



City of San Leandro

Meeting Date: February 16, 2021

Staff Report

File Number: 21-082

Agenda Section: ACTION ITEMS

Agenda Number: 10.B.

TO: City Council

FROM: Fran Robustelli
Interim City Manager

BY: City Council

FINANCE REVIEW: Not Applicable

TITLE: Staff Report for a City of San Leandro City Council Urgency Ordinance to Require Large Grocery Stores in San Leandro to Pay Employees an Additional Five Dollars per Hour in Temporary Hazard Pay During a Specified Period of Time Associated with the Covid-19 Pandemic

SUMMARY AND RECOMMENDATIONS

Per the City Council's direction, staff presents this staff report and the attached draft urgency ordinance. If adopted, it would require large retail grocery food stores in San Leandro to pay employees an additional five dollars per hour in temporary "hazard pay" during a specified period of time associated with the Covid-19 pandemic.

BACKGROUND

At the January 19, 2021 regular City Council meeting, Vice Mayor Aguilar made a request, which was affirmed by a majority vote of the City Council, for staff to bring forward a discussion related to the possible adoption of an ordinance that would require additional hourly pay for grocery store workers during the Covid-19 pandemic. Per that request, staff developed the attached draft ordinance for the City Council's discussion and if so inclined, immediate consideration as an urgency ordinance.

If adopted, the urgency ordinance would impose a temporary \$5 per hour increase (also referred to as "hazard pay") to the hourly wages earned by retail grocery store workers, as defined. It would require covered employers to pay hazard pay to all covered employees for any pay period for 120 days from the effective date of the ordinance, or during which the City of San Leandro is within a Widespread (purple), Substantial (red) or Moderate (orange) Risk Level, and until such time as risk levels return to Minimal (yellow) under State Health Orders, or until such time as all Covered Employers' Covered Employees are vaccinated, excluding those Covered Employees who are prevented from receipt of vaccination by disability or sincerely held religious beliefs, whichever is later.

The ordinance would apply to employees of any retail food establishments 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.

Retail food establishments means a retail store in the City of San Leandro that is either:

- a) over 15,000 square feet in size and that 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;
- b) over 85,000 square feet and with 10% of its sales floor area dedicated to sale of non-taxable merchandise including, but not limited to, the sale of fresh produce, meats, poultry, fish, deli products, dairy products, canned foods, dry foods, beverages, baked foods and/or prepared foods; or
- c) a drug retail store in the City of San Leandro that sells a variety of prescription and nonprescription medicines and miscellaneous items, including but not limited to drugs, pharmaceuticals, sundries, fresh produce, meats, poultry, fish, deli products, dairy products, canned foods, dry foods, beverages, prepared foods, and other merchandise.

Attached to this staff report is a *preliminary draft* list of approximately 19 San Leandro businesses that would most likely be impacted by the draft ordinance. Staff estimates these businesses employ approximately 2,105 workers in total who would be eligible for the proposed enhanced pay. It is important to note that this is a preliminary estimated list, so it's possible that the ordinance's provisions would not necessarily be limited to only those identified businesses and their employees.

Staff also offers for the City Council's consideration that there likely exists at least one, if not other, local family-owned businesses in San Leandro that operate in a franchise framework associated with a larger nationwide company. As a result of that franchise association, they would most likely *not* be exempted from the ordinance as currently written.

The requested proposal comes on the heels of similar ordinances having been adopted by the cities of Long Beach, Montebello, and Oakland, California. It is staff's understanding that the California Grocers Association (CGA) has filed legal challenges to those ordinances, including requests for a temporary restraining order and preliminary injunction.

In summary, the proposed urgency ordinance represents a significant policy decision for the City Council and the public to consider.

Fiscal Impacts

Based on the high likelihood of litigation being filed against the City by the CGA and/or potentially impacted businesses immediately subsequent to adoption of this ordinance, it is reasonably foreseeable that if the ordinance is adopted the City will incur significant legal costs to defend the ordinance, and potential exposure to payment of attorneys' fees and costs if the CGA's litigation is successful. Preliminary estimates provided by the City Attorney's office estimate costs of defense all the way through hearings but not through appeals could be in the range of \$25,000 to \$75,000. Payment of CGA's attorneys' fees could be significantly higher; preliminary estimates are that they would be well over \$100,000. Funds to offset the costs of such litigation were not appropriated in the adopted FY 2020-2021 City budget, nor would such costs be eligible for coverage under the City's existing program of self-insurance. As such, any related expenditures would likely need to be paid by drawing down from the City's undesignated General Fund reserves.

ATTACHMENT(S)

Attachment to Resolution

- Preliminary Draft List of Potentially Affected San Leandro Retail Food Establishments
- Draft Resolution and Emergency Ordinance

PREPARED BY:

Eric Engelbart, Deputy City Manager & Katie Bowman, Economic Development Manager

San Leandro Retail Food Establishments

Estimated list of businesses, as defined by Hazard Pay Ordinance

	Store	Address
1	C V S PHARMACY #16764	15555 E 14TH ST 400
2	C V S PHARMACY #414	14869 E 14TH ST
3	C V S PHARMACY #9942	1401 WASHINGTON AVE
4	C V S PHARMACY 9635	1550 E 14TH ST
5	C V S PHARMACY 9876	699 LEWELLING BLVD 200
6	COSTCO WHOLESALE	1900 DAVIS ST
7	FOOD MAXX #416	699 LEWELLING BLVD 310
8	LUCKY #767	1300 FAIRMONT DR
9	PAK N SAVE #3111	555 FLORESTA BLVD
10	RITE AID 5937	1355 MACARTHUR BLVD
11	SAFEWAY STORE 790	555 BANCROFT AVE
12	SAFEWAY STORES INC #2315	699 LEWELLING BLVD 150
13	SAFEWAY STORES INC 994	1499 WASHINGTON AVE
14	SAN LEANDRO GROCERY OUTLET	2179 E 14TH ST
15	TARGET STORE T-1428	300 BAYFAIR ML
16	WALGREENS #07274	1456 136TH AVE
17	WALGREENS # 2426	15500 WASHINGTON AVE
18	WAL-MART STORE #2648	1919 DAVIS ST
19	WAL-MART STORE #5434	15555 HESPERIAN BLVD
	Est Total Employees	2,105







City of San Leandro

Meeting Date: February 16, 2021

Urgency Ordinance

File Number: 21-083

Agenda Section: ACTION ITEMS

Agenda Number:

TO: City Council

FROM: Fran Robustelli
Interim City Manager

BY: City Council

FINANCE REVIEW: Not Applicable

TITLE: City of San Leandro City Council Urgency Ordinance to Require Large Grocery Stores in San Leandro to Pay Employees an Additional Five Dollars per Hour in Temporary Hazard Pay During a Specified Period of Time Associated with the Covid-19 Pandemic

Retail Food Worker Hazard Pay Ordinance

Recitals

WHEREAS, the novel coronavirus 19 (COVID-19) disease is caused by a virus easily transmissible from person to person and may result in serious illness or death, and is classified by the Centers for Disease Control and the World Health Organization (WHO) as a pandemic; and,

WHEREAS, COVID-19 has spread broadly throughout the State of California and remains a significant, imminent health risk to the community, especially to members of our most vulnerable populations; and

WHEREAS, COVID-19 has been declared as a global pandemic, which is particularly severe in high risk populations, such as people with underlying medical conditions and the elderly, and the WHO has raised the health emergency to the highest level, requiring dramatic interventions to disrupt the spread of the disease; and

WHEREAS, on March 4, 2020, California Governor Gavin Newsom proclaimed a state of emergency in response to rising cases of COVID-19, directing state agencies to use all resources necessary to prepare for and respond to the outbreak; and

WHEREAS, on March 16, 2020, due to an escalating increase in the number of cases in Alameda County, under San Leandro Municipal Code section 3-4-124, the Director of Emergency Services proclaimed a local emergency and a state of emergency related to COVID-19; and **WHEREAS**, on March 16, 2020, at its regular meeting the San Leandro City Council confirmed the Director of Emergency Services' proclamation of a local emergency and a state of emergency related to COVID-19; and

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 grocery store workers as essential critical infrastructure workers; and

WHEREAS, on March 19, 2020, the California State Public Health Officer designated specific sectors and their workers, including grocery stores, as Essential Critical Infrastructure Workers (“essential workers”) to ensure the “continuity of functions critical to public health and safety, as well as economic and national security;” and

WHEREAS, grocery stores are essential businesses operating in San Leandro during the COVID-19 emergency making grocery workers highly vulnerable to economic insecurity and health or safety risks; and

WHEREAS, on March 24, 2020, in order to mitigate the effects of COVID-19, Alameda County’s Public Health Officer issued the “Safer at Home” Order to control the spread of COVID-19 by 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 “Safer at Home” Order 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

WHEREAS, on December 3, 2020, California Governor Gavin Newsom extended the “Stay Home - Stay Healthy” proclamation; and

WHEREAS, on December 3, 2020, in order to mitigate the effects of COVID-19 within the County of Alameda, the Alameda County Health Department extended the “Safer at Home” Order to control the effects and spread of COVID-19; and

WHEREAS, on January 17, 2021, the California Department of Public Health reported another COVID-19 variant that had grown more common across the state since December, with worrisome signs that this variant may be highly transmissible; and

WHEREAS, on February 3, 2021, California Governor Gavin Newsom announced that there was a California or West Coast variant of COVID-19 that had grown more common across the state; and

WHEREAS, as of February 4, 2021, the County of Alameda reported 75,175 case of COVID-19, including 1,021 deaths; and

WHEREAS, grocery workers working for grocery stores are essential workers who perform services that are fundamental to the economy and health of the community during the COVID-19 crisis. They work in high risk conditions with inconsistent access to personal protective equipment and other safety measures; work in public situations with limited ability to engage in physical distancing; and continually expose themselves and the public to the spread of disease; and

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; and

WHEREAS, grocery workers working during the COVID-19 emergency merit additional compensation because they are performing hazardous duty due to the significant risk of exposure

to the COVID-19 virus. Grocery workers have been working under these hazardous conditions for months. They are working in these hazardous conditions now 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; and

WHEREAS, the City of San Leandro has adopted wage and employment ordinances specific to employment sectors in the past; and

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

WHEREAS, establishing an immediate requirement for grocery stores to provide premium pay to grocery workers protects public health, supports stable incomes, and promotes job retention by ensuring that grocery workers are compensated for the substantial risks, efforts, and expenses they are undertaking to provide essential services in a safe and reliable manner during the COVID-19 emergency.

NOW THEREFORE, the City of San Leandro City Council hereby ORDAINS, as follows:

That the document attached hereto, and made a part hereof is hereby adopted pursuant to San Leandro Municipal Code Section 1-1-345(b) as an urgency ordinance.

ORDINANCE NO. XXX-XX

Retail Food Worker Hazard Pay Ordinance

SEC. 1 RECITALS.

The City Council finds the foregoing recitals to be true and correct and hereby incorporates those recitals into this Ordinance.

SEC. 2 TITLE AND PURPOSE.

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

The retail food workers of San Leandro 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 and health supply chain operating.

The purpose of this Retail Food Worker Hazard Pay Ordinance (“Ordinance”) is to justly compensate retail food 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.

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

SEC. 3 AUTHORITY

This Chapter is adopted pursuant to the powers vested in the City of San Leandro under the laws of the State of California, including, but not limited to, the police powers vested in the City pursuant to Article XI, Section 7 of the California Constitution, California Labor Code section 1205(b), and the Charter of the City of San Leandro.

SEC. 4 EMERGENCY NEED.

In accordance with subsection (b) of San Leandro Municipal Code Section 1-1-345, the City Council finds and declares that adoption of this Emergency Ordinance is necessary for preserving the public peace, health and safety for the following reasons:

- A. The COVID-19 pandemic has led to the current state of emergency in California, and local emergency in the City of San Leandro.

- B. 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 (“ICU”) beds.
- C. The virus is spreading rapidly across the region with many clusters arising within retail stores. Grocery stores remain a critical piece of infrastructure in the fight against the COVID-19 virus and in protecting the City’s food supply chain.
- D. Grocery stores are the primary points of distribution for food and other daily necessities for the residents of the City of San Leandro and are therefore essential to the vitality of our community.
- E. 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 workers if they are not given immediate financial relief.
- F. To protect the food supply chain and the public health and safety, the City of San Leandro must take steps to guard against turnover and ensure that grocery stores in San Leandro have well-trained, consistent, and stable staffing.
- G. The City Council of the City of San Leandro finds that there is a current and immediate threat to the public health, safety and/or welfare and a need for immediate preservation of the public peace, health, welfare and safety that warrants this ordinance, which finding is based upon the facts stated in the recitals above, and in the staff report dated February 16, 2021, as well as any oral and written testimony at the February 16, 2021 City Council meeting. This Ordinance is declared by the City Council to be an urgency measure necessary for the immediate preservation of the public peace, health, welfare, and safety. The facts constituting such urgency are all of those certain facts set forth and referenced in this Ordinance and the entirety of the record before the City Council.

SEC. 5 EFFECTIVE DATE.

This Ordinance shall take effect immediately if adopted in accordance with subsection (b) of San Leandro Municipal Code section 1-1-345.

SEC. 6 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 any

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 San Leandro.

“**Covered Employer**” shall mean:

(a) Retail food establishments as defined herein, 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.

(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 inside the City;

(iii) Employees who worked outside 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 1197¹ of the California Labor Code and wage orders published by the California Industrial Welfare Commission, and the City of San Leandro’s Minimum Wage Ordinance.

¹ Lab. Code § 1197. The minimum wage for employees fixed by the commission or by any applicable state or local law, is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful. This section does not change the applicability of local minimum wage laws to any entity.

“Designated Administrative Agency” means the Department of Finance or other City Department or agency the City Manager may designate.²

“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.³

“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.⁴

“Retail Food Establishment” shall mean a retail store in the City of San Leandro that is either:

(a) over 15,000 square feet in size and that 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;

(b) over 85,000 square feet and with 10% of its sales floor area dedicated to sale of non-taxable merchandise including, but not limited to, the sale of fresh produce, meats, poultry, fish, deli products, dairy products, canned foods, dry foods, beverages, baked foods and/or prepared foods;⁵ or

(c) a drug retail store in the City of San Leandro that sells a variety of prescription and nonprescription medicines and miscellaneous items, including but not limited to drugs, pharmaceuticals, sundries, fresh produce, meats, poultry, fish, deli products, dairy products, canned foods, dry foods, beverages, prepared foods, and other merchandise.

“Retaliatory Action” shall mean the failure to hire, or the discharge, suspension, demotion, penalization, lowering of the Base Wage or Holiday Premium wage, or discrimination or any other adverse action against a Covered Employee with respect to the terms and conditions of the Covered Employee’s employment, for opposing any practice proscribed by this Ordinance, for participating in proceedings

² San Leandro Minimum Wage Ordinance, San Leandro Municipal Code Section 4-35.

³ California Code of Regulations, Title 8, Section 11040

⁴ Living Wage Ordinance, San Leandro Municipal Code Section 1-6-615

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.

SEC. 7 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 an additional \$5.00 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 6 and 13.

(b) Duration of Hazard Pay. Covered Employers shall pay Hazard Pay to all workers for any pay period for 120 days from the effective date of this Ordinance, or during which the City of San Leandro is within a Widespread (purple), Substantial (red), or Moderate (orange) Risk Level and until such time as risk levels return to Minimal (yellow) under State Health Orders, or until such time as all Covered Employers' Covered Employees are vaccinated, excluding those Covered Employees who are prevented from receipt of vaccination by disability or sincerely held religious beliefs, whichever is later.

SEC. 8 NOTICE AND POSTING.⁶

Every Employer shall post in a conspicuous place at any workplace or job site where any Employee works, a notice informing Employees of their rights under this Ordinance. Every Employer shall post notices in the top three languages spoken in San Leandro as determined by the last U.S. Census. Every Employer shall provide each Employee at the time this Ordinance becomes effective or at the time of hire, whichever is later, the 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 Employer provided to the Employee changes, the Employer shall provide the updated information in writing within ten days of the change.

SEC. 9 RETALIATION PROHIBITED.⁷

It shall be unlawful for an Employer or any other party to discriminate in any manner or take adverse action against any 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

⁶ San Leandro Minimum Wage Ordinance, San Leandro Municipal Code Section 4-35-600

⁷ San Leandro Minimum Wage Ordinance, San Leandro Municipal Code Section 4-35-700

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 Employee who mistakenly, but in good faith, alleges noncompliance with this Ordinance. Taking adverse action against an Employee, including lowering Covered Employees' Base Wage or Holiday Premium Wages or reduction of hours, within 90 days of the 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.

SEC. 10 IMPLEMENTATION.⁸

The Department may promulgate guidelines and rules consistent with this Ordinance for the implementation of the provisions of this Ordinance. Any guidelines or rules shall have the force and effect of law, and may be relied upon by Covered Employers, Covered Employees and other parties to determine their rights and responsibilities under this Ordinance.

SEC. 11 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 and 7 of this Ordinance. 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 Department 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 Department reasonable access to such records within 30 days of the Department's request, it shall be presumed that the Covered Employer has violated the Ordinance, absent clear and convincing evidence otherwise.

SEC. 12 ENFORCEMENT.

The provisions related to enforcement set forth in the San Leandro Municipal Code Section 4-35-900 shall apply equally to the enforcement of this Chapter and individuals and entities afforded rights and protections under those Sections are hereby granted those same rights and protections in connection with the enforcement of any provision of this Chapter. Covered Employers shall have all obligations of "Employers" and "employers" under Section 4-35-300. The terms "Employer," "Employ," and "Employee," when used in Section 4-35-300 for purposes of enforcing provisions of this Ordinance, shall have the meanings set forth in Section 6 of this Ordinance. The provisions of this Ordinance do not diminish, alter, or negate any other legal rights, remedies, or procedures available to an Employee.

⁸ San Leandro Minimum Wage Ordinance, San Leandro Municipal Code Section 4-35-800

SEC. 11 EMPLOYEE REMEDIES FOR VIOLATIONS.

(a) **Damages and Restitution.** Every Employer who violates this Ordinance, or any portion thereof shall be liable to the 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 Employer, the 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 subdivision (b) of Section 3289 of the California Civil Code⁹, which shall accrue from the date that the wages were due and payable as provided in Part 1 (commencing with Section 200¹⁰) of Division 2 of the California Labor Code, to the date the wages are paid in full.

(b) **Civil Enforcement.** For any Covered Employee aggrieved by a violation of this Ordinance, the City Attorney or any other person or entity acting on behalf of the public as provided for under applicable state law, may bring a civil action in a court of competent jurisdiction against the Covered Employer violating this Ordinance. A Covered Employee or the City, 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 state law, upon prevailing, shall be entitled only to equitable, injunctive and/or restitutionary relief, and reasonable attorneys' fees and costs. Nothing in this Ordinance shall be interpreted as restricting, precluding, or otherwise limiting a separate or concurrent criminal prosecution under the Municipal Code or state law. Jeopardy shall not attach as a result of any administrative or civil enforcement action taken pursuant to this Ordinance.

SEC. 12 ADDITIONAL REMEDIES

⁹ 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.

¹⁰ 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.

The City, when enforcing on behalf of an Employee, has the authority to require that payment of wages, Hazard Pay and/or penalties found to be due and owing to the Employee, be paid directly to the City for disbursement to the Employee. The City, when enforcing on the behalf of an Employee, has the authority to require that payment of all amounts due under this Ordinance be paid directly to the City. The failure of an Employer to pay any amounts due under this Ordinance shall constitute a debt to the City. The City, as plaintiff and/or judgment creditor, may file a civil action on behalf of an Employee and/or the City or, to the extent feasible under state law, create and impose a lien against any property owned or operated by an Employer or other person who fails to pay wages, penalties and administrative fines assessed, or pursue other legal and equitable remedies available to the City. The City shall be awarded reasonable attorney's fees and costs as well as costs associated with enforcing a violation under this Ordinance.

The remedies, penalties, and procedures provided under this Ordinance are cumulative and are not intended to be exclusive of any other available remedies, penalties, and procedures.

SEC. 13 CREDIT FOR 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 \$5.00 per hour 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 \$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 paying more than \$5.00 per hour in Hazard Pay.
- (b) To receive credit for employer-initiated hazard pay policies, Covered Employers must offer the following showings of proof to the Department:
 - (1) A copy of the Employer’s 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 City to review for compliance by assessing wages for the past 12 months and that is itemized in such a way that the City 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.

- i. Accepted evidence of employer-initiated hazard pay wage described in (b)(4):
 - 1. A spreadsheet, of all Covered Employees and their wages for each pay period for the last 12 months, that allows the City to distinguish Base Wage from Holiday Pay and other bonuses or pay increases that are separate and distinct from employer-initiated hazard pay. The foregoing does not exempt any Covered Employer from maintaining, and providing access to, the underlying payroll records described above. The foregoing notwithstanding if the City creates an online submission form for its Online Certified Payroll System (OCPS) that meets the above criteria then all offers of proof under subparagraph (b) shall be submitted directly to the OCPS.
- b. Any offer of proof under subparagraph (b) shall be accompanied by a written acknowledgement that it was so submitted under penalty of perjury.

SEC. 14 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, provided that such waiver is explicitly set forth in such agreement in clear and unambiguous terms.

SEC. 15 COEXISTENCE WITH OTHER AVAILABLE RELIEF FOR SPECIFIC DEPRIVATIONS OF PROTECTED RIGHTS.¹¹

The provisions of this Ordinance shall not be construed as limiting any Covered Employee’s right to obtain relief to which he or she may be entitled at law or in equity.

SEC. 16 CONFLICTS.¹²

Nothing in this Ordinance shall be interpreted or applied so as to create any power or duty in conflict with any federal or state law.

SEC. 17 SEVERABILITY.

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. The City Council hereby declares that it would have adopted this section, and each and every

¹¹ San Leandro Minimum Wage Ordinance, San Leandro Municipal Code Section 4-35-1000

¹² San Leandro Minimum Wage Ordinance, San Leandro Municipal Code Section 4-35-1000

subsection, sentence, clause and phrase thereof not declared invalid or unconstitutional, without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

SEC. 18 EFFECTIVE DATE AND PUBLICATION

Upon its adoption pursuant to City of San Leandro Municipal Code section 1-1-345(b), this Ordinance shall be published in accordance with Cal. Govt. Code Sec. 36933.

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