

URGENCY ORDINANCE NO. 2039

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PALM SPRINGS, CALIFORNIA, AMENDING THE PALM SPRINGS MUNICIPAL CODE BY ADDING CHAPTER 5.87, RELATING TO GROCERY WORKERS IN PALM SPRINGS, AND ESTABLISHING LABOR STANDARDS AND REQUIREMENTS FOR PREMIUM PAY FOR GROCERY WORKERS WORKING IN PALM SPRINGS
(four-fifths (4/5) vote required)

City Attorney Summary

The Urgency 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 Palm Springs.

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, the City Manager acting as Director of Emergency Services issued a Proclamation of Local Emergency regarding COVID-19 on March 14, 2020 that was ratified by the City Council on March 19, 2020; 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 their workers as essential critical infrastructure workers; and

WHEREAS, on December 3, 2020, Governor Newsom issued a Regional Stay at Home Order; and

WHEREAS, as of February 16, 2021, the WHO Situation Report reported a global total of 108,822,960 cases of COVID-19, including 2,403,641 deaths; California reported

3,412,057 cases of COVID-19, including 47,107 deaths; and Palm Springs has reported 3,553 cases of COVID-19, including 105 deaths; and

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

WHEREAS, grocery workers 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 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 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 Council of the City of Palm Springs ordains as follows:

SECTION 1. Incorporation of Recitals. The findings and determinations reflected above are true and correct, and are incorporated by this reference herein as the cause and foundation for the action taken by and through this Urgency Ordinance.

SECTION 2. Addition to Palm Springs Municipal Code. Chapter 5.87 *Premium Pay for Grocery Workers* is hereby added to the Palm Springs Municipal Code as follows:

“CHAPTER 5.87

PREMIUM PAY FOR GROCERY WORKERS

5.87.005 Purpose.

As a result of the COVID-19 pandemic, this Ordinance aims to protect and promote the public health, safety, and welfare during the new coronavirus 19 (“COVID-19”) emergency by requiring grocery stores to provide premium pay for grocery workers performing work in Palm Springs. 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 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.

5.87.010 Short title.

This Ordinance shall constitute the “Premium Pay for Grocery Workers Ordinance” and may be cited as such.

5.87.020 Definitions.

For purposes of this Ordinance:

“Adverse action” means reducing the compensation to a designated worker, garnishing gratuities, temporarily or permanently denying or limiting access to work, incentives, or bonuses, offering less desirable work, demoting, terminating, deactivating, putting a designated worker on hold status, failing to rehire after a seasonal interruption of work, threatening, penalizing, retaliating, or otherwise discriminating against a designated worker for any reason prohibited by Section 5.87.090. “Adverse action” also encompasses any action by the hiring entity or a person acting on the hiring entity’s behalf that would dissuade a designated worker from exercising any right afforded by this Ordinance.

“Aggrieved party” means a designated 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 Palm Springs.

“Designated worker” means a grocery store worker employed directly by a hiring entity who is entitled to premium pay pursuant to this Ordinance.

“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.

“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, or a store that has at least fifteen thousand square feet (15,000 sf) of floor space dedicated to retailing a general range of food products. There is a rebuttable presumption that if a store receives seventy percent (70%) or more revenue from retailing a general range of food products, or if a store has at least fifteen thousand square feet (15,000 sf) of floor space dedicated to retailing a general range of food products, then it qualifies as a grocery store.

“Hiring entity” means a grocery store that employs over three hundred (300) designated workers nationally and employs more than fifteen (15) employees per grocery store location in the City of Palm Springs.

“Premium pay” means additional compensation owed to a designated 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 store, franchisor, parent company or any person who is alleged or found to have committed a violation of this Ordinance.

5.87.030 Designated worker coverage.

For the purposes of this Ordinance, covered designated workers are limited to those who perform work for a hiring entity where the work is performed in the City of Palm Springs.

5.87.040 Hiring entity coverage.

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

B. To determine the number of designated workers employed for the current calendar year:

1. The calculation is based upon the average number per calendar week of workers who worked for compensation during the preceding calendar year for any and all weeks during which at least one (1) designated worker worked for compensation. For hiring entities that did not have any designated workers during the preceding calendar year, the number of designated workers employed for the current calendar year is calculated based upon the average number per calendar week of designated 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 designated workers who worked for compensation shall be counted, including but not limited to:

(a) Grocery workers who are not covered by this Ordinance; and

(b) Designated workers who worked in Palm Springs.

5.87.050 Premium pay requirement.

A. Hiring entities shall provide each designated worker with premium pay consisting of an additional Four Dollars (\$4.00) per hour for each hour worked.

B. Hiring entities shall provide the pay required by Subsection 5.87.050 (A) for a minimum of one hundred twenty (120) days from the effective date of this Ordinance.

C. Unless extended by City Council, this Ordinance shall expire in one hundred twenty (120) days.

5.87.060 Designated 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 designated worker's compensation;

2. Limit a designated worker's earning capacity.

B. 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 5.87.060 (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.

5.87.070 Notice of rights.

A. Hiring entities shall provide covered designated 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 designated 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 designated 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 store location utilized by employees for breaks, and in an electronic format that is readily accessible to the designated workers. The notice of rights shall be made available to the designated 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 designated worker(s).

5.87.080 Hiring entity records.

A. Hiring entities shall retain records that document compliance with this Ordinance for covered designated workers.

B. Hiring entities shall retain the records required by Subsection 5.87.080 (A) for a period of two (2) years.

C. If a hiring entity fails to retain adequate records required under Subsection 5.87.080 (A), there shall be a presumption, rebuttable by clear and convincing evidence, that the hiring entity violated this Ordinance for each covered designated worker for whom records were not retained.

5.87.090 Retaliation prohibited.

No hiring entity employing a designated worker shall discharge, reduce in compensation, or otherwise discriminate against any designated 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.

5.87.100 Violation.

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

5.87.110 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.

B. A respondent found to be in violation of this Ordinance for retaliation under Section 5.87.090 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.

5.87.120 Private right of action.

A. Any covered designated worker that suffers financial injury as a result of a violation of this Ordinance, or is the subject of prohibited retaliation under Section 5.87.090, 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.

5.87.130 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 designated worker than required by this Ordinance.

C. In the event a hiring entity has, on or after the effective date of this Ordinance, voluntarily implemented a “Hero pay” increase, and for so long as that “Hero pay” increase remains in effect, such hiring entity shall be entitled to credit such voluntary “Hero pay” increase amount against the increased amount required by Section 5.87.050 of this Ordinance. The hiring entity shall bear the burden of proving, by clear and convincing written evidence, that its increased amount is voluntary (i.e., not a result of any statutory or contractual requirement). A hiring entity shall not be entitled to any credit for any voluntarily paid “Hero pay” increase that was paid prior to the effective date of this Ordinance.

D. In the event a hiring entity demonstrates that it has, prior to the effective date of this Ordinance but after the Governor’s March 4, 2020 Declaration of Emergency, paid the equivalent of an additional four dollars (\$4.00) per hour, for at least one hundred and twenty (120) days, to that employer’s employees who would be covered designated workers under this Ordinance, that hiring entity shall

be deemed to have satisfied all of the requirements of this Ordinance going forward.

E. In the event a hiring entity demonstrates that it has, prior to the effective date of this Ordinance but after the Governor's March 4, 2020 Declaration of Emergency, paid an amount that is less than the equivalent of an additional four dollars (\$4.00) per hour, for one hundred and twenty (120) days, to that employer's employees who would be covered designated workers under this Ordinance, that hiring entity shall be entitled to a dollar for dollar credit toward its obligation under Section 5.87.050 of this Ordinance going forward.

F. This Ordinance shall not apply to any hiring entity whose industry was ordered to be closed by any federal, state, county or local emergency order related to COVID-19.

5.87.140 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 designated 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 designated worker's right to pursue any other remedies at law or equity for violation of their rights.

5.87.150 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, designated 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.

5.87.160 Exemption for collective bargaining agreement.

All of the provisions of this Ordinance, or any part thereof, may be expressly waived in a collective bargaining agreement, but only if the waiver is explicitly set forth in the agreement in clear and unambiguous terms. Unilateral implementation of a collective bargaining agreement shall not constitute a waiver of all or any provisions of this Ordinance.

5.87.170 No waiver of rights.

Except for a collective bargaining agreement provision made pursuant to Section 5.87.160, any waiver by a designated worker of any or all provisions of this

Ordinance shall be deemed contrary to public policy and shall be void and unenforceable. Other than in connection with the bona fide negotiation of a collective bargaining agreement, any request by a hiring entity to a designated worker to waive rights given by this Ordinance shall be a violation of this Ordinance.”

SECTION 3. CEQA. The City Council determines that the adoption of this Urgency Ordinance is exempt from environmental review under the California Environmental Quality Act (“CEQA”) pursuant to the following provisions of the CEQA Guidelines, 14 California Code of Regulations, Chapter 3: this Urgency Ordinance is exempt under CEQA Guidelines Section 15378(b)(5) in that it is not a “project” under CEQA, and will not result in direct or indirect physical changes in the environment.

SECTION 4. Urgency Findings/Effective Date. Pursuant to City Charter Section 312 and California Government Code Section 36937, this Ordinance is designed to protect the health, safety and welfare of the citizens of the City of Palm Springs and becomes effective immediately upon adoption by a four-fifths (4/5) vote of the City Council. The City Council hereby finds that there is an urgent need to adopt these regulations in order to address the current and immediate threats set forth above.

SECTION 5. Severability. If any section or provision of this Urgency Ordinance is for any reason held to be invalid or unconstitutional by any court of competent jurisdiction, or contravened by reason of any preemptive legislation, the remaining sections and/or provisions of this Urgency Ordinance shall remain valid. The City Council hereby declares that it would have adopted this Urgency Ordinance, and each section or provision thereof, regardless of the fact that any one or more section(s) or provision(s) may be declared invalid or unconstitutional or contravened via legislation.

SECTION 6. Adoption, Certification, and Publication. The Mayor shall sign and the City Clerk shall certify to the passage and adoption of this Urgency Ordinance and shall cause the same, or the summary thereof, to be published and posted pursuant to the provisions of law.

PASSED, APPROVED AND ADOPTED BY THE PALM SPRINGS CITY COUNCIL THIS 11TH DAY OF MARCH, 2021.



CHRISTY HOLSTEGE, MAYOR

ATTEST:

ANTHONY J. MEJIA, CITY CLERK

CERTIFICATION

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE) ss.
CITY OF PALM SPRINGS)

I, ANTHONY J. MEJIA, City Clerk of the City of Palm Springs, California, do hereby certify that Urgency Ordinance No. 2039 is a full, true, and correct copy, and was adopted without introduction at a regular meeting of the City Council held on March 11, 2021 by the following vote:

AYES: Councilmembers Garner, Kors, Woods, Mayor Pro Tem Middleton, and Mayor Holstege
NOES: None
ABSENT: None
ABSTAIN: None

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of Palm Springs, California, this _____ day of _____, _____.

Anthony J. Mejia MMC, City Clerk
City of Palm Springs, California