

BILL NO. _____

ORDINANCE NO. _____

AN EMERGENCY ORDINANCE OF THE CITY OF FRESNO,
CALIFORNIA, ADDING SECTION 2-517 TO THE FRESNO
MUNICIPAL CODE RELATED TO GROCERY STORE
EMPLOYEE HAZARD PAY

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

SECTION 1. Section 2-517 is added to the Fresno Municipal Code to read:

SECTION 2-517. GROCERY STORE EMPLOYEE HAZARD PREMIUM
PAY.

(a) Purpose. As a result of the COVID-19 pandemic, this Ordinance aims to protect and promote the public health, safety, and welfare during the COVID-19 emergency by requiring grocery stores to provide premium pay for grocery workers performing work in the City. Requiring grocery stores to provide premium pay to grocery workers compensates grocery workers for the risks of working during a pandemic. Grocery workers face magnified risks of catching or spreading COVID-19 because the nature of their work involves close contact with the public, including members of the public who are not showing symptoms of COVID-19 but who can spread the disease. The provision of premium pay better ensures the retention of these essential workers who are on the front lines of this pandemic providing essential services and who are needed

throughout the duration of the COVID-19 emergency. As such, they are deserving of fair and equitable compensation for their work.

(b) Definitions. For purposes of this section, the following definitions apply:

(1) “Base Wage” means the hourly wage paid to Covered Employees as of the effective date of this Ordinance not including Hazard Premium Pay owed under this Ordinance or any Employer-Initiated Hazard Pay.

(2) “City” means the City of Fresno.

(3) “Covered Employer” means:

(i) A Grocery Store, as define herein, that employs 300 or more employees nationwide, regardless of where those employees are employed, including but not limited to chains, integrated enterprises, or Franchises associated with a Franchisor or network of Franchises with Franchisees that employ more than 300 employees in the aggregate, regardless of where those employees are employed.

1. To determine the number of Grocery Store’s employees, the calculation shall be based on the actual number of employees per calendar week who worked for compensation during the pay period preceding the effective date of this Ordinance. All employees who worked for compensation shall be

counted, including but not limited to employees who are not covered by this Ordinance; employees who worked inside the City; employees who worked outside the City; and employees who worked in full-time employment, part-time employment, joint employment, temporary employment, or through the service of a temporary services staffing agency or similar entity.

(4) “Covered Employee” means any person who:

(i) In a calendar week, performs at least two hours of work for a Covered Employer within the geographic boundaries of the City; and

(ii) Qualifies as an employee entitled to payment of a minimum wage from any Covered Employer under the California minimum wage law, as provided under Section 1197 of the California Labor Code and wage orders published by the California Industrial Welfare Commission.

(5) “Employer-Initiated Hazard Pay” shall mean any other premium hourly rate already paid by a Covered Employer solely to compensate Covered Employees for working during the pandemic.

(6) “Franchise” means a written agreement by which:

(i) A person is granted the right engage in the business of offering, selling, or distributing goods or services

under a marketing plan prescribed or suggested in substantial part by a Franchisor or its affiliates; and

(ii) The operation of a business is substantially associated with a trademark, service mark, trade name, advertising, or other commercial symbol; designating, owned by, or licensed by a Franchisor or its affiliates; and

(iii) The person pays, agrees to pay, or is required to pay, directly or indirectly, a fee for the rights granted to the person under such written agreement.

(7) “Franchisee” means a person to whom a Franchise is offered or granted.

(8) “Franchisor” means a person who grants a Franchise to another person.

(9) “Holiday Premium” means the hourly wage paid to Covered Employees for performing work during a holiday or holiday season.

(10) “Hazard Premium Pay” means Covered Employer shall pay the amount of \$3 per hour in hazard pay above and beyond any payments already owed to the Covered Employee.

(11) “Hours Worked” means the time during which a Covered Employee is subject to the control of a Covered Employer, including all times the Covered Employee is permitted to work, and on-call.

(12) “Grocery Store” means a retail store in the City that is either over 15,000 square feet in size, or at least 10% of its sales floor area is dedicated to non-taxable merchandise, that sells 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.

(13) “Retaliatory Action” means the failure to hire, or the discharge, suspension, demotion, penalization, lowering of the Base Wage or Holiday Premium wage, or discrimination or any other adverse action against a Covered Employee with respect to the terms and conditions of the Covered Employee’s employment, for opposing any practice proscribed by this Ordinance, for participating in proceedings related to this Ordinance, for seeking to enforce his or her rights under this Ordinance by any lawful means, or for otherwise asserting rights under this Ordinance.

(c) Payment of Hazard Premium Pay to Covered Employees.

(1) Hazard Premium Pay. For all hours worked and in addition to the Covered Employee’s Base Wage or Holiday Premium Wage, whichever applicable at the time of hours worked, Covered Employers shall pay Hazard Premium Pay to their Covered Employees.

(2) Duration of Hazard Premium Pay. Covered Employers shall pay Hazard Premium Pay to all workers for 120 days from the effective date of this Ordinance.

(d) Protections.

(1) No Covered Employer shall, as a result of this Ordinance going into effect, reduce a Covered Employee's compensation or limit a Covered Employee's earning capacity.

(2) It shall be a violation if this Ordinance is a motivating factor in a Covered Employer's decision to take any of the actions in subsection (1) above, unless a Covered Employer can prove that its decision to take the action(s) would have happened in the absence of this Ordinance going into effect.

(e) Notice and Posting. Every Covered Employer shall post in a conspicuous place at any workplace or job site where any Covered Employee works, a notice informing Covered Employees of their rights under this Ordinance. Every Covered Employer shall post notices in English, Spanish, and any other language spoken by at least 5% of the Covered Employees at the workplace or job site. Every Covered Employer also shall provide each Covered Employee at the time this Ordinance becomes effective or at the time of hire, whichever is later, the Covered Employer and owner or manager's name; address; telephone number; and whether it is part of a chain, integrated enterprise, or Franchise associated with a Franchisor or network of Franchises. If the information the Covered

Employer provided to the Covered Employee changes, the Covered Employer shall provide the updated information in writing within ten days of the change.

(f) 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 his or her potential rights under this Ordinance and to assist him or her in asserting such rights. Protections of this Ordinance shall apply to any Covered Employee who mistakenly, but in good faith, alleges noncompliance with this Ordinance. Taking adverse action against a Covered Employee, including but not limited to lowering Covered Employees' Base Wage or Holiday Premium Wages or reduction of hours, within ninety days of the Covered Employee's exercise of rights protected under this Ordinance, shall raise a rebuttable presumption of having done so in retaliation for the exercise of such rights.

(g) Credit for Employer-Initiated Hazard Pay. Hazard Premium Pay otherwise required under this Ordinance shall be reduced by the hourly amount of any Employer-Initiated Hazard Pay (e.g., a Covered Employer offering a \$2 per hour Employer-Initiated Hazard Pay pays an additional \$1 per hour in Hazard Premium 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 Covered Employer from paying more than \$3 per hour in Hazard Premium Pay.

(h) No Waiver of Rights. Any waiver by a Covered Employee of any or all of the provisions of this Ordinance shall be deemed contrary to public policy and shall be void and unenforceable.

(i) Penalties or Enforcement. A violation of this Ordinance is a misdemeanor punishable by imprisonment for a period not exceeding one year, or by a fine of not more than \$1,000, or by both fine and imprisonment. Alternatively, an administrative citation may be imposed pursuant to Section 1-308 of this code with an administrative fine up to \$10,000 per violation.

(j) Private Right of Action. Any Covered Employee that suffers financial injury as a result of a violation of this Ordinance, or is the subject of prohibited retaliation, may bring a civil action in a court of competent jurisdiction against the hiring entity or other person violating this Ordinance, and, upon prevailing, may be awarded reasonable attorney's fees and costs and such legal or equitable relief as may be appropriate to remedy the violation, including without limitation, the payment of any unpaid

compensation plus interest due to the person and liquidated damages in an additional amount of up to twice the unpaid compensation, and a reasonable penalty payable to any aggrieved party if the aggrieved party was subject to prohibited retaliation.

(k) Conflicts, Severability. Nothing in this Ordinance shall be interpreted or applied so as to create any power of duty in conflict with any federal or state law. If any subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

(l) Effectiveness. This Ordinance shall remain in effect for 120 days past its effective date, unless further extended by the Council.

SECTION 2. This ordinance is declared to be necessary as an emergency measure for preserving the public peace, health, or safety, for the reasons set forth above. Pursuant to Sections 603 and 610 of the Charter of the City of Fresno, this Ordinance shall take effect immediately upon passage.

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STATE OF CALIFORNIA)
COUNTY OF FRESNO) ss.
CITY OF FRESNO)

I, YVONNE SPENCE, City Clerk of the City of Fresno, certify that the foregoing ordinance was adopted by the Council of the City of Fresno, at a regular meeting held on the _____ day of _____ 2021.

AYES :
NOES :
ABSENT :
ABSTAIN :

YVONNE SPENCE, MMC CRM
City Clerk

BY: _____
Deputy Date

APPROVED AS TO FORM:
DOUGLAS T. SLOAN,
City Attorney

BY: _____
Katie Doerr Date
Deputy City Attorney