

City Council Meeting March 9, 2021

Santa Monica, California

ORDINANCE NUMBER 2664 (CCS)

(City Council Series)

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SANTA MONICA ADDING CHAPTER 4.65.5 TO THE SANTA MONICA MUNICIPAL CODE TO IMPLEMENT HERO PAY FOR CERTAIN WORKERS PROVIDING ESSENTIAL SERVICES DURING THE COVID-19 PANDEMIC

WHEREAS, the novel coronavirus 19 (“COVID-19”) disease is caused by a virus that reads 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, the WHO has declared that COVID-19 is 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 this disease; and

WHEREAS, on March 4, 2020, the Los Angeles County Board of Supervisors and Department of Public Health declared a local emergency and local public health emergency to aid the regional healthcare and governmental community in responding to COVID-19; and

WHEREAS, on March 4, 2020, the Governor of the State of California declared a state of emergency to make additional resources available, formalize emergency actions already underway across multiple state agencies and departments, and help the State prepare for broader spread of COVID-19; and

WHEREAS, on March 13, 2020, the President of the United States of America declared a national emergency and announced that the federal government would make emergency funding available to assist state and local governments in preventing the spread of and addressing the effects of COVID-19; and

WHEREAS, on March 13, 2020, the City Manager, in his role as the Director of Emergency Services, proclaimed the existence of a local emergency pursuant to Chapter 2.16 of the Santa Monica Municipal Code to ensure the availability of mutual aid and an effective the City's response to the novel coronavirus ("COVID-19") and this local emergency was restated on March 14, 2020, through a revised declaration of local emergency to ensure compliance with all digital signature requirements; and

WHEREAS, on March 19, 2020, the Governor of the State of California issued Executive Order N-33-20 directing all residents of the State of California to heed directives issued by the State Health Officer on the same date instructing all Californians to stay home except as needed to maintain continuity of operations of the federal critical infrastructure sectors. In addition to healthcare, public health, and emergency services, the Executive Order permitted workers in critical infrastructure sectors, as outlined by the federal government, to continue to work; grocery and drug retail stores were included as essential business sectors critical to protecting the health and well-being of all

Californians and their workers were therefore designated as essential critical infrastructure workers; and

WHEREAS, on March 19, 2020, the Los Angeles County Department of Public Health issued an enhanced Health Officer Order, the Safer at Home Order for Control of COVID-19, amending and superseding its earlier March 16, 2020 Order, closing all nonessential businesses, and limiting gatherings to 9 people or less. The County Safer at Home Order identified grocery stores and drug retail stores as essential businesses and/or parts of essential infrastructure supporting healthcare operations, with the result that they were allowed to remain open and their workers were allowed to continue going to work; and

WHEREAS, on January 12, 2021, the City Council directed staff to return with an emergency ordinance implementing hero pay to require large grocery store chains and drug retailers to provide an extra \$5 per hour to frontline workers temporarily during the pandemic consistent with any such measures imposed in unincorporated Los Angeles County; and

WHEREAS, on January 25, 2021, noting that while there are positive signs that COVID-19 is spreading at a slower rate across the state the COVID-19 pandemic is far from over; that it is still critical that Californians continue to wear masks when they leave their homes, maintain physical distance of at least 6 feet, wash their hands frequently, avoid gatherings and mixing with other households, and follow all state and local health department guidance and get the vaccine when it is their turn; and that the majority of counties remain in the strictest, or purple, tier that indicates which activities and businesses may open based on local case rates and test positivity, the California

Department of Health ended the state's Regional Stay at Home Order, allowing all counties statewide to return to the rules and framework of the Blueprint for a Safer Economy; and

WHEREAS, on February 18, 2021, the Los Angeles County Department of Public Health issued its revised Reopening Safer at Work and in the Community for Control of COVID-19 Blueprint for a Safer Economy-Tier 1 Surge Response order, which continued to require the closure of many non-essential businesses; grocery stores and drug stores remained identified as essential businesses and/or parts of essential infrastructure supporting healthcare operations, and remained allowed to stay open with their workers allowed to continue going to work; and

WHEREAS, on February 23, 2021, Los Angeles County adopted an urgency ordinance requiring large grocery store chains and drug retailers to provide an extra \$5 per hour to grocery and drug retail workers temporarily during the pandemic; and

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

WHEREAS, the Center for Disease Control reports that COVID-19 spreads more readily indoors, and essential grocery and drug retail workers must perform their jobs inside and interact with members of the public; and

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

WHEREAS, on March 9, 2021, the City Council held a public meeting during which it considered the adoption of this Urgency Ordinance pursuant to California Government Code Section 36937 and Santa Monica City Charter Section 615, both of which allow the adoption of urgency ordinances to take effect immediately to ensure the immediate preservation of the public peace, health, safety, and general welfare in the City of Santa Monica; and

WHEREAS, the City Council hereby finds that: the revisions to the Santa Monica Municipal Code implemented by this Urgency Ordinance are immediately necessary as an emergency measure to sustain the stability of the food supply chain by supporting the essential workers who continue to work during the COVID-19 pandemic, and thereby safeguard the health, safety, and general welfare of the public in the City of Santa Monica.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SANTA MONICA DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. New Santa Monica Municipal Code Chapter 4.65.5, Hero Pay, is added to read as follows:

**CHAPTER 4.65.5 HERO PAY**

**4.65.5.010 Findings and Purpose.**

(a) To protect the public health and welfare during the COVID-19 pandemic, California Governor Gavin Newsom and the County of Los Angeles have issued "Safer at Home" declarations that have affected every sector of the economy. While many sectors were able to transition their workforce to working from home, millions of workers in face-to-face service industries were deemed essential to ensure that our communities continue to operate, and basic needs continue to be fulfilled.

(b) The City Council finds that frontline grocery retail and drug retail workers are essential workers who face potential exposure to COVID-19 through interactions with customers and co-workers. Because of their work on the frontlines, grocery retail and drug retail workers have been met with COVID-19 exposures and outbreaks in their workplaces. Their work has increased the workers' COVID-19 exposure risks and contributed to the psychological distress workers have felt during the pandemic.

(c) The City Council finds that frontline grocery retail and drug retail workers are among the heroes of this pandemic, putting their lives on the line – often for low wages and minimal benefits – to maintain the food supply and distribution system necessary for healthy communities. Despite their importance to our communities, their employers have not all provided sufficient wages during the COVID-19 pandemic to compensate frontline employees for their critical function to our society and the significant risk they face in the workplace. Working in an essential industry, grocery and drug retail employees have not had the luxury of working from home to help their children with distance-learning and, as a result, have incurred additional childcare expenses.

(d) The City of Santa Monica has an interest in protecting the employment environment for frontline grocery retail and drug retail workers and in maintaining the supply and distribution-chain of food. Through this ordinance, the City seeks to sustain the stability of the food supply chain by supporting the essential workers who continue to work during the pandemic, and thereby safeguard the health, safety, and welfare of the public.

(e) The City Council finds it is imperative to act with urgency to support these frontline workers to be justly compensated for the unprecedented risks they encounter on the job during this pandemic and require their employers to provide for additional hazard pay, or “Hero Pay.”

**4.65.5.020 Definitions.**

As used in this Chapter, the following words and phrases have the following meanings:

(a) “Base Wage” means the hourly wage paid to Employees as of the effective date of this Chapter, less Hero Pay owed under this Chapter or any other premium hourly rate already paid to compensate Employees for working during the COVID-19 pandemic, such as Voluntary Hazard Pay or Holiday Premium Pay.

(b) "City Council" means the City Council of the City of Santa Monica.

(c) "City" means the City of Santa Monica.

(d) "DCBA" means the Los Angeles County Department of Consumer and Business Affairs, with which the City contracts for enforcement of its various Municipal Code provisions relating to wages.

(e) "Employee" means any person who:

1. In a particular week performs at least two hours of work within the City for an Employer; and

2. Qualifies as an employee entitled to payment of a minimum wage from any 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.



3. Presumption of Employee. For purposes of this Chapter, a person performing work for an Employer is presumed to be an Employee of that Employer. If an Employer asserts a person is not an Employee covered by this Chapter either due to the person's status as a bona fide independent contractor, or due to the person not being required to physically appear at a Store to perform their job function during the COVID-19 pandemic, then the Employer has the burden to demonstrate that the person is not an Employee.

(f) "Employer" means a person, as defined in section 18 of the California Labor Code, including a corporate officer or executive, that meets all of the following:

1. Directly or indirectly or through an agent or any other person, including through the services of a temporary service or staffing agency or similar entity, employs or exercises control over the wages, hours or working conditions of any Employee;
2. Operates at least one Store;
3. Either is (i) a corporate entity the stock of which is traded on a public stock exchange, or (ii) employs 300 or more workers for compensation nationwide in the pay period preceding the effective date of this Chapter; and
4. Employs more than 10 Employees per Store in the pay period preceding the effective date of this Chapter.

(g) "Enforcement Agent" means the DCBA, or such other City employee or contractor designated by the City to enforce the provisions of this Chapter, any of which shall be considered an Enforcement Officer, as defined in Section 1.09.020 of this Code, with authority to issue administrative citations.

(h) "Hero Pay" means the additional wage Employers are required to pay Employees for work performed at Stores due to the risks associated with COVID-19 pursuant to Section 4.65.5.040(a), in addition to an Employee's Base Wage or Holiday Premium Pay, whichever is applicable at the time of hours worked. The Hero Pay rate shall not include compensation already owed to Employees, Holiday Premium rates, gratuities, service charge distributions, or other bonuses.

(i) "Holiday Premium Pay" means the hourly wage paid to Employees for performing work during a holiday or holiday season.

(j) "Retaliatory Action" means the refusal to hire, or the discharge, suspension, demotion, penalization, discipline, lowering of the Base Wage or Holiday Premium Pay, discrimination, or any other adverse action taken against an Employee regarding the terms and conditions of the Employee's employment, for opposing any practice proscribed by this Chapter, for participating in proceedings related to this Chapter, for seeking to enforce rights under this Chapter by any lawful means, or for otherwise asserting rights under this Chapter.

(k) "Store" means any of the following located within the City:

1. A retail grocery store that sells primarily food or household goods, including fresh produce, meats, poultry, fish, deli products, dairy products, canned foods, dry foods, beverages, baked goods, and/or prepared foods; or

2. A retail drug store that sells a variety of prescription and non-prescription 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, and prepared foods; or

3. A retail store that is over 85,000 square feet and:

i. Dedicates 10 percent or more of its sales floor to groceries, including, but not limited to, produce, meats, poultry, fish deli products, dairy products, canned foods, dry foods, beverages, baked foods, and/or prepared foods; or

ii. Dedicates 10 percent or more of its sales floor to drug retail, including, but not limited to, drugs, pharmaceuticals, sundries, produce, meats, poultry, fish, deli products, dairy products, canned foods, dry foods, beverages, prepared foods, and other merchandise.

(l) "Voluntary Hazard Pay" means additional premium pay for COVID-19 related purposes above and beyond an Employee's Base Wage.

**4.65.5.030 Exemptions.**

This Chapter does not apply to public entities, such as federal, State, County, and City entities, including school districts.

**4.65.5.040 Hero Pay Requirement.**

(a) Hero Pay Amount. For each hour of work performed by an Employee at a Store operated by an Employer, the Employer shall pay the Employee no less than five dollars (\$5) per hour, in addition to the Employee's Base Wage. Such Hero Pay is intended to compensate an Employee for time spent physically present performing work at a Store where there is a heightened potential for exposure to COVID-19. Hero Pay shall not be required for any time an Employee is not physically present to perform work at a Store location, such as when remote working, teleworking, or on paid leave.

(b) Offsets Prohibited. Employers shall not reduce an Employee's Base Wage, Holiday Premium Pay, or other Employee benefits to offset the requirements of this Chapter.

(c) Election to Receive Hero Pay as Paid Leave. An Employee may elect to receive paid leave in lieu of Hero Pay.

1. Must be in Writing. An election to receive paid leave in lieu of Hero Pay must be made in a writing signed by the Employee. If the Employee elects to receive paid leave in lieu of Hero Pay, the Employer shall convert the Hero Pay into paid leave.

2. Calculation of Paid Leave. An Employee accrues one full hour of paid leave when the Hero Pay earned totals one hour of the Employee's Base Wage.

3. Paid Leave Increments. An Employee is entitled to earn paid leave in less than one hour increments.

4. Use of Paid Leave. Employers must allow Employees to use accrued paid leave under this subsection in the same way Employers allow other paid leaves to be used by their Employees.

**4.65.5.050 Employer Credit for Voluntary Hazard Pay.**

(a) If an Employer provides an Employee Voluntary Hazard Pay, the obligation to provide Hero Pay under this Chapter shall be reduced for each cent the Employer provides an Employee with such Voluntary Hazard Pay. No Employer shall be credited prospectively for any past payments. No Employer shall be credited for any hourly premiums already owed to Employees, such as, but not limited to, Holiday

Premiums. Nothing in this Chapter shall be interpreted to prohibit an Employer from paying more than five dollars (\$5) per hour in Hero Pay.

(b) In the event the credit for Voluntary Hazard Pay is challenged, the Enforcement Agent is authorized to evaluate the credibility and sufficiency of proof to determine if the Employer shall receive credit. An Employer must maintain and make available for inspection by the Enforcement Agent the following showings of proof to receive credit for Voluntary Hazard Pay:

1. A copy of the Employer's Voluntary Hazard Pay policy.
2. A concise statement explaining Employees' hourly base wages, hourly Holiday Premiums, hourly Voluntary Hazard Pay, and any other wage bonuses received during the prior 12 months.

3. Records and other information that allows the Enforcement Agent to review for compliance by assessing wages for the prior 12 months and that is itemized in such a way that the Enforcement Agent can understand an Employee's Base Wage distinguished from Holiday Premiums and other bonuses or pay increases that are separate and distinct from Voluntary Hazard Pay.

Acceptable evidence of Voluntary Hazard Pay wage includes:

- i. A spreadsheet of all Employees and their wages for each pay period for the prior 12 months that allows the Enforcement Agent to distinguish Base Wage from Holiday Premium Pay and other bonuses or pay increases that are separate and distinct from Voluntary Hazard Pay. The foregoing does not exempt any Employer from maintaining, and providing access to, the underlying payroll records described above.

ii. Any offer of proof under this subsection (b) shall be accompanied by a written acknowledgement that it was submitted under penalty of perjury.

**4.65.5.060 Employer Notification Requirements.**

(a) Hero Pay Workplace Posting. Every Employer shall post in a conspicuous place at every Store located within the unincorporated areas of the County where any Employee works a written notice prepared and made available electronically by the Enforcement Agent informing Employees of the Hero Pay Ordinance and of their rights under this Chapter.

(b) Pay Period Statement. Each Pay Day, as that term is defined in Section 4.65.5.030, Employers shall provide each Employee with all information required by federal, state, and local laws, including section 226(a) of the California Labor Code, as well as the following additional information: (1) the hourly rate of Hero Pay required by this Chapter or Voluntary Hazard Pay paid by the Employer; (2) the amount of Hero Pay, Paid Leave in lieu of Hero Pay, or Voluntary Hazard Pay earned by the Employee in the pay period; and (3) the number of hours of work performed that entitled the Employee to Hero Pay or Voluntary Hazard Pay in the pay period.

(c) Supplemental Disclosure Allowed. Nothing in this Section shall require Employers to duplicate disclosures required by State law, including sections 226 and 2810.5 of the California Labor Code. Disclosures required by this Section may be satisfied by supplementing any State-mandated disclosure.

**4.65.5.070 Employer Record Keeping and Access Requirements.**

(a) Payroll Records. Employers shall keep records necessary to demonstrate compliance with this Chapter, including accurate and complete payroll records pertaining to each Employee that document the name, address, occupation, dates of employment, rate or rates of pay, amount paid each Pay Period, the hours worked for each Employee, and the formula by which each Employee's wages are calculated.

(b) Retention Period. Every Employer shall retain payroll records required in subsection (a) pertaining to each Employee for a period of four years.

(c) Records and Interview Access; Cooperation with Investigations. To monitor and investigate compliance with the requirements of this Chapter, every Employer shall: (i) allow the Enforcement Agent access to such records required in subsection (a); (ii) allow the Enforcement Agent to interview persons, including Employees, during normal business hours; and (iii) cooperate with Enforcement Agent investigators.

(d) Presumption of Violation. There shall be a rebuttable presumption that an Employer violated this Chapter if an allegation is made concerning an Employee's entitlement to Hero Pay under this Chapter and an Employer does not comply with the requirements of this Section to maintain or retain payroll records, or does not allow the Enforcement Agent reasonable access to such records.

(e) Records Access Charges. When an Employer demonstrates to the Enforcement Agent that the Employer will incur a fee or charge for providing the records required in this Section, the Employer shall be required to provide the

Enforcement Agent with only the prior two years of records, unless the Enforcement Agent determines that obtaining four years of records is reasonable and necessary for the enforcement of this Chapter.

**4.65.5.080 Retaliatory Action Prohibited.**

(a) Retaliation. No Employer may discharge, reduce in compensation, or otherwise discriminate against any Employee for opposing any practice proscribed by this Chapter, for requesting Hero Pay under this Chapter, for participating in proceedings related to this Chapter, for seeking to enforce rights under this Chapter by any lawful means, or for otherwise asserting rights under this Chapter. Rights protected under this Chapter include: the right to file a complaint or inform any person about any party's alleged noncompliance with this Chapter; and the right to inform any person of potential rights under this Chapter and to assist in asserting such rights. Protections of this Chapter shall apply to any Employee who mistakenly, but in good faith, alleges noncompliance with this Chapter.

(b) Rebuttable Presumption of Retaliation. Taking adverse action against an Employee, including lowering Employees' Base Wage or Holiday Premium Pay or reduction of hours, within 90 days of the Employee's exercise of rights protected under this Chapter, shall raise a rebuttable presumption of the Employer having done so in retaliation for the exercise of such rights.

**4.65.5.090 Administrative Fines for Violations.**

(a) Administrative Citations. Any person violating any provision of this Chapter or any rule or regulation may be subject to administrative citation pursuant to Chapter 1.09 of this Code.



(b) Administrative Fines. Notwithstanding Section 1.09.040 of this Code, the administrative fines, payable to both the City and the Employee, that may be assessed for violations of the provisions of this Chapter are as follows:

VIOLATION AND FINE AMOUNT			
Violation	Code Section	Fine Per Violation Payable to City	Fine Per Violation Payable to Employee
Failure to pay Hero Pay to Employee	SMMC Section 4.65.5.040(a)	Up to \$100 per day, per Employee, for each day that an Employee is not paid all wages owed	Up to \$100 per day for each day that an Employee is not paid all wages owed
Improper offset of Employee Base Wage, Holiday Premium Pay, or other benefits to satisfy Hero Pay Requirement	SMMC Section 4.65.5.040(c)	Up to \$100 per day, per Employee, for each day that an Employee is not paid all wages owed	Up to \$100 per day for each day that an Employee is not paid all wages owed
Failure to post written Notice at Store location	SMMC Section 4.65.5.060(a)	Up to \$500 per violation	
Failure to provide complete, accurate, and timely Pay Period Statement to Employee	SMMC Section 4.65.5.060(b)	Up to \$500 per Employee	Up to \$500 per Pay Period
Failure to maintain payroll records or to retain payroll records for four years	SMMC Section 4.65.5.070(a), (b)	Up to \$500 per violation	
Failure to allow access for inspection of books and records or to interview Employees or cooperate with investigation	SMMC Section 4.65.5.070(c)	Up to \$500 per violation	
Retaliation for exercising rights under this Chapter	SMMC Section 8.204.080	Up to \$1,000 per employee subject to retaliation	Up to \$1,000 per employee, plus \$100 per day until reinstatement, if ordered

(c) Calculation of Administrative Fines. Each and every day that a violation exists constitutes a separate and distinct violation. The maximum administrative fine may be increased cumulatively by 50 percent for each subsequent violation of the same provision by the same Employer within a three-year period. The maximum administrative fine that may be imposed in a calendar year for each type of violation listed above shall be \$20,000 per Employee, per year, with the exception of a retaliation violation, in which case the maximum fine shall be \$30,000 per Employee, per year.

(d) Late Payment Fee. Notwithstanding Sections 1.09.040(c) and 1.09.110 of this Code, the failure of any Employer to pay an administrative fine within 30 days shall result in the assessment of an additional late fee, which shall be ten percent of the total amount of the administrative fine assessed for each month the amounts are unpaid, compounded to include already accrued late administrative fines that remain unpaid.

(e) Payments to Employees; Fines and Restitution. Every Employer who violates this Chapter, or any portion thereof, shall be liable to the Employee whose rights were violated for back wages unlawfully withheld and a fine of \$100 for each day that the violation occurred or continued. A violation for unlawfully withholding wages shall be deemed to continue from the date immediately following the date that the wages were due and payable as provided in Part 1 (commencing with section 200) of Chapter 2 of the California Labor Code, to the date immediately preceding the date the wages are paid in full. For retaliatory action by the Employer, the Employee shall be entitled to reinstatement of his or her prior position, assignment, or job, if

applicable, and a trebling of all back wages, fines, and penalties.

(f) Interest. In any administrative or civil action brought for the nonpayment of wages under this Chapter, the Enforcement Agent, the Hearing Officer, or the court, shall award interest on all due and unpaid wages, fines, and penalties at the rate of interest specified in subdivision (b) of section 3289 of the California Civil Code, which shall accrue from the date the wages were due and payable as provided in Part 1 (commencing with section 200) of Division 2 of the California Labor Code, to the date immediately preceding the date the wages are paid in full.

**4.65.5.100 Employee Remedies.**

(a) Private Right of Action. An Employee claiming a violation of this Chapter may file an action in the Superior Court of the State of California against an Employer, within three years of the occurrence of the alleged violation, and may be awarded:

1. Reinstatement to the position from which the Employee was discharged in violation of this Chapter.
2. Back pay unlawfully withheld.
3. All penalties or fines imposed pursuant to other provisions of this Chapter or State law, as determined by the court.
4. For retaliatory action by an Employer, the Employee shall be entitled to a trebling of lost wages and penalties or fines imposed, in addition to reinstatement, as determined by the court.
5. Interest on all due and unpaid wages at the rate of interest specified in subdivision (b) of Section 3289 of the California Civil Code, which shall accrue from the date that the wages were due and payable as provided in

Part 1 (commencing with Section 200) of Division 2 of the California Labor Code, to the date the wages are paid in full.

6. Other legal or equitable relief the court may deem appropriate.

7. If an Employee is the prevailing party in any legal action taken pursuant to this Chapter, the court may award reasonable attorneys' fees and costs as part of the costs recoverable.

(b) Administrative Complaint. Any Employee, or any other person, may file a complaint with the Enforcement Agent alleging a potential violation of this Chapter. A complaint should include a statement of the dates, places, and persons or entities responsible for such violation. Complaints must be filed within three years after the occurrence of the alleged violation of this Chapter.

**4.65.5.110 Administrative Enforcement.**

(a) Payments on Employees' Behalf. The City, when enforcing on behalf of an Employee, has the authority to require that payment of all amounts due under this Chapter be paid directly to the City. The failure of an Employer to pay any amounts due under this Chapter shall constitute a debt to the City. The City, as plaintiff or judgment creditor, may file a civil action on behalf of an Employee 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, or pursue other legal and equitable remedies available to the City. The City shall be awarded reasonable attorneys' fees and costs, as well as costs associated with enforcing a violation under this Chapter.

(b) Nothing in this Chapter shall limit or otherwise prohibit any governmental agency with jurisdiction over wage-related claims from enforcing, or pursuing remedies on behalf of affected Employees permitted by, the provisions of this Chapter.

**4.65.5.120 No Waiver of Rights.**

Any waiver by an Employee of any or all of the provisions of this Chapter shall be deemed contrary to public policy and shall be void and unenforceable.

**4.65.5.130 Coexistence With Other Available Relief.**

(a) The remedies, fines, penalties, and procedures provided under this Chapter are cumulative and are not intended to be exclusive of any other available remedies, fines, penalties, and procedures. By filing a complaint with the City, an Employee is not precluded from being able to recover remedies available to them under any other code, regulation, or law. The procedures established in this Chapter shall be in addition to any other criminal, civil, or other remedy established by law that may be pursued to address violations of this Chapter. An administrative citation issued pursuant to this Chapter shall not prejudice or adversely affect any other action, civil or criminal, that may be filed to prosecute or abate a violation, or to seek compensation for damages suffered.

(b) Any Employee aggrieved by a violation of this Chapter, the City, or any other person or entity acting on behalf of the public, as provided for under applicable State law, may file a civil action in a court of competent jurisdiction against the Employer violating this Chapter and, upon prevailing, shall be entitled to such legal or equitable relief as may be appropriate to remedy the violation including, without limitation, the payment of any back wages unlawfully withheld, the payment of fines in

the amount of \$100 to each Employee whose rights under this Chapter were violated for each day that the violation occurred or continued, reinstatement in employment and/or injunctive relief, and shall be awarded reasonable attorneys' fees and costs. Any person or entity enforcing this Chapter on behalf of the public, as provided for under applicable State law, upon prevailing, shall be entitled only to equitable, injunctive, or restitutionary relief, and reasonable attorneys' fees and costs. Nothing in this Chapter shall be interpreted as restricting, precluding, or otherwise limiting a separate or concurrent criminal prosecution under the Santa Monica Municipal Code or State law. Jeopardy shall not attach as a result of any administrative or civil enforcement action taken under this Chapter.

**4.65.5.140 Conflicts.**

Nothing in this Chapter shall be interpreted or applied to create any power or duty in conflict with any federal or State law.

**4.65.5.150 Administrative Regulations.**

The Finance Director is authorized to adopt administrative regulations that are consistent with the provisions of this Chapter. Violations of the administrative regulations adopted pursuant to this section shall constitute violations of this Chapter and shall subject the violator to the penalties set forth in this Chapter.

**4.65.5.160 Operative Period.**

(a) Operative Date and Duration of Hero Pay Requirement. The requirement to pay Hero Pay, as provided in this Chapter, shall commence at 12:00 a.m. the Thursday immediately following adoption of this Chapter by the City Council (the "Operative Date"), and shall continue for 120 days.

(b) Grace Period. An Employer shall be relieved of liability for non-payment of Hero Pay until April 12, 2021, so long as Hero Pay begins accruing on the Operative Date of this Chapter, and the accrued amount is paid in full on or before the next pay day immediately following April 12, 2021.

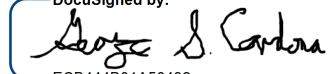
SECTION 2. Any provision of the Santa Monica Municipal Code or appendices thereto inconsistent with the provisions of this Urgency Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to that extent necessary to effect the provisions of this Urgency Ordinance.

SECTION 3. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Urgency Ordinance. The City Council hereby declares that it would have passed this Urgency Ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

SECTION 4. The Mayor shall sign and the City Clerk shall attest to the passage of this Urgency Ordinance. The City Clerk shall cause the same to be published once in the official newspaper within 15 days after its adoption. Pursuant to Sections 615 and 619 of the City Charter, for the reasons stated in the recitals above, the City Council declares this Urgency Ordinance to be necessary as an emergency measure for preserving the public peace, health, and safety, with the result that this Urgency Ordinance shall be introduced

and adopted at the same meeting and shall become effective immediately upon its adoption.

APPROVED AS TO FORM:

DocuSigned by:  
  
ECB444B01A56432...

---

George S. Cardona  
Interim City Attorney



Approved and adopted this 9<sup>th</sup> day of March, 2021.

DocuSigned by:  
  
823148D999FF4F3...  
Sue Himmelrich, Mayor

State of California )  
County of Los Angeles ) ss.  
City of Santa Monica )

I, Denise Anderson-Warren, City Clerk of the City of Santa Monica, do hereby certify that the foregoing Ordinance No. 2664 (CCS) had its introduction and adoption at the Santa Monica City Council meeting held on March 9, 2021, by the following vote:

AYES: Councilmembers Brock, Davis, De la Torre, McKeown, Parra, Mayor Himmelrich

NOES: None

ABSENT: Mayor Pro Tem McCowan

ATTEST:

DocuSigned by:  
  
E2F85B056A714C3...  
Denise Anderson-Warren, City Clerk

3/16/2021  
Date

A summary of Ordinance No. 2664 (CCS) was duly published pursuant to California Government Code Section 40806.