



Memorandum

TO: CITY COUNCIL

FROM: Mayor Sam Liccardo

SUBJECT: Hazard Pay (Item 3.4)

DATE: 2/1/21

APPROVED:

DATE: 2/1/21

RECOMMENDATION

1. Defer the matter until after the County of Santa Clara has voted on its similar proposal next week.

DISCUSSION

Santa Clara County has moved forward expeditiously with a Board Referral to require hazard pay for retail grocers and restaurants countywide. That proposal will go before the Board of Supervisors on February 9, 2021. We are told that the authors of that measure intend for the County ordinance to operate preemptively over all of the County's 15 cities.

In other words, we could invest many hours in debate, legal analysis, and drafting of an ordinance, and it will have no effect whatsoever.

We've seen this before, in the context of fee caps on restaurants for on-demand delivery—City staff, the City Attorney, and Council & Mayor offices worked extensively with key stakeholders to fashion a workable policy, and one that would survive legal challenge, only to find that our ordinance was preempted by the County's—with little or no communication between County and City staff. It amounts to a lot of wasted effort amid a pandemic that places critical claims on that time. We need to focus every minute on a host of needs ranging from food delivery, to rent relief, to small business support, to digital inclusion.

Despite its many merits, there are also many complexities in implementing and legally defending the proposed policy. Long Beach is facing a lawsuit after the passage of its ordinance, and two chains, Krogers and Food for Less, have announced that they will close 25% of its stores as a result. Similar challenges will consume hundreds of hours of our City's scarce staff time. Before expending those resources, it would serve us well to determine whether the County will pass a measure that will preempt ours, as seems highly likely.

We'll know the answer to that question in seven days. In the meantime, we can use this very short pause to better understand from stakeholders the impact of a citywide proposal that has only seen the light of day for a few days.