the requirements of this Ordinance. When an issue arises as to a Covered Employer's compliance with this Ordinance, if the Covered Employer does not maintain or retain adequate records documenting compliance or does not allow the Complainant reasonable access to such records within 30 days of the Complainant's request, it shall be presumed that the Covered Employer has violated the Ordinance, absent clear and convincing evidence otherwise.

SECTION 10. Covered Employee Remedies for Violations.

a. Damages and Restitution. Every Covered Employer who violates this Ordinance, or any portion thereof shall be liable to the Covered Employee whose rights were violated for any and all relief, including, but not limited to:

1. Legal and equitable relief including but not limited to reinstatement, rescission, the payment of Hazard Pay unlawfully withheld, and the payment of all penalties and fines imposed pursuant to other provisions of this Ordinance or State law. For retaliatory action by the Covered Employer, the Covered Employee shall be entitled to a trebling of lost wages and penalties owed in addition to reinstatement.

2. Interest on all due and unpaid wages at the rate of interest specified in California Civil Code Section 3289(b)², which shall accrue from the date that the wages were due and payable as provided in California Labor Code Division 2 Part 1 (commencing with Section 200³) to the date the wages are paid in full.

b. Civil Enforcement. Any Covered Employee (or any employee who in good faith asserts they are a Covered Employee despite their employer's assertion to the contrary) aggrieved by a violation of this Ordinance or any other person or entity acting on behalf of the public as provided

² Cal Civ. Code §3289: (a) Any legal rate of interest stipulated by a contract remains chargeable after a breach thereof, as before, until the contract is superseded by a verdict or other new obligation. (b) If a contract entered into after January 1, 1986, does not stipulate a legal rate of interest, the obligation shall bear interest at a rate of 10 percent per annum after a breach. For the purposes of this subdivision, the term contract shall not include a note secured by a deed of trust on real property.

³ Labor Code § 200. As used in this Ordinance: (a) "Wages" includes all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation. (b) "Labor" includes labor, work, or service whether rendered or performed under contract, subcontract, partnership, station plan, or other agreement if the labor to be paid for is performed personally by the person demanding payment.

for under applicable law, may institute a civil proceeding for injunctive relief, money damages, and whatever other relief the court deems appropriate. The remedy available under this Section shall be in addition to any other existing remedies which may be available under local, state or federal law. A Covered Employee (or any employee who in good faith asserts they are a Covered Employee despite their employer's assertion to the contrary), upon prevailing, shall be entitled to such legal or equitable relief as may be appropriate to remedy the violation including but not limited to monies to be paid pursuant to this Ordinance, back pay, reinstatement, rescission, and reasonable attorneys' fees and costs. Any other person or entity enforcing this Ordinance on behalf of the public as provided for under applicable, upon prevailing, shall be entitled only to equitable, injunctive and/or restitutionary relief, and reasonable attorneys' fees and costs. The foregoing are individually and collectively referred to herein as "**Complainant.**" Nothing in this Ordinance shall be interpreted as restricting, precluding, or otherwise limiting a separate or concurrent criminal prosecution under applicable law. Jeopardy shall not attach as a result of any administrative or civil enforcement action taken pursuant to this Ordinance.

SECTION 11. Credit for Covered Employer-Initiated Hazard Pay.

a. Any Covered Employer already providing a premium hourly rate to compensate Covered Employees for working during the pandemic (hereinafter "employer- initiated hazard pay") shall be credited against the Hazard Pay for the hourly amount paid to each Covered Employee (e.g. a Covered Employer offering a \$2.00 per hour employer-initiated hazard pay pays an additional \$3.00 per hour in Hazard Pay per this Ordinance). Such Covered Employer must demonstrate that, as of the effective date of this Ordinance and in any subsequent covered pay periods, all Covered Employees are receiving such employer-initiated hazard pay. No Covered Employer shall be credited prospectively for any past payments. 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 employer from maintaining or offering additional employer- initiated hazard pay that is more than the Hazard Pay amount.

//

b. To receive credit for employer-initiated hazard pay policies, Covered Employers must offer the following showings of proof to the Complainant:

1. A copy of the Covered Employer's employer- initiated hazard pay policy.
2. A concise statement explaining Covered Employees' hourly base wages, hourly Holiday Premiums, hourly employer-initiated hazard pay, and any other wage bonuses received during the last 12 months.
3. Evidence that, since the effective date of the Ordinance and for so long as this Ordinance is applicable, each and every Covered Employee has received employer-initiated hazard pay.
4. Evidence that allows the Complainant to review for compliance by assessing wages for the past 12 months and that is itemized in such a way that the Complainant can understand a Covered Employee's Base Wage distinguished from Holiday Premiums and other bonuses or pay increases that are separate and distinct from employer-initiated hazard pay. Accepted evidence of employer-initiated hazard pay wage described in this Section (b)(4) includes a spreadsheet, of all Covered Employees and their wages for each pay period for the last 12 months, which allows the Complainant to distinguish Base Wage from Holiday Pay and other bonuses or pay increases that are separate and distinct from employer-initiated hazard pay (provided, however, that the foregoing does not exempt any Covered Employer from maintaining, and providing access to, the underlying payroll records described above.
5. Any offer of proof under subparagraph (b) shall be accompanied by a written acknowledgement that it was so submitted under penalty of perjury.

SECTION 12. Waiver Through Collective Bargaining. To the extent required by Federal law, all or any portion of the applicable requirements of this Ordinance may be waived in a bona fide collective bargaining agreement, employment agreement, or similar agreement, provided that such waiver is explicitly set forth in such agreement in clear and unambiguous terms. Nothing in this Ordinance is intended or shall be construed to affect substantive labor standards under the National Labor Relations Act, or interfere with existing collective bargaining agreements, employment

agreements, or similar agreements.

SECTION 13. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council declares that it would have adopted this Ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more section, subsection, sentence, clause, or phrase be declared invalid.

SECTION 14. Codification. This Ordinance is effective immediately pursuant to Government Code Section 36937(b) and shall NOT be codified.

AYES: Councilmembers - D. Aliano, E. Birsan, L. Hoffmeister, C. Obringer, T. McGallian

NOES: Councilmembers - None

ABSTAIN: Councilmembers - None

ABSENT: Councilmembers - None

I HEREBY CERTIFY that the foregoing is a true and correct copy of an Ordinance duly and regularly introduced, passed, and adopted by the City Council of the City of Concord, California.



Joelle Fockler, MMC
City Clerk