

01-30-2021

Dear City Counsel,

I am a UFCW 5 employee and have been working through the entire pandemic. My coworkers and I perform the essential work of feeding people and therefore, we are around hundreds of people when we work. Despite all of the safety procedures in place, we ~~are~~ come in close contact with many people who do not wear a face covering or keep their physical distance. We are putting our health at risk to serve our community and we feel underappreciated for it. I ask that you strongly consider hazard pay for essential workers, like myself.

01-28-2021

Dear City Counsel,

I am a 50 year old grocery worker who has been working throughout this pandemic with respiratory issues: asthma, COPD, and bronchitis. Despite the safety precautions in place, I am subjected to being close to people without masks ~~with~~ who have no consideration for my personal space at work. I am considered a high-risk citizen, but I continue ~~to~~ to work in a grocery store in order to support myself through these unprecedented times. My coworkers and I perform essential work everyday, but feel our pay does not reflect the type of work we do. I ask that you ~~support~~ consider supporting extra hazard pay for essential workers, like myself.

1-28-21

Dear City Counsel,

I'm writing this letter in hope that you can see how life is for a grocery Essential worker like myself. I am a Meat Cutter and I have been in this trade for over 30 years. Our work is big on Customer Service providing food service I have anxiety everyday having to wear my mask everyday and fearing that I may get sick with COVID 19. We put our lives on the line everyday and our families as well. Please support the Hazard pay for us Grocery Essential workers. Thank you.

1-28-21

Dear City Council,

I am a meat clerk in San Jose, CA. I am hoping you will consider our letters and support us with providing our employees with more hazard pay and other essential workers that put their lives at risk at work. We come to work everyday, living in fear that ourselves and families will contract the COVID 19. There are hundreds of customers who walk through the door and we don't know if they are positive or carriers of COVID 19. Some customers are inconsiderant about wearing their face masks or don't respect our boundaries of being 6 feet apart. So please support what we are asking for and we hope everyone stays healthy and safe.

Dear City Council,

I work in grocery & I have been
working in a dangerous environment some
people don't even wear mask ~~at~~
~~our~~ store • We deserve to have
extra pay for our services

Dear city Council,

1/28/20

My names Therance and

I
am diabetic and it makes me a higher
risk to get sick yet I still come
In despite the risk to myself as well
as the risk to bring it into my home.
I ~~work~~ work with many people coming into
our store. While many do as asked we
have gotten many that refuse to wear masks
and even the extreme of people deliberately
coughing on us as they think it's funny.
Please give us this little bit of help.

January 27

Dear City Council:

I am a grocery worker here in San Jose. My co-workers and I perform the essential work of feeding people. Despite the dangers of COVID we mask up, sanitize, and keep our distance, and we come into work every day that hundreds of people visit. We make very little money and put our lives at risk. While big companies make millions, we scrimp by. Please honor our work and support hazard pay for essential workers like me.

1-28-21

Dear City Council,

Everyday since this pandemic happened I live in fear wondering when it will be my turn to contract COVID 19. We are in a business where hundreds of people come through our doors without knowing if they are carriers of the virus and putting us at risk. I feel as an essential grocery worker we should get a better wage increase in our hazard pay - The big businesses are raking in profits hand over fist I see the sales on an everyday basis and I see the rise in profits - Please understand that we not only risk our lives everyday but our families lives as well. So I ask to please support the hazard pay for us Grocery Essential workers. Thank you.

Fw: Agenda Item Number 8.1- Hazard Pay

City Clerk <city.clerk@sanjoseca.gov>

Mon 2/8/2021 3:40 PM

To: Agendadesk <Agendadesk@sanjoseca.gov>

Office of the City Clerk | City of San José

200 E. Santa Clara St., Tower 14th Floor

San Jose, CA 95113

Main: 408-535-1260

Fax: 408-292-6207

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From: Allison Winsatt [REDACTED]
Sent: Monday, February 8, 2021 3:37 PM
To: City Clerk <city.clerk@sanjoseca.gov>
Subject: Agenda Item Number 8.1- Hazard Pay

[External Email]

Regarding Hazard Pay for Grocery Industry Employees

Good Afternoon,

My name is Allison Winsatt and I work and live in San Jose, CA, in District 1.

I never imagined that working in the grocery industry would become so contentious. I love my job, and I love the community that I get to support. That's why I have stayed as a grocery worker, my first and only job, for five years. At this point, I have invested so much of my own time into this company that I have a lot to lose if I leave. Many of my coworkers have been working for Safeway for nearly twenty years, if not more. It's a career we embark on assuming it will be steady, predictable, and reliable.

Unfortunately, just as with all else, the pandemic has changed the grocery industry tremendously. Grocery employees suddenly became "essential," painted by the media as "heroes." In reality, many of us simply cannot afford to leave our jobs even as we risk potential death. When I applied, I thought I would be selling apples. That's really all that Safeway trained, prepared, and compensated me for. I did not think that every day I could be coming into contact with a deadly virus that I could potentially pass onto my loved ones.

The buildings we work in are not designed to allow us to safely maintain social distancing between employees and customers, and we have become an outlet for political tension and pandemic distress within the community as we try our best to assist customers that take out their anxieties out on us and refuse to wear masks. Grocery companies have been profiting throughout the pandemic, but these profits have stayed in the hands of executives and shareholders. Meanwhile, employees live in fear of not only the virus, but having to cover basic living expenses when being required to stay out of work when sick. \$5 per hour Hazard Pay would alleviate many of these burdens while simultaneously benefiting the local economy and promoting equality amongst laborers.

We are working indoors- in large buildings constantly filled with people. Our work areas and checkstands are not built to enforce six-foot social distancing, nor is human nature designed to maintain it. Regardless of how many masks I wear, how much hand sanitizer I use, or how conscious I am of my proximity to others, people will still walk up within six inches of me and enter our store refusing to wear a mask. Many customers and employees also have a bad habit of removing their mask when speaking, entirely negating its efficacy. My store sees about 10,000+ customers per week, and we are one of the least busy.

At the beginning of the pandemic, many grocery corporations acknowledged the sudden stress and risks that employees had to deal with by providing a \$2 per hour “appreciation pay.” While the pandemic has continued into 2021, this pay increase disappeared for most in May, 2020.

Very few companies have continued this regular pay increase, and instead those such as Safeway/Albertsons have opted to do a one-time bonus of between \$100 and \$300, before taxes. Many businesses have faced significant losses and bankruptcies throughout this pandemic, but grocery companies have seen huge profits. Grocery employees, however, have seen none of it.

For the 2019 fiscal year that ended right before the pandemic, in February 2020, Albertsons’ CEO earned \$8,898,008 cash income and \$19,505,087 in company equity (1). Co-Chairman Jim Donald earned \$3,812,078 cash income and \$9,454,536 in company equity (1). The company’s assets grew \$3,958,500,000 between 2018 and 2019 (1), and so far into the pandemic assets have increased by \$1,584,200,000 (2).

While employees and the Union, UFCW5, have been calling for \$5 Hazard Pay, grocery corporations and the California Grocers’ Association have failed to display compassion or understanding for grocery workers, instead implementing scare tactics to continue scraping every penny from consumers and employees to line executive’s pockets.

What is the “financial burden” that Albertsons and other grocery companies will be put under? Kroger announced after Long Beach, CA passed a \$4 per hour “Hazard Pay” that they would have to close two underperforming stores in the area (3). The keyword here is “underperforming.” If these stores were already not generating enough profit to warrant continued operations from Kroger, \$4 Hazard Pay is not

what is closing them. Instead, the grocery corporation is manipulating the narrative to avoid having to pay grocery workers wages that reflect the current climate of grocery employment.

The California Grocers Association is continuing to push this narrative, causing employees to fear for their jobs instead of promoting the appreciation and compensation for the additional duress they have been subjected to. The Association also claims that consumers will suffer, as grocery costs will increase so corporations can cover the \$5 Hazard Pay for employees. In reality, that \$1,584,200,000 asset increase Albertsons has seen throughout the pandemic as well as the \$28,944,892 salary for CEO Vivek Sankaran in 2019 show that these companies will increase grocery costs simply to pad their bottom line and ensure that their profits continue to be astronomical. They can afford the \$5 Hazard Pay, and they should be passing their profits along to employees and customers. Instead, they continue to amass unnecessary wealth by passing along costs to consumers.

The fears over rising grocery costs and decreased job availability are not the only factors dividing grocery workers. Many employees are upset over the lack of equality in the industry. While employees at Lucky's have been receiving \$2 Hazard Pay, employees at Nob Hill have not. While Safeway employees in Oakland are now receiving \$5 per hour Hazard Pay, Safeway employees in San Jose are not. We are all doing the same jobs, dealing with the same obstacles, and risking our safety and the safety of our loved ones. Yet, there is more division than ever because of these significant benefits discrepancies.

The stress, fear, and obstacles that grocery workers face have not stopped increasing. One recent ordinance in San Jose dictates that we are no longer allowed to take breaks in our breakroom. We've been instructed to eat lunch or sit down in our vehicles, even though many grocery workers do not have a vehicle accessible to them. Since the beginning of January, employees have been sitting outside in the freezing cold and rain. People enter our store without a mask, pull down their mask to speak to us, and walk right up to us regardless of social distancing. Yet, it has been deemed unsafe to sit six-feet apart in a breakroom with a maximum limited capacity of three.

Our sick pay has not been increased, even though we are being required to stay home and quarantine whenever we feel we may be sick. We have only been given 80 hours paid sick leave- two weeks full-time, and that's regardless of whether or not we actually contract the virus. This amount of "COVID leave" was announced at the start of the pandemic. The pandemic has now lasted nearly a year, but we have received no additional options for leave pay.

Let's say you've been working in the produce department for 2 years. You come home to your wife, who is a nurse, and sit down to watch a few episodes of TV with her. About an hour in, she tells you she's not feeling well. She goes to bed early, and you sleep on the couch "just in case." The next morning, she feels even sicker and goes to get a COVID test, but they tell her it will take at least 3 days for the results. To be as safe as possible, she stays away from you in a separate room. You call your boss, and because this is a person that you live with, that you were in close contact with, your boss has to instruct you to call the at-

will nurse line the company uses, which instructs you to get a COVID test before being able to return to work. You go to urgent care, get a COVID test, go home and wait. You wait for an additional 11 days for the results, the entire time you are not allowed to come into work. Finally, both tests come back negative, and you can return to work. You get paid for the time you were out.

One month later, your wife comes home and tells you that her work has instructed her to stay home because she came into close contact with a patient that tested positive a few days before. You call your boss, who instructs you to call the nurse line again. They tell you to stay home and get a COVID test before being able to return to work. You and your wife get tested, and this time the results come back within a day as positive for COVID. You are instructed to stay out of work for at least 10 days. This time, though, your boss tells you that you've already used your COVID leave. Instead, you end up missing out on two weeks of pay.

For many grocery workers this can cause bills to pile up. \$5 Hazard Pay would alleviate these financial burdens that have already been taken on by many grocery workers. Additionally, this would encourage grocery workers to stay home when feeling sick, because they may actually be able to afford missing time off work and rely on either increased savings or the ability to generate more income when returning from leave. Additionally, this increased income would likely end up circulating back through the economy in San Jose.

It's time for grocery workers to receive Hazard Pay. We have been consistently here for our communities, despite coping with the repercussions that all are facing throughout the pandemic. We have faced challenges that we never could have predicted when starting our careers and investing our lives in the grocery industry. We have been working through the threats on our jobs and livelihoods that are being perpetuated by grocery corporations and the California Grocers' Association. The previous city council meeting in San Jose failed to reach a consensus, and pushing off the decision until the end of February does nothing but add more stress to grocery workers while catering to corporations that have been steadily profiting off the pandemic. Implementing \$5 Hazard Pay will allow us to continue to safely and confidently serve our communities.

- (1) <https://investor.albertsoncompanies.com/financial-reports/sec-filings/document-details/default.aspx?FilingId=14145631>
- (2) <https://www.businesswire.com/news/home/20210112005250/en/Albertsons-Companies-Inc.-Reports-Third-Quarter-Fiscal-2020-Results>
- (3) <https://www.supermarketnews.com/retail-financial/kroger-shut-two-long-beach-stores-due-local-hazard-pay-mandate>

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Blair Beekman. sj council. February 9, 2021. Item 3.4.

b. beekman [REDACTED]

Tue 2/9/2021 8:30 AM

To: Agendadesk <Agendadesk@sanjoseca.gov>

[External Email]

Dear community of San Jose, and city govt.

An additional, \$3 an hour, for the next 6 months, until September 2021, seems it can work, very well, in what can be a year of stagnant inflation, in 2021.

I think, the question of the mayor, and those of city council, is not being clear, exactly

How the economy, can begin to develop, after September 2021 - is an important part, in what the mayor & city council, are worried about.

Although, decisions will be need to be made, by the end of May, to extend Hazard pay, for a few more months - I feel, by July & August, of this year, a more clear direction into 2022, and beyond, can begin to be better understood.

And if, current bonus, Hazard pay, can become a part of, a more regular pay, into the future.

A reminder, it now may be, September 2021, as the time, we can possibly start to return, to more familiar routines, of shared work spaces & regular community living.

Sincerely,
Blair Beekman

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Fw: Agenda item number 8.1

City Clerk <city.clerk@sanjoseca.gov>

Tue 2/9/2021 8:14 AM

To: Agendadesk <Agendadesk@sanjoseca.gov>

FYI

Office of the City Clerk | City of San José

200 E. Santa Clara St., Tower 14th Floor

San Jose, CA 95113

Main: 408-535-1260

Fax: 408-292-6207

How is our service? [Please take our short survey.](#)

From: Elizabeth [REDACTED]

Sent: Tuesday, February 9, 2021 7:05 AM

To: City Clerk <city.clerk@sanjoseca.gov>

Subject: Agenda item number 8.1

[External Email]

Hello ,

I'm writing in as I am a grocery worker. I have been working on the front line from day 1. In March 2020, myself as well as other co-workers were working 6 days a week 12 and 14 hours days. Today, luckily, that is not required. But we are facing different problems. Now we are having to deal with customers that refuse to wear their mask. We ask politely and we get attitude and then get yelled at. As we all know,, this is where the danger is introduced. We are trying to protect other customers as well as our fellow grocery workers. We also get many customers who wear their mask incorrectly and do not understand why we request they do wear it correctly. We should receive this hazard pay as we really are on the front line in danger of getting sick. We all are using safe practices, but we cannot control other people.

Please approve this hazard pay.

Thank you for your time.

-Elizabeth

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GREATER RIVERSIDE
CHAMBERS OF COMMERCE



PLEASANTON
CHAMBER of
COMMERCE



SWCLC
Southwest California
Legislative Council
A Coalition of
The Orange County, Riverside, San Diego, Santa Ana and Westland Chambers of Commerce



ELK GROVE
CHAMBER
OF COMMERCE



February 9, 2021

San Jose City Councilmembers
200 E. Santa Clara St.
San Jose, CA

Sent via email

SUBJECT: PROPOSAL TO MANDATE INCREASED GROCERY WORKER PAY

Dear Councilmembers:

The California Chamber of Commerce and undersigned organizations respectfully oppose the proposal to mandate an across-the-board increase of grocery worker and hourly pay. Such a steep increase in payroll costs will have a detrimental impact on the grocery industry, which has been and presently is operating on thin profit margins with many stores operating at a loss.

Grocery Stores Operate on Razor-Thin Profit Margins

At least fifteen cities and/or counties are presently considering \$3.00, \$4.00, or \$5.00 an hour increases for all grocery workers who work for companies of a certain size. The average pay for grocery workers in California is currently \$18.00 per hour, which is \$4.00 per hour above the state minimum wage.¹ Labor costs are already one of the largest expenses for grocers, second only to the cost of goods. On average, about 16% of sales are used to pay for labor costs. An across-the-board increase as proposed by these ordinances would increase labor costs approximately 28% for grocery stores and increase the amount of sales used to pay for labor costs to about 19-20.5% of sales. This is a 3-4.5% increase in sales that will need to be used to pay for labor.

¹ Capitol Matrix Consulting, Consumer and Community Impacts of Hazard Pay Mandates (2021), available at: <https://www.extrapayfacts.com/economic-impact-study-consumer-and-community-impacts-of-hazard-pay-mandates/>

These proposals are largely based on a false premise about the profitability of the grocery industry. Temporary increased sales during COVID-19 have not led to a windfall of extra money for these companies. Average profit margins for the grocery industry were approximately 1.4% in 2019, far below the average profit margins of other industries. The industry saw a slight increase in those margins to 2.2% in early to mid-2020 and it was around that time that some grocery stores did voluntarily increase workers' pay around \$2.00 per hour and/or provided one-time bonuses. That prior voluntary increase in pay is now being cited as one of the reasons that stores can afford these increases again, but profit margins have since trended down to pre-COVID numbers and these new ordinances mandate hourly pay increases of double the size of the voluntary increases. This trend of declining profit margins is true even for California's largest grocery store chains, whose profit margins peaked at 3.6% of sales in early 2020 and fell to 1.9% by December. A store with a profit margin of less than 2% of its sales cannot absorb a cost that is equivalent to 3-4.5% of its sales.

Profits are also not consistent between stores. It is estimated that up to one third of all stores incur net losses and are propped up by other stores that do profit. With such a sharp increase in labor costs, this will decrease those other stores' ability to subsidize stores that incur losses. The grocery industry is not in a place to absorb a 28% increase in labor costs.

Businesses Face Increased Costs Due to COVID-19

It is crucial to view this issue in light of all of the costs that businesses have faced throughout COVID and are still facing. The grocery industry has incurred significant costs to keep their employees and customers safe and to comply with constantly changing guidance from local public health departments and the California Occupational Safety and Health Administration (CalOSHA). Those costs include:

- Providing employees with personal protective equipment
- Increased sanitation and cleaning protocols
- Installation of protective equipment, including plastic barriers, and social distancing markers
- Supplemental paid leave under the Families First Coronavirus Act, Executive Order No. 51-20, and Labor Code sections 248 and 248.1
- Exclusion pay under the CalOSHA Emergency Temporary Standard (ETS)
- Hiring and training workers or paying overtime wages to existing workers who fill in for those out on paid leave or who are excluded under the ETS
- Biweekly or weekly testing costs under the ETS
- Reduced sales due to limiting numbers of customers

Grocery stores' efforts to protect employees are proving effective. Less than 1% of COVID-19 workers' compensation claims in California have been filed by grocery store employees.²

While mandating such significant pay increases to all grocery workers may directly benefit those workers, it will have negative impacts to the industry as a whole and reduce the ability for the stores to hire back more employees, or maintain existing levels of other wages or benefits for employees in the industry. It is likely to even result in higher food costs of approximately \$400.00 annually per household of four, which many Californians can simply not afford.

The Long Beach Ordinance Has Already Caused Multiple Grocery Store Closures

As a result of the Long Beach ordinance that took effect several weeks ago mandating a \$4.00 per hour increase for grocery workers, The Kroger Company announced that it was forced to close two of its struggling stores in the city. The company estimates that it has spent approximately \$1.3 billion on additional pay to associates and COVID-19 related safety measures. That \$1.3 billion cost does not include paid leave offered to employees due to the pandemic.

We implore you to reconsider this proposal due to the detrimental impacts that this proposal would have on businesses, the overall workforce, and the cost of goods.

² [California Workers' Compensation Institute - COVID-19 & Non-COVID Interactive App \(cwci.org\)](https://www.cwci.org/)

We appreciate your consideration of our concerns.

Sincerely,



Ashley Hoffman
Policy Advocate
California Chamber of Commerce

Brea Chamber of Commerce
Carlsbad Chamber of Commerce
Corona Chamber of Commerce
El Dorado County Chamber of Commerce
El Dorado Hills Chamber of Commerce
Elk Grove Chamber of Commerce
Folsom Chamber of Commerce
Greater Conejo Valley Chamber of Commerce
Greater High Desert Chamber of Commerce
Greater Riverside Chambers of Commerce
Hollywood Chamber of Commerce
Long Beach Area Chamber of Commerce
Oceanside Chamber of Commerce
Pleasanton Chamber of Commerce
Rancho Cordova Chamber of Commerce
Roseville Area Chamber of Commerce
San Gabriel Valley Economic Partnership
Southwest California Legislative Council
Torrance Area Chamber of Commerce
United Chamber Advocacy Network
Yuba Sutter Chamber of Commerce

AH:ll

From [REDACTED]

Sent: Tuesday, February 9, 2021 12:32 PM

To: City Clerk <city.clerk@sanjoseca.gov>

Subject:

I believe that we should pass the vote because we are all putting ourselves in the middle of this pandemic and in the front lines of covid.we work hard for this community so we deserve this pay.

February 8, 2020

The Honorable Sam Liccardo
Mayor, City of San Jose
200 E. Santa Clara Street
San Jose, CA 95113



RE: Grocery Worker Premium Pay

Dear Mayor Liccardo,

On behalf of San Jose grocers, I write to ask the Council to not move forward with the proposed grocery worker premium pay ordinance until meeting with the grocery industry to understand the community and economic impacts. Without the city's willingness to engage the grocery industry, we must oppose the ordinance for both policy and legal reasons.

We agree that grocery workers serve a vital and essential role during the pandemic. They have worked tirelessly to keep stores open for consumers, allowing our communities to have uninterrupted access to food and medications. To protect our employees, grocery stores were among the first to implement numerous safety protocols, including providing PPE and masks, performing wellness checks, enhancing sanitation and cleaning, limiting store capacity, and instituting social distance requirements, among other actions.

On top of increased safety measures, grocery employees have also received unprecedented amounts of supplemental paid leave to care for themselves and their families in addition to already existing leave benefits. During the pandemic grocers have also provided employees additional pay and benefits throughout the pandemic in various forms, including hourly and bonus pay averaging an extra \$2 to \$3 along with significant discounts and complimentary groceries. All of these safety efforts and additional benefits clearly demonstrate grocers' dedication and appreciation for their employees.

Unfortunately, the Grocery Worker Premium Pay ordinance would mandate grocery stores provide additional pay beyond what is economically feasible, which would severely impact store viability and result in increased prices for groceries, limited operating hours, reduced hours for workers, fewer workers per store, and most concerning, possible store closures. These negative impacts from the ordinance would be felt most acutely by independent grocers, ethnic format stores, and stores serving low-income neighborhoods. The City of Long Beach, who recently passed a similar ordinance, has already suffered the permanent loss of several full-service grocery stores as direct result.

Based on the ordinance and supporting documentation it is clear that Council is relying on flawed and inaccurate data, as well as a significant lack of information specific to the grocery industry or to grocers in Irvine to make its decision. The study referenced supporting documentation lumps a few traditional grocery companies, with most not operating in San Jose, in with several of the largest non-grocery retailers in existence. This study's broad view completely ignores the continued low profit margins and significant operational costs traditional grocers have incurred in response to the pandemic, including the hiring of tens of thousands of new employees. In order to help address in more detail the negative consequences of this ordinance we are submitting "Consumer and Community Impacts of Hazard Pay Mandates" for your review. We believe a full understanding of the impacts is required before moving forward.

Specific to ordinance language, there are numerous policy and legal issues which unnecessarily single out the grocery industry and create significant burdens. The ordinance fails to recognize the current efforts grocers are making to support their employees and requires grocers add significant costs on to existing employee benefit programs.



Furthermore, passing this ordinance improperly inserts the city into employee-employer contractual relationships. The ordinance also ignores other essential workers, including city employees, that have similar interaction with the public. Taken in whole, this ordinance is clearly intended to impact only specific stores within a single industry and fails to recognize the contributions of all essential workers. Based on language specifics, this ordinance misses a genuine effort to promote the health, safety and welfare of the public.

Emergency passage of the ordinance also ignores any reasonable effort for compliance by impacted stores, as several grocery stores will be operating at the time of passage. By implementing the ordinance immediately there is literally no time to communicate to employees, post notices, adjust payroll processes, and other necessary steps as required by California law. Coupled with the varied enforcement mechanisms and significant remedies outlined, the passage of this ordinance would put stores into immediate jeopardy. This scenario is yet another negative consequence resulting from the lack of outreach to grocers and the grocery industry to understand real world impacts.

Grocery workers have demonstrated exemplary effort to keep grocery stores open for San Jose. This why the grocery industry has provided significant safety measures and historic levels of benefits that include additional pay and bonuses. Unfortunately, this ordinance is a significant overreach of policy and jurisdictional control. This will result in negative consequences for workers and consumers that will only be compounded by the pandemic.

We respectfully implore the Council to not move forward with the grocery worker pay ordinance at this time. We encourage you to understand the impact of this ordinance on workers and the community by accepting our invitation to work cooperatively with San Jose grocers. If Council must bring the ordinance forward for a vote at this time we ask you to oppose its passage. CGA is submitting additional information from our legal counsel for your consideration.

Thank you for your consideration and we look forward to being able to combat the pandemic in partnership with the City of San Jose.

Sincerely

Tim James
California Groc

CC: Members, San Jose City Council

Consumer and Community Impacts of Hazard Pay Mandates

January 2021

Prepared for:

California Grocers Association

Prepared by:

Brad Williams, Chief Economist

Michael C. Genest, Founder and Chairman

Capitol Matrix Consulting

About the Authors

The authors are partners with Capitol Matrix Consulting (CMC), a firm that provides consulting services on a wide range of economic, taxation, and state-and-local government budget issues. Together, they have over 80 years of combined experience in economic and public policy analysis.

Mike Genest founded Capitol Matrix Consulting (originally Genest Consulting) in 2010 after concluding a 32-year career in state government, which culminated as Director of the California Department of Finance (DOF) under Governor Arnold Schwarzenegger. Prior to his four-year stint as the Governor's chief fiscal policy advisor, Mr. Genest held top analytical and leadership positions in both the executive and legislative branches of government. These included Undersecretary of the Health and Human Services Agency, Staff Director of the Senate Republican Fiscal Office, Chief of Administration of the California Department of Corrections and Rehabilitation, and Director of the Social Services section of California's Legislative Analyst's Office.

Brad Williams joined Capitol Matrix Consulting in 2011, after having served in various positions in state government for 33 years. Mr. Williams served for over a decade as the chief economist for the Legislative Analyst's Office, where he was considered one of the state's top experts on the tax system, the California economy, and government revenues. He was recognized by the Wall Street Journal as the most accurate forecaster of the California economy in the 1990s, and has authored numerous studies related to taxation and the economic impacts of policy proposals. Immediately prior to joining CMC, Mr. Williams served as a consultant to the Assembly Appropriations Committee, where he advised leadership of the majority party on proposed legislation relating to taxation, local government, labor, and banking.

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Hazard-pay mandates passed in the City of Long Beach and under consideration in the City of Los Angeles and in other local jurisdictions would raise pay for grocery workers by as much as \$5.00 per hour. Since the average pay for grocery workers in California is currently about \$18.00 per hour, a \$5.00 increase would raise store labor costs by 28 percent, and have major negative impacts on grocery stores, their employees and their customers. Specifically:

- Average profit margins in the grocery industry were 1.4% in 2019, with a significant number of stores operating with net losses. While profits increased temporarily to 2.2% during early to mid 2020, quarterly data indicates that profit margins were subsiding to historical levels as 2020 drew to a close.
- Wage-related labor expenses account for about 16 percent of total sales in the grocery industry. As a result, a 28 percent increase in wages would boost overall costs 4.5 percent under the City of Los Angeles proposal of \$5.00 per hour. *This increase would be twice the size of the 2020 industry profit margin and three times historical grocery profit margins.*
- In order to survive such an increase, grocers would need to raise prices to consumers and/or find substantial offsetting cuts to their controllable operating expenses, which would mean workforce reductions. As an illustration of the potential magnitude of each of these impacts, we considered two extremes:
 - 1) All of the higher wage costs (assuming the \$5.00/hour proposal) are passed through to consumers in the form of higher retail prices:
 - This would result in a \$400 per year increase in grocery costs for a typical family of four, an increase of 4.5 percent.
 - If implemented in the City of Los Angeles, its residents would pay \$450 million more for groceries over a year.
 - The increase would hit low- and moderate-income families hard, particularly those struggling with job losses and income reductions due to COVID-19.
 - If implemented statewide, additional grocery costs would be \$4.5 billion per year in California.
 - 2) Retail prices to consumers are not raised and all the additional costs are offset through a reduction in store expenses:
 - Given that labor costs are by far the largest controllable expense for stores, it is highly likely that the wage mandates will translate into fewer store hours, fewer employee hours, and fewer jobs.
 - For a store with 50 full-time equivalent employees, it would take a reduction of 11 employees to offset the increased wage costs, or a 22% decrease in staff.
 - If the mandate were imposed statewide at \$5.00 per hour, the job loss would be 66,000 workers.

Consumer and Community Impacts of Hazard Pay Mandates

- If imposed in the City of Los Angeles, the job loss would be 7,000 workers.
- And in the City of Long Beach, the job impact of its \$4.00 per hour mandate would be 775 jobs.
- Stores could alternatively avoid job reductions by cutting hours worked by 22 percent.
- For the significant share of stores already operating with net losses, a massive government-mandated wage increase would likely result in store closures, thereby expanding the number of “food deserts” (i.e. communities with no fresh-food options).

Introduction

The Long Beach City Council has passed an ordinance that mandates grocers to provide a \$4.00 per hour pay increase – “hazard pay” – to grocery workers. The mandate expires in 120 days. Two members of the Los Angeles City have introduced a similar measure for a \$5.00 per hour increase for companies that employ more than 300 workers nationwide. Grocery workers in California currently earn about \$18.00 per hour.¹ Therefore, the Los Angeles proposal would increase average hourly pay to \$23.00 per hour, an increase of 28 percent. Several other cities in California have discussed \$5.00/hour proposals similar to Los Angeles.

This report focuses on the impact of hazard pay mandates on grocery store profitability and on the sustainability of an industry with traditionally low profit margins. It also assesses the potential impact of the proposed wage increases on consumers, especially lower-income consumers (a cohort already hit hard by the COVID lockdowns and business closures).

Background — Grocery is a Low-Margin, High-Labor Cost Business

The grocery business is a high-volume, low-margin industry. According to an annual database of public companies maintained by Professor Damodaran of New York University (NYU),² net profit margins as a percent of sales in the grocery industry are among the lowest of any major sector of the economy. Earnings Before Interest, Taxes, Depreciation, and Amortization (EBITDA) averaged 4.6 percent of sales in 2019, and the net profit margin (which accounts for other unavoidable expenses such as rent and depreciation) was just 1.4 percent during the year. This compares to the non-financial, economy-wide average of 16.6 percent for EBITDA and 6.4 percent for the net profit margin. The NYU estimate for public companies in the grocery industry is similar to the 1.1 percent margin reported by the Independent Grocers Association for the same year.³

COVID-19 temporarily boosted profits

In the beginning of the COVID-19 pandemic, sales and profit margins spiked as people stocked up on household items and shifted spending from eating establishments to food at home. According to data compiled by NYU, net profit margins in the grocery industry increased to 2.2 percent in early to mid 2020.⁴ Although representing a substantial year-to-year increase in profits, the 2.2 percent margin remains quite small relative to most other industries. This implies that even with the historically high rates of profits in 2020, there is little financial room to absorb a major wage increase.

¹ \$18.00 per hour is consistent with the responses we received to our informal survey. It is also consistent with published contract agreements we reviewed. See, for example, the “Retail Food, Meat, Bakery, Candy and General Merchandise Agreement, March 4, 2019 - March 6, 2022 between UFCW Union Locals 135, 324, 770, 1167, 1428, 1442 & 8 - GS and Ralphs Grocery Company.” In this contract, hourly pay rates starting March 2, 2021 for food clerks range from \$14.40 per hour (for first 1,000 hours) up to \$22.00 per hour (for workers with more than 9,800 hours), The department head is paid \$23.00 per hour. Meat cutter pay rates range from \$14.20 (for the first six months) to \$23.28 per hour (for those with more than 2 years on the job). The department manager is paid \$24.78 per hour. <https://ufcw770.org/wp-content/uploads/2020/08/Ralphs-Contract-2020.pdf>

² Source: Professor Aswath Damodaran, Stern School of Business, New York University. <http://pages.stern.nyu.edu/~adamodar/>

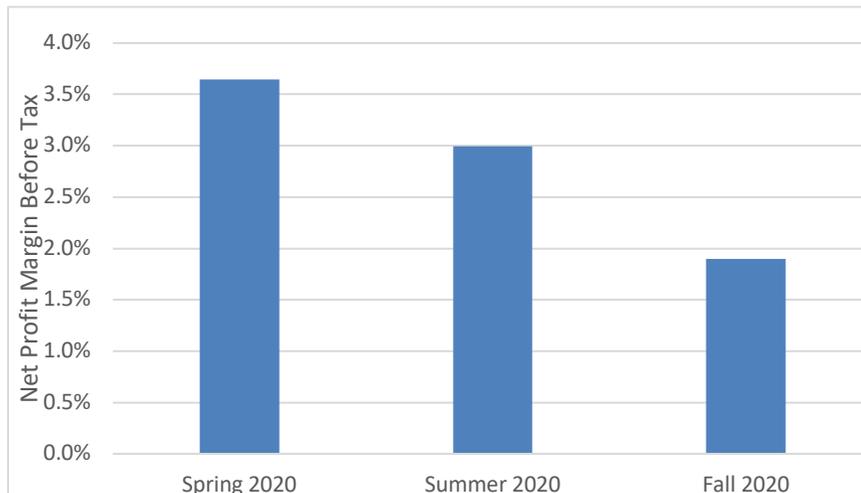
³ Source: “2020 Independent Grocer Financial Survey.” Sponsored by the National Grocer’s Association and FMS Solutions Holding, LLC

⁴ Supra 2.

But the increases are subsiding

Moreover, quarterly data indicates that the sales and profit increases experienced in early 2020 were transitory and were settling back toward pre-COVID trends as 2020 drew to a close. This quarterly trend is evident in quarterly financial reports filed by California’s two largest publicly traded companies in the grocery business: The Kroger Company (which includes Ralphs, Food for Less, and Fred Meyers, among others) and Albertsons (which includes Safeway, Albertsons, and Vons, among others). Figure 1 shows that the average profit margin for these two companies was 3.6 percent of sales in the Spring of 2020, declining to 1.9 percent by the fourth quarter of the year.⁵ Monthly sales data contained in the 2020 Independent Grocer’s Financial Survey showed a similar pattern, with year-over-year sales peaking at 68 percent in mid-March 2020, but then subsiding to 12 percent as of the first three weeks of June (the latest period covered by the survey).⁶

Figure 1
Combined Net Profit Margins During 2020
Albertsons and The Kroger Companies



While grocers continued to benefit from higher food and related sales during the second half of 2020, they also faced higher wholesale costs for food and housing supplies, as well as considerable new COVID-19 related expenses. These include expenses for paid leave and overtime needed to cover shifts of workers affected by COVID-19, both those that contracted the virus and (primarily) those that were exposed and needed to quarantine. Other COVID-19 costs include those for intense in-store cleaning, masks for employees, new plastic barriers at check-outs and service counters, and additional staffing and capital costs for scaling up of e-commerce, curbside and home delivery.

⁵ In their SEC 10-Q quarterly report for the four-month period ending in June 2020, Albertsons reported that consolidated sales were up 21.4 percent from the same period of 2019 and before-tax profits were 3.5 percent of total sales. In the three-month period ending in mid-September, the company reported year-over-year sales growth of 11.2 percent and before-tax profits equal to 2.5 percent of sales. In their 10-Q report filed for the three-month period ending in early December, Albertsons showed year-over-year sales growth of 9.3 percent, and profits as a percent of sales of just 1.0 percent. Data for the Kroger Company indicates that year-over-year sales growth subsided from 11.5 percent for the three-month period ending in May 2020 to 8.2 percent for the three-month period ending in August, and further to 6.3 percent for the three-month period ending in November. Profits as a percent of sales fell from 3.8 percent to 3.5 percent, and further to 2.8 percent during the same three quarterly periods. (Source: EDGAR Company Filings, U.S. Securities and Exchange Commission. <https://www.sec.gov/edgar/searchedgar/companysearch.html>.)

⁶ Supra 3

Many stores incur losses in normal years

The 1- to 2-percent net profit levels cited above reflect industry averages. There is considerable variation around these averages among individual stores, with some doing better and some doing worse. As one indication of this variation, the 2020 Independent Grocer Financial Survey found that, while the nationwide average profit before tax for all stores was 1.1 percent of sales in 2019, about 35 percent of the respondents reported negative net profits during the year.⁷ This national result is consistent with feedback we received from California grocers, which reported that even in profitable years, anywhere from one-sixth to one-third of their stores show negative earnings. While chain operations can subsidize some store losses with earnings from other stores, a major mandated wage increase would eliminate earnings for even the most profitable stores, making cross-subsidies within supermarket chains much less feasible. As discussed below, the consequence would likely be a closure of some unprofitable stores.

Mandated wage increases would push most stores into deficits

The grocery business is very labor intensive. Labor is the industry's second largest cost, trailing only the wholesale cost of the food and other items they sell. According to a benchmark study by Baker-Tilly, labor expenses account for 13.2 percent of gross sales of grocers nationally.⁸ The Independent Grocer Survey, cited above, found that labor costs account for 15 percent of sales nationally and 18.4 percent for independent grocers in the Western region of the U.S.⁹

Respondents to our survey of California grocers reported that labor costs equate to 14 percent to 18 percent of sales revenues. For purposes of this analysis, we are assuming that the wage base potentially affected by the mandated hourly pay increase is about 16 percent of annual sales.¹⁰

A mandatory \$4-\$5 per hour increase, applied to an average \$18.00 per hour wage base, would increase labor costs by between 22 percent and 28 percent. This would, in turn, raise the share of sales devoted to labor costs from the current average of 16 percent up to between 19 percent and 20.5 percent of annual sales. The up-to-4.5 percent increase would be double the 2020 profit margin reported by the industry, and three times the historical margins in the grocery industry.

Potential Impacts on Consumers, Workers and Communities

In order to survive such an increase, grocers would need to raise prices to consumers and/or find substantial offsetting cuts to their operating expenses. As an illustration of the potential magnitude of each of these impacts, we considered two extremes: (1) all of the higher wage costs are passed through to consumers in the form of higher retail prices; and (2) prices are not passed forward and all the additional costs are offset through a reduction of jobs or hours worked.

⁷ Supra 3

⁸ White Paper, "Grocery Benchmarks Report", November 5, 2019, Baker Tilly Virchow Krause LLP.

⁹ Supra 3

¹⁰ This recognizes that not all labor costs would be affected by the hazard pay proposal. Grocers report that both in-store and warehouse staff would receive the increase, as would supervisors and managers, although some executive and administrative staff may not. In addition, costs for health coverage would probably not be affected, at least not immediately, but payroll taxes and some other benefit costs would be.

Higher costs passed along to consumers

Aggregate impacts. If a \$5.00 per hour wage increase were imposed statewide and all of the increase were passed along to customers in the form of higher product prices, Californians would face a rise in food costs of \$4.5 billion annually. If imposed locally, the City of Los Angeles's \$5 per hour proposal would raise costs to its residents by \$450 million annually, and the \$4.00 per hour increase in Long Beach would raise grocery costs to its residents by about \$40 million annually.¹¹

Impact on household budgets. The wage increase would add about \$400 to the annual cost of food and housing supplies for the typical family of four in California.¹² While such an increase may be absorbable in higher income households, it would hit low- and moderate-income households especially hard. The impact would be particularly harsh for those who have experienced losses of income and jobs due to the pandemic, or for those living on a fixed retirement income including many seniors. For these households, the additional grocery-related expenses will make it much more difficult to cover costs for other necessities such as rent, transportation, utilities, and healthcare.

According to the BLS Consumer Expenditure Survey, California households with annual incomes of up to \$45,000 already spend virtually all of their income on necessities, such as food, housing, healthcare, transportation and clothing.¹³ For many of these households, a \$33 per month increase in food costs would push them into a deficit.

These increases would add to the severe economic losses that many Californians have experienced as a result of government-mandated shutdowns in response to COVID-19. According to a recent survey by the Public Policy Institute of California, 44 percent of households with incomes under \$20,000 per year and 40 percent with incomes between \$20,000 and \$40,000 have reduced meals or cut back on food to save money.¹⁴ Clearly, imposing a \$4.5 billion increase in grocery prices would make matters worse, especially for these lower-income Californians.

Higher costs are offset by job and hours-worked reductions

If grocers were not able to pass along the higher costs resulting from the additional \$5/hour wage requirement, they would be forced to cut other costs to avoid incurring financial losses.¹⁵ Given

¹¹ Our estimates start with national U.S. Census Bureau estimates from the Annual Retail Trade Survey for 2018 (the most current data available), which indicates that nationwide sales by grocers (excluding convenience stores) was \$634 billion in 2018. We then apportioned this national data to California as well as the cities of Los Angeles and Long Beach based on relative populations and per-household expenditure data from the Consumer Expenditure Survey. We then updated the 2018 estimate to 2021 based on actual increases in grocery-related spending between 2018 and 2020, as reported by the U.S. Department of Commerce, and a projection of modest growth in 2021. Our estimate is consistent with the industry estimate of \$82.9 billion for 2019 that was by IBISWorld, as adjusted for industry growth in 2020 and 2021. (See IBISWORLD Industry Report, Supermarkets & Grocery Stores in California, Tanvi Kumar, February 2019.)

¹² Capitol Matrix Consulting estimate based on U.S. Bureau of Labor Statistics, Consumer Expenditure Report, 2019. <https://www.bls.gov/opub/reports/consumer-expenditures/2019/home.htm>

¹³ U.S. Bureau of Labor Statistics, Consumer Expenditure Survey, State-Level Expenditure Tables by Income. <https://www.bls.gov/cex/csxresearchtables.htm#stateincome>.

¹⁴ "Californians and Their Well-Being", a survey by the Public Policy Institute of California. December 2020. <https://www.ppic.org/publication/ppic-statewide-survey-californians-and-their-economic-well-being-december-2020/>

¹⁵ Circumstances where stores would not be able to pass forward high costs include communities where customers are financially squeezed by pandemic-related losses in jobs or wages, or where the increased is imposed locally and customers are able to avoid higher prices by shifting purchases to cross-border stores.

that labor costs are by far the largest controllable expense for stores, it is highly likely that the wage mandates will translate into fewer store hours, fewer employee hours, and fewer jobs. For a store with 50 full-time equivalent employees, it would take a reduction of 11 employees to offset the increased wages, which is about a 22 percent decrease in staff/hours.

Aggregate impacts. As an illustration, if the full California grocery industry were to respond to a statewide \$5.00 wage mandate by reducing its workforce, we estimate that up to 66,000 industry jobs would be eliminated. This is about 22 percent of the 306,000 workers in the grocery industry in the second quarter of 2020 (the most recent quarter for which we have detailed job totals).¹⁶ If the mandate were imposed locally in the City of Los Angeles, the impact would be about 7,000 workers, and in the City of Long Beach (at \$4.00 per hour), the impact would be about 775 jobs. Stores could alternatively avoid job reductions by cutting hours worked by 22 percent across-the-board.

Under these circumstances, some workers receiving the wage increases would be better off, but many others would be worse off because of reduced hours or layoffs. Customers would also be worse off because of reduced store hours, and fewer food choices and services.

Without any external constraints imposed by the local ordinances, it is likely some combination of higher prices and job and hour reductions would occur. Stores within some jurisdictions imposing the mandatory wage increase might be able to raise retail prices sufficiently to cover a significant portion of the mandated wage increase, thereby shifting the burden onto customers. However, the degree to which this would occur would vary from jurisdiction to jurisdiction, depending on the price-sensitivity of their customers and (if the mandate is imposed locally) the availability of shopping alternatives in neighboring communities that have not imposed the wage mandate.

Of course, if the local ordinances contain provisions prohibiting stores from cutting hours, then stores would be forced to pass costs on to consumers in the form of higher prices, or to close stores in those jurisdictions.

Some communities would become food deserts

Many of the up-to one third of stores already incurring losses may find it impossible to raise prices or achieve savings that are sufficient to offset the higher wage costs. For these stores, the only option would be store closure. Indeed, a consistent theme of feedback we received from California grocer representatives is that it would be extremely difficult, if not impossible, to justify continued operation of a significant portion of their stores following a government-mandated 28-percent increase in wages. This would leave some communities with fewer fresh food options.

According to the Propel LA: “The United States Department of Agriculture (USDA) defines a food desert as ‘a low-income census tract where either a substantial number or share of residents has low access to a supermarket or large grocery store.’ There are a large number of census tracts in Los Angeles County, including Antelope Valley and San Fernando Valley, that are considered to be food deserts. The population of food deserts is predominantly Hispanic or Latino, followed by Black and White, respectively.”¹⁷ The map also shows several food deserts in and around the City of Long Beach. The hazard pay proposal would exacerbate this problem.

¹⁶ Employment Development Department. Labor Market Information Division. Quarterly Census of Employment and Wages. <https://www.labormarketinfo.edd.ca.gov/qcew/cew-select.asp>

¹⁷ “Food deserts in LA, an Interactive Map.” Propel LA, <https://www.propel.la/portfolio-item/food-deserts-in-los-angeles-county/>

Closing even one supermarket in many neighborhoods would result in residents having to commute significantly farther to find fresh and healthy food at reasonable prices. Tulane University studied the impact of food deserts and concluded that while the majority of items at smaller stores are priced higher than at supermarkets, price is a consideration in deciding where to purchase staple foods, and transportation from a food desert to a supermarket ranges from \$5 to \$7 per trip.¹⁸

Thus, mandating hazard pay would likely impose significant hardships on some communities, especially in lower-income areas. The loss of a grocery store means both fewer jobs for members of the community and higher costs for all residents in the community, who must pay higher local prices or incur additional time and expense to shop.

Conclusion

Hazard pay initiatives like those passed in the City of Long Beach, and proposed in the City of Los Angeles and in other local jurisdictions, would have far-reaching and negative consequences for businesses, employees and customers of grocery stores in the jurisdictions where levied. They would impose an up-to-28 percent increase in labor costs on an industry that is labor-intensive and operates on very thin profit margins. The increases would be more than double the average profit margins for the grocery industry in 2020, and triple the margins occurring in normal years, and thus would inevitably result in either retail price increases or major employment cutbacks by grocery stores, or a combination of both. If the increased costs were passed forward to consumers, a typical family of four in California would face increased food costs of \$400 per year. This would intensify financial pressures already being felt by millions of low- and moderate-income families, many of whom are already cutting back on basic necessities like food due to COVID-19-related losses in jobs and income. Establishments not able to recoup the costs by raising prices would be forced to reduce store hours and associated jobs and hours worked by employees. For a significant number of stores that are already struggling, the only option may be to shutter the store. This would be a “lose-lose” for the community. It would mean fewer jobs with benefits, less local access to reasonably-priced food, and more time and expense spent by customers that would have to travel greater distance to find grocery shopping alternatives.

¹⁸ “Food Deserts in America (Infographic),” Tulane University, School of Social Work, May 10, 2018. <https://socialwork.tulane.edu/blog/food-deserts-in-america>

Fw: Hazard pay

City Clerk <city.clerk@sanjoseca.gov>

Tue 2/9/2021 12:38 PM

To: Agendadesk <Agendadesk@sanjoseca.gov>

Forwarding ...

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200 E. Santa Clara St., Tower 14th Floor

San Jose, CA 95113

Main: 408-535-1260

Fax: 408-292-6207

How is our service? [Please take our short survey.](#)

From: Jacob Tapia [REDACTED]

Sent: Tuesday, February 9, 2021 12:37 PM

To: City Clerk <city.clerk@sanjoseca.gov>

Subject: Hazard pay

[External Email]

First off my apologies for not being there today I was at work I thought the hazard payment was going to be \$5 now they're only going to give us \$3 out of the \$5 I'm sorry but My vote is no to the \$3 hazard payment I know it's extra money but to take this extra money that is less than what we were promised I feel like I'm gonna be wasting my time and health

Sent from my iPhone

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Fw: Essential pay

City Clerk <city.clerk@sanjoseca.gov>

Tue 2/9/2021 12:37 PM

To: Agendadesk <Agendadesk@sanjoseca.gov>

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San Jose, CA 95113

Main: 408-535-1260

Fax: 408-292-6207

How is our service? [Please take our short survey.](#)

From: dan helmer [REDACTED]

Sent: Tuesday, February 9, 2021 12:36 PM

To: City Clerk <city.clerk@sanjoseca.gov>

Subject: Essential pay

[External Email]

Should be 10\$ an hour . Workers like us are going to work because we need to feed our families not because we want to expose ourselves. This has been the case from the beginning and we just keep getting slapped in the face left and right by our companies. I have seen co-workers fall sick. We are risking our lives to keep people from dying bottom line. Our landlords have been bailed out and we have not . I would love to propose a strike. If my landlord is guaranteed his or her money in full during this crisis then I want my and fellow co-workers money guaranteed during this crisis. Don't forget that I/ we can not file for unemployment because we are essential and our employers do not have to shut their doors. that equates to no state or federal help. We do not qualify for unemployment and we are taking high risks every day. If our employers are made to pay us this pay which should be 10\$/hr then our employers should ask for a bail out from the government to help keep them essential. I would vote yes on this.

Sent from my Verizon Motorola Smartphone

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Fw: Grocery Clerk Hazard pay.

City Clerk <city.clerk@sanjoseca.gov>

Tue 2/9/2021 12:28 PM

To: Agendadesk <Agendadesk@sanjoseca.gov>

Forwarding

Office of the City Clerk | City of San José

200 E. Santa Clara St., Tower 14th Floor

San Jose, CA 95113

Main: 408-535-1260

Fax: 408-292-6207

How is our service? [Please take our short survey.](#)

From: mannysuresh [REDACTED]

Sent: Tuesday, February 9, 2021 11:52 AM

To: City Clerk <city.clerk@sanjoseca.gov>

Subject: Grocery Clerk Hazard pay.

[External Email]

Hello , As a grocery clerk having worked and still working ,Frontline during this pandemic we need this hazard pay.

We are not govt officials or tech employees working from home sipping coffee and eating donuts. We put our lives working everyday and exposing our health to Covid. We are not highly paid group,cost living in San Jose is extremely high,rent is excruciating painful to my wallet and home ownership is only a dream not achievable in BayArea.So given these facts as to whether we deserve the hazard payI leave it to your judgement.Thank You.

Sincerely

Emmanuel A Suresh
[REDACTED]

Sent from my T-Mobile 5G Device

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

February 9, 2021



Via Email

The Honorable Sam Liccardo
City Council
200 E. Santa Clara St.
San Jose, California 95113

Re: Hazard Pay for Grocery Workers Ordinance

Dear Council Members:

We write on behalf of our client, the California Grocers Association (the “CGA”), regarding the proposed Urgency Ordinance of the City of San Jose Establishing Labor Standards Requirements for Hazard Pay for Grocery Store Employees (the “Ordinance”) that singles out an specific group of grocery stores (i.e., those over 15,000 square feet operated by companies with 300+ employees) and requires them to implement mandatory pay increases. The City Council’s rushed consideration of this Ordinance would, if passed, lead to the enactment of an unlawful, interest-group driven ordinance that ignores large groups of essential retail workers. It will compel employers to spend less on worker and public health protections in order to avoid losses that could lead to closures. In addition, the Ordinance, in its proposed form, interferes with the collective-bargaining process protected by the National Labor Relations Act (the “NLRA”), and unduly targets certain grocers in violation of their constitutional equal protection rights. We respectfully request that the City Council reject the Ordinance as these defects are incurable.

The Ordinance fails to address any issue affecting frontline workers’ health and safety.

The Ordinance purportedly “protects public health and welfare by insuring the stability of the food supply chain” during the Covid-19 pandemic. (Ordinance at 4.) The Ordinance is devoid of any requirements related to the health and safety of frontline workers or the general public and instead imposes costly burdens on certain grocers by requiring them to provide an additional “three dollars (\$3.00) per hour in hazard pay above and beyond any payments already owed” (“Premium Pay”). (§ 5.J.). A wage increase does not play any role in mitigating the risks of exposure to COVID-19, nor is there any suggestion that there is any risk of interruption to the food supply absent an increase in wages. If anything, the Ordinance could increase those risks, as it may divert funds that otherwise would have been available for grocers to continue their investments in public health measures recognized to be

Hon. Sam Liccardo
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effective: enhancing sanitation and cleaning protocols, limiting store capacity, expanding online orders and curbside pickup service, and increasing spacing and social distancing requirements.

The Ordinance also inexplicably chooses winners and losers among frontline workers in mandating Premium Pay. The Ordinance defines “grocery store” as “a retail store in the City of San Jose that is either: over fifteenth thousand (15,000) square feet in size and that sells household foodstuffs for offsite consumption,” or “at least ten percent (10%) of its sales floor area dedicated to sale of non-taxable merchandise.” (§ 5.M.) Other retail and health care workers are ignored, despite the fact that those same workers have been reporting to work since March. The Ordinance grants Premium Pay for select, employees of the large grocers while ignoring frontline employees of larger, generic retailers that also sell a substantial amount of groceries, and other frontline workers in San Jose that face identical, if not greater, risks.

The Ordinance is unlawful. By mandating Premium Pay, the Ordinance would improperly insert the City of San Jose into the middle of the collective bargaining process protected by the National Labor Relations Act. The Ordinance suggests that the certain grocery workers require this “relief” on an emergency basis, as they “risk their lives and the health of their families each day, without any extra benefits or wages in order to keep the critical food and health supply operating.” (§ 3.C). San Jose employers and workers in many industries have been faced with these issues since March 2020. They are in no way “urgent.” More importantly, there has been no meaningful interruption of the food supply chain, as the Ordinance suggests is imminent absent implementation of hazard pay. Grocers have continued to operate, providing food and household items to protect public health and safety. In light of the widespread decrease in economic activity, there is also no reason to believe that grocery workers are at any particular risk of leaving their jobs, but even if there were such a risk, grocers would have every incentive to increase the workers’ compensation or otherwise bargain with them to improve retention. The Ordinance would interfere with this process that Congress intended to be left to be controlled by the free-play of economic forces. *Machinists v. Wisconsin Employment Relations Comm’n*, 427 U.S. 132 (1976). Such ordinances have been found to be preempted by the NLRA.

For example, in *Chamber of Commerce of U.S. v. Bragdon*, the Ninth Circuit Court of Appeals held as preempted an ordinance mandating employers to pay a predetermined wage scale to employees on certain private industrial construction projects. 64 F.3d 497 (9th Cir. 1995). The ordinance’s purported goals included “promot[ing] safety and higher quality of construction in large industrial projects” and “maintain[ing] and improv[ing] the standard of living of construction workers, and thereby improv[ing] the economy as a whole.” *Id.* at 503. The Ninth Circuit recognized that this ordinance “differ[ed] from the [a locality’s] usual exercise of police power, which normally seeks to assure that a minimum wage is paid

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to all employees within the county to avoid unduly imposing on public services such as welfare or health services.” *Id.* at 503. Instead, the ordinance was an “economic weapon” meant to influence the terms of the employers’ and their workers’ contract. *Id.* at 501-04. The Ninth Circuit explained that the ordinance would “redirect efforts of employees not to bargain with employers, but instead, to seek to set specialized minimum wage and benefit packages with political bodies,” thereby substituting a “free-play of economic forces that was intended by the NLRA” with a “free-play of political forces.” *Id.* at 504.

The same is true of this Ordinance. While the City has the power to enact ordinances to further the health and safety of its citizens, it is prohibited from interfering directly in employers’ and their employees’ bargaining process by arbitrarily forcing certain grocers to provide Premium Pay that is both unrelated to minimum labor standards, or the health and safety of the workers and the general public.

The Ordinance also violates the U.S. Constitution and California Constitution’s Equal Protection Clauses (the “Equal Protection Clauses”). The Equal Protection Clauses provide for “equal protections of the laws.” U.S. Const. amend. XIV, § 1; Cal. Const. art I, § 7(a). This guarantee is “essentially a direction that all persons similarly situated should be treated alike” and “secure[s] every person within the State’s jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents.” *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 439 (1985); *Village of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000). No law may draw classifications that do not “rationally further a legitimate state interest.” *Nordlinger v. Hahn*, 505 U.S. 1, 10 (1992). By requiring that any classification “bear a rational relationship to an independent and legitimate legislative end, [courts] ensure that classifications are not drawn for the purpose of disadvantaging the group burdened by law.” *Romer v. Evans*, 517 U.S. 620, 633 (1996).

As discussed above, the Ordinance here unfairly targets traditional grocery companies and arbitrarily subjects certain 300-employee grocers to the Premium Pay mandate while sparing other generic retailers who also employ frontline workers and who also sell groceries. *See Fowler Packing Co., Inc. v. Lanier*, 844 F.3d 809, 815 (9th Cir. 2016) (“[L]egislatures may not draw lines for the purpose of arbitrarily excluding individuals,” even to “protect” those favored groups’ “expectations.”); *Hays v. Wood*, 25 Cal. 3d 772, 786-87 (1979) (“[N]othing opens the door to arbitrary action so effectively as to allow [state] officials to pick and choose only a few to whom they will apply legislation and thus to escape the political retribution that might be visited upon them if larger numbers were affected.”). Moreover, absent from the Ordinance is any requirement that would actually address its stated purpose of promoting the public’s health and safety. Put simply, there is a disconnect between the Ordinance’s reach and its stated purpose, making it unlawful and violating the equal protection rights of CGA’s members.

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CGA disagrees with the Council’s characterization of the Ordinance as an “urgency ordinance.” There is nothing in the Ordinance that is required for “immediate preservation of the public peace, health and safety.” (§ 3.) Even if an emergency ordinance passes, there is no requirement that an emergency ordinance become effective immediately on passage. As this Council has done many times before, an emergency ordinance can become effective at a set date in the future.

Finally, in light of emerging vaccination programs for essential workers, stores’ increasing ability to protect patrons and workers from infection using distancing, curbside pickup, and other measures, we strongly encourage the City to set an alternate deadline for expiration of hazard pay ordinance (i.e., 90 days) so that it can be revisited by the Council in light of the rapidly changing pandemic conditions.

For all of the reasons discussed above, we respectfully request that the City Council reject the Ordinance.

Sincerely,

A large black rectangular redaction box covering the signature of William F. Tarantino.

William F. Tarantino

cc: Honorable Members of the San Jose City Council
Mr. Charles Jones
Mr. Sergio Jimenez
Mr. Raul Peralez
Mr. David Cohen
Ms. Magdalena Carrasco
Ms. Devora Davis
Ms. Maya Esparza
Ms. Sylvia Arenas
Ms. Pam Foley
Mr. Matt Mahan

Fw: Yes are Hazard pay should be increased but what happened to the \$5 per hour Hazard pay increase didn't Oakland approve it and it is already in effect we are currently receiving \$3 an hour Hazard pay for 40 hours or more already

City Clerk <city.clerk@sanjoseca.gov>

Tue 2/9/2021 2:27 PM

To: Agendadesk <Agendadesk@sanjoseca.gov>

Forwarding ...

Office of the City Clerk | City of San José

200 E. Santa Clara St., Tower 14th Floor

San Jose, CA 95113

Main: 408-535-1260

Fax: 408-292-6207

How is our service? [Please take our short survey.](#)

From: Todd McMaguire [REDACTED]

Sent: Tuesday, February 9, 2021 1:31 PM

To: City Clerk <city.clerk@sanjoseca.gov>

Subject: Yes are Hazard pay should be increased but what happened to the \$5 per hour Hazard pay increase didn't Oakland approve it and it is already in effect we are currently receiving \$3 an hour Hazard pay for 40 hours or more already

[External Email]

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Fw: \$3 hazard pay

City Clerk <city.clerk@sanjoseca.gov>

Tue 2/9/2021 2:28 PM

To: Agendadesk <Agendadesk@sanjoseca.gov>

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From: Maryanne S [REDACTED]

Sent: Tuesday, February 9, 2021 12:59 PM

To: City Clerk <city.clerk@sanjoseca.gov>

Subject: \$3 hazard pay

[External Email]

I vote yes to \$3 hazard pay. From district 7. We are exposed daily to the public, some people may not show symptoms of COVID-19, but they can be carriers and pass it to others, so our health is vulnerable everyday. \$3 hazard pay will help when employees become ill and use up their sick time. Others are working from home safely, yet we're in constant contact with people with possibly being infected by the virus and risking ourselves and family members lives everyday. So there's a higher chance we can acquire the virus easier from others.

Please consider the \$3 hazard pay. \$5 would even be a better choice and more helpful instead of \$3.

Thank you for your time and consideration in this matter.

Sent from my iPhone

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Fw: I can't make today because I'm of at 2:30 pm I'm ok with the 3\$dollar

City Clerk <city.clerk@sanjoseca.gov>

Tue 2/9/2021 3:13 PM

To: Agendadesk <Agendadesk@sanjoseca.gov>

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From: Arturo Cortez <[REDACTED]>

Sent: Tuesday, February 9, 2021 3:07 PM

To: City Clerk <city.clerk@sanjoseca.gov>

Subject: I can't make today because I'm of at 2:30 pm I'm ok with the 3\$dollar

[External Email]

Sent from my iPhone

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Fw:

City Clerk <city.clerk@sanjoseca.gov>

Wed 2/10/2021 8:08 AM

To: Agendadesk <Agendadesk@sanjoseca.gov>

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San Jose, CA 95113

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Fax: 408-292-6207

How is our service? [Please take our short survey.](#)

From: Monica [REDACTED]

Sent: Tuesday, February 9, 2021 9:28 PM

To: City Clerk <city.clerk@sanjoseca.gov>

Subject:

[External Email]

I agree on the \$5 hazzard pay!

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