

ORDINANCE NO. 2434

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MONTEBELLO AMENDING THE MONTEBELLO MUNICIPAL CODE BY ADDING CHAPTER 5.10, RELATING TO GROCERY OR DRUG STORE WORKERS IN MONTEBELLO, AND ESTABLISHING LABOR STANDARDS REQUIREMENTS FOR PREMIUM PAY FOR GROCERY OR DRUG STORE WORKERS WORKING IN MONTEBELLO

WHEREAS, the new coronavirus 19 (COVID-19) disease is caused by a virus that spreads easily from person to person and may result in serious illness or death, and is classified by the World Health Organization (WHO) as a worldwide pandemic; and

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

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

WHEREAS, on March 10, 2020, the City Council of the City of Montebello proclaimed a civil emergency in response to new cases of COVID-19, authorizing the City Manager to exercise the emergency powers necessary to take extraordinary measures to prevent death or injury of persons and to protect the public peace, safety and welfare, and alleviate damage, loss, hardship or suffering; 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 or drug store 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, as of January 5, 2021, the World Health Organization Situation Report reported a global total of 86,833,481 cases of COVID-19, including 1,875,460 deaths; California reported 2,490,000 cases of COVID-19, including 27,038 deaths; and Montebello reported 35,664 cases of COVID-19, including 420 deaths; and

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

WHEREAS, grocery or drug store workers working for grocery or drug 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 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 or drug store 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 or drug store

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 availability of grocery or drug store stores is fundamental to the health of the community and is made possible during the COVID-19 emergency because grocery or drug store 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 or drug stores to provide premium pay to grocery or drug store workers protects public health, supports stable incomes, and promotes job retention by ensuring that grocery or drug store 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; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MONTEBELLO DOES ORDAIN AS FOLLOWS:

Section 1. The Montebello Municipal Code is amended by adding Chapter 5.10 to read as follows:

**CHAPTER 5.10
PREMIUM PAY FOR GROCERY OR DRUG STORE WORKERS**

5.10.010 Purpose.

As a result of the COVID-19 pandemic and the "Stay at Home" order issued by California Governor Gavin Newsom, this Ordinance aims to protect and promote the public health, safety, and welfare during the new coronavirus 19 (COVID-19) emergency by requiring grocery or drug store stores to provide premium pay for grocery or drug store and drug store workers performing work in Montebello. Requiring grocery or drug stores to provide premium pay to grocery or drug store workers compensates grocery or drug store workers for the risks of working during a pandemic. Grocery or drug store workers face magnified risks of catching or spreading the COVID-19 disease 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 frontlines 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.

5.10.020 Short title.

This ordinance shall constitute the "Premium Pay for Grocery and Drug Store Workers Ordinance" and may be cited as such.

5.10.030 Definitions.

For purposes of this Ordinance:

"Adverse action" means reducing the compensation to a grocery or drug store worker, garnishing gratuities, temporarily or permanently denying or limiting access to work, incentives, or bonuses, offering less desirable work, demoting, terminating, deactivating, putting a grocery or drug store worker on hold status, failing to rehire after a seasonal interruption of work, threatening, penalizing, retaliating, or otherwise discriminating against a covered grocery or drug store worker for any reason prohibited by Sections 5.10.070 or 5.10.100.

"Adverse action" also encompasses any action by the hiring entity or a person acting on the hiring entity's behalf that would dissuade a grocery or drug store worker from exercising any right afforded by this ordinance.

"Aggrieved party" means a grocery or drug store worker or other person who suffers tangible or intangible harm due to a hiring entity or other person's violation of this ordinance.

"City" means the City of Montebello.

"Covered grocery or drug store worker" means a grocery or drug store worker employed directly by a hiring entity who is entitled to premium pay pursuant to this Ordinance.

"Drug store worker" means a worker employed directly by a hiring entity at a drug store. Drug store worker does not include managers, supervisors or confidential employees.

"Grocery worker" means a worker employed directly by a hiring entity at a grocery store. Grocery worker does not include managers, supervisors or confidential employees.

"Drug store" means a store that devotes seventy percent (70%) or more of its business to retailing a general range of drugs, pharmaceuticals, cosmetics and related products, including food products, which may be fresh or packaged. There is a rebuttable presumption that if a store receives seventy percent (70%) or more revenue from retailing a general range of drugs, pharmaceuticals, cosmetics and related products, including food products, then it qualifies as a drug store.

"Grocery store" means a store that devotes seventy percent (70%) or more of its business to retailing a general range of food products, which may be fresh or packaged. There is a rebuttable presumption that if a store receives seventy percent (70%) or more revenue from retailing a general range of food products, then it qualifies as a grocery store.

"Hiring entity" means a grocery or drug store that employs over three hundred (300) grocery or drug store workers nationally and employs more than fifteen (15) employees per grocery or drug store in the City of Montebello.

"Premium pay" means additional compensation owed to a grocery or drug store worker that is separate from hiring entity payments for providing services, bonuses, and commissions, as well as tips earned from customers.

"Respondent" means a grocery or drug store, parent company or any person who is alleged or found to have committed a violation of this Ordinance.

5.10.040 Grocery or drug store worker coverage.

For the purposes of this Ordinance, covered grocery or drug store workers are limited to those who perform work for a hiring entity where the work is performed in the City of Montebello.

5.10.050 Hiring entity coverage.

A. For purposes of this Ordinance, hiring entities are limited to those who employ three hundred (300) or more grocery or drug store workers nationally and employ more than fifteen (15) employees per grocery or drug store in the City of Montebello.

B. To determine the number of grocery or drug store workers employed for the current calendar year:

1. The calculation is based upon the average number per calendar week of grocery or drug store workers who worked for compensation during the preceding calendar year for any and all weeks during which at least one (1) grocery or drug store worker worked for compensation. For hiring entities that did not have any grocery or drug store workers during the preceding calendar year, the number of grocery or drug store workers employed for the current calendar year is calculated based upon the average number per calendar

week of grocery or drug store workers who worked for compensation during the first ninety (90) calendar days of the current year in which the hiring entity engaged in business.

2. All grocery or drug store workers who worked for compensation shall be counted, including but not limited to:
 - a. Grocery or drug store workers who are not covered by this Ordinance; and
 - b. Grocery or drug store workers who worked in Montebello.

5.10.060 Premium pay requirement.

A. Hiring entities shall provide each grocery or drug store worker with premium pay consisting of an additional Four and 00/100 Dollars (\$4.00) per hour for each hour worked.

B. Hiring entities shall provide the pay required by Subsection 5.10.060 (A) for a minimum of One Hundred Eighty (180) days from the effective date of this Ordinance.

C. Unless extended by City Council, this ordinance shall expire in One Hundred Eighty (180) days.

5.10.070 Grocery or drug store worker and consumer protections.

A. No hiring entity shall, as a result of this Ordinance going into effect, take any of the following actions:

1. Reduce a grocery or drug worker's compensation;
2. Limit a grocery or drug store worker's earning capacity.

C. It shall be a violation if this Ordinance is a motivating factor in a hiring entity's decision to take any of the actions in Subsection 5.10.070 (A) unless the hiring entity can prove that its decision to take the action(s) would have happened in the absence of this Ordinance going into effect.

5.10.080 Notice of rights.

A. Hiring entities shall provide covered grocery or drug store workers with a written notice of rights established by this ordinance. The notice of rights shall be in a form and manner sufficient to inform grocery or drug store workers of their rights under this ordinance. The notice of rights shall provide information on:

1. The right to premium pay guaranteed by this Ordinance;
2. The right to be protected from retaliation for exercising in good faith the rights protected by this ordinance; and
3. The right to bring a civil action for a violation of the requirements of this Ordinance, including a hiring entity's denial of premium pay as required by this Ordinance and a hiring entity or other person's retaliation against a covered grocery or drug store or drug store worker or other person for asserting the right to premium pay or otherwise engaging in an activity protected by this Ordinance.

B. Hiring entities shall provide the notice of rights required by posting a written notice of rights in a location of the grocery or drug utilized by employees for breaks, and in an electronic format that is readily accessible to the grocery or drug store workers. The notice of rights shall be made available to the grocery or drug store workers via smartphone application or an online web portal, in English and any language that the hiring entity knows or has reason to know is the primary language of the grocery or drug store worker(s).

5.10.090 Hiring entity records.

A. Hiring entities shall retain records that document compliance with this Ordinance for covered grocery or drug store workers.

B. Hiring entities shall retain the records required by Subsection 5.10.090 (A) for a period of two (2) years.

C. If a hiring entity fails to retain adequate records required under Subsection 5.10.090 (A), there shall be a presumption, rebuttable by clear and convincing evidence, that the hiring entity violated this Ordinance for each covered grocery or drug store worker for whom records were not retained.

5.10.100 Retaliation prohibited.

No hiring entity employing a grocery or drug store worker shall discharge, reduce in compensation, or otherwise discriminate against any grocery or drug store worker for opposing any practice proscribed by this Ordinance, for participating in proceedings related to this Ordinance, for seeking to exercise their rights under this Ordinance by any lawful means, or for otherwise asserting rights under this Ordinance.

5.10.110 Violation.

The failure of any respondent to comply with any requirement imposed on the respondent under this Ordinance is a violation.

5.10.120 Remedies.

A. The payment of unpaid compensation, liquidated damages, civil penalties, penalties payable to aggrieved parties, fines, and interest provided under this Ordinance is cumulative and is not intended to be exclusive of any other available remedies, penalties, fines, and procedures. A respondent found to be in violation of this Ordinance for retaliation under Section 5.10.100 shall be subject to any appropriate relief at law or equity including, but not limited to reinstatement of the aggrieved party, front pay in lieu of reinstatement with full payment of unpaid compensation plus interest in favor of the aggrieved party under the terms of this Ordinance, and liquidated damages in an additional amount of up to twice the unpaid compensation.

5.10.130 Private right of action.

A Any covered grocery or drug store worker that suffers financial injury as a result of a violation of this Ordinance, or is the subject of prohibited retaliation under Section 5.10.100, 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 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.

5.10.140 Encouragement of more generous policies.

A. Nothing in this Ordinance shall be construed to discourage or prohibit a hiring entity from the adoption or retention of premium pay policies more generous than the one required herein.

B. Nothing in this Ordinance shall be construed as diminishing the obligation of a hiring entity to comply with any contract or other agreement providing more generous protections to a grocery or drug store worker than required by this Ordinance.

5.10.150 Other legal requirements.


This Ordinance provides minimum requirements for premium pay while working for a hiring entity during the COVID-19 emergency and shall not be construed to preempt, limit, or otherwise affect the applicability of any other law, regulation, requirement, policy, or standard that provides for higher premium pay, or that extends other protections to grocery or drug store workers; and nothing in this Ordinance shall be interpreted or applied so as to create any power or duty in conflict with federal or state law. Nothing in this Section shall be construed as restricting a grocery or drug store worker's right to pursue any other remedies at law or equity for violation of their rights.

5.10.160 Severability.

The provisions of this Ordinance are declared to be separate and severable. If any clause, sentence, paragraph, subdivision, section, subsection, or portion of this ordinance, or the application thereof to any hiring entity, grocery or drug store worker, person, or circumstance, is held to be invalid, it shall not affect the validity of the remainder of this Ordinance, or the validity of its application to other persons or circumstances.

Section 2. This Ordinance is duly adopted by the City Council as a regular ordinance and has no affect upon the previously adopted Urgency Ordinance adopted on January 27, 2021. The City Clerk shall certify to a roll call vote and cause the same to be posted in two (2) conspicuous places in the City of Montebello and published as required by law, and it shall thereupon take effect within thirty (30) days from its adoption.

PASSED, APPROVED AND ADOPTED this 10th day of February 2021.


Kimberly A. Cobos-Cawthorne, Mayor

ATTEST:

Christopher Jimenez, City Clerk

APPROVED AS TO FORM:


Arnold M. Alvarez-Glasman, City Attorney

I certify that on January 27, 2021, upon a roll call and vote on the introduction and first reading of the Ordinance, it was introduced by the City Council of the City of Montebello by the following vote:

AYES: Mayor Cobos-Cawthorne
Mayor Pro Tem Torres
Councilmembers Melendez, Jimenez and Peralta
NOES: None
ABSENT: None
Recusal(s) None

I further certify that the foregoing Ordinance was thereafter adopted on final reading by the City Council of the City of Montebello at its meeting of February 10, 2021, by the following vote:

AYES: Mayor Cobos-Cawthorne
Mayor Pro Tem Torres
Councilmembers Melendez, Jimenez and Peralta
NOES:
ABSENT:
RECUSAL(S)

Christopher Jimenez City Clerk