

ORDINANCE NO. 21-1138U

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WEST HOLLYWOOD ESTABLISHING PREMIUM PAY AND ASSOCIATED LABOR PROTECTIONS FOR GROCERY WORKERS WORKING IN WEST HOLLYWOOD AND SETTING FORTH THE FACTS CONSTITUTING SUCH URGENCY.

THE CITY COUNCIL FOR THE CITY OF WEST HOLLYWOOD HEREBY ORDAINS AS FOLLOWS:

SECTION 1. Findings.

1. 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.
2. COVID-19 has broadly spread throughout California and remains a significant health risk to the community, especially members of our most vulnerable populations.
3. 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.
4. 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.
5. On March 16, 2020, the City Council of the City of West Hollywood proclaimed the existence of a local 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.
6. On March 19, 2020, Governor 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.

7. On March 19, 2020, in order to mitigate the effects of COVID-19 within the County of Los Angeles, the County Public Health Officer issued the “Safer at Home” Order to control the affects and 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 of more than 10 people. 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

8. Effective November 30, 2020, the County Department of Public Health enacted a new Health Officer Order requesting individuals to remain in their homes as much as possible and to avoid crowding and mingling with non-household members. The Order came after many Americans gathered and traveled over the Thanksgiving holiday in the midst of a winter surge of COVID-19 cases and deaths. According to the County Department of Public Health, daily peaks are now more than double the County’s peak of daily cases during the summer surge. The region is currently experiencing a surge following the winter holiday season. The Southern California Region, which the City of West Hollywood is a part of, was at zero percent ICU capacity on January 15, 2021. Nevertheless, Grocery workers report to work while others are directed to remain home to slow the spread of the virus.

9. On December 3, 2020, Governor Newsom extended the “Stay Home – Stay Healthy” proclamation.

10. On January 25, 2021 Governor Newsom lifted the statewide stay-at-home order, returning counties back to a tiered system.

11. On January 25, 2021, the California Department of Public Health (CDPH) ended the Regional Stay at Home Order, lifting the order for all regions statewide, including Southern California. This action allowed all counties to return to the Blueprint for a Safer Economy framework which uses color-coded tiers to indicate which activities and businesses can open based on local case rates and test positivity. Los Angeles County is in the strictest tier, the Purple Tier.

12. Los Angeles County remains in the most restrictive purple tier where many non-essential business operations remain closed and the virus remains widespread.

13. As of January 28, 2021, the WHO Situation Report reported a global total of 100,455,529 cases of COVID-19, including 2,166,440 deaths; California

reported 3,200,000 cases of COVID-19, including 38,927 deaths; and West Hollywood has reported 1,874 cases of COVID-19, including 24 deaths.

14. Grocery stores are essential businesses operating in West Hollywood during the COVID-19 emergency making grocery workers highly vulnerable to economic insecurity and health or safety risks.

15. 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 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.

16. 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.

17. 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.

18. 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. A study of grocery store workers has also shown an accelerated risk of coronavirus infection faced by workers in customer-centric roles. Another report from CNBC reports how the toll of COVID has been particularly hard on grocery store workers who can't work from home and often have low pay and limited benefits. Additionally, new and potentially more contagious variants of the coronavirus that have been detected in California.

19. 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.

20. 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 West Hollywood. 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.

21. This Ordinance is adopted pursuant to the City's police powers and powers afforded to the city in time of national, state, county and local emergency during an unprecedented health pandemic, such powers being afforded by the State Constitution, State law and the Chapter 2.80 of the West Hollywood Municipal Code to protect the peace, health, and safety of the public. The West Hollywood City Council finds that this ordinance is necessary for the preservation of the public peace, health, and safety of grocery workers working in West Hollywood and finds urgency to approve this ordinance immediately based on the facts described herein and detailed in the staff report. Under Government Code Section 8634, this ordinance is necessary to provide for the protection of health, life and property.

## SECTION 2. PREMIUM PAY FOR GROCERY WORKERS.

### A. Definitions.

For purposes of this Ordinance:

“Adverse action” means reducing the compensation to a grocery 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 worker on hold status, failing to rehire after a seasonal interruption of work, threatening, penalizing, retaliating, or otherwise discriminating against a covered grocery worker for any reason prohibited by this ordinance. “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 worker from exercising any right afforded by this ordinance.

“Aggrieved party” means a grocery 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 West Hollywood.

“Covered grocery worker” means a grocery 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. 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 store that employs over three hundred (300) grocery workers nationally and employs more than fifteen (15) employees per grocery store in the City of West Hollywood.

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

B. Grocery worker coverage.

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

C. Hiring entity coverage.

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

2. To determine the number of grocery workers employed for the current calendar year:

a. The calculation is based upon the average number per calendar week of grocery workers who worked for compensation during the preceding calendar year for any and all weeks during which at least one (1) grocery worker worked for compensation. For hiring entities that did not have any grocery workers during the preceding calendar year, the number of grocery workers employed for the current calendar year is calculated based upon the average number per calendar week of grocery workers who worked for compensation during the first ninety (90) calendar days of the current year in which the hiring entity engaged in business.

b. All grocery workers who worked for compensation shall be counted, including but not limited to:

i. Grocery workers who are not covered by this Ordinance;  
and

ii. Grocery workers who worked in West Hollywood.

D. Premium pay requirement.

1. Hiring entities shall provide each grocery worker with premium pay consisting of an additional Five Dollars (\$5.00) per hour for each hour worked.

2. Hiring entities shall provide the pay required by Subsection D.1 for a minimum of one hundred twenty (120) days from the effective date of this Ordinance.

3. This terms of this Section 2 shall be in effect for one hundred twenty (120) days from the effective date of this Ordinance.

E. Grocery worker and consumer protections.

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

a. Reduce a grocery worker's compensation;

b. Limit a grocery worker's earning capacity.

2. 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 E.1 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.

F. Notice of rights.

1. Hiring entities shall provide covered grocery 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 workers of their rights under this Ordinance. The notice of rights shall provide information on:

a. The right to premium pay guaranteed by this Ordinance;

b. The right to be protected from retaliation for exercising in good faith the rights protected by this Ordinance; and

c. 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 worker or other person for asserting the right to premium pay or otherwise engaging in an activity protected by this Ordinance.

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

G. Hiring entity records.

1. Hiring entities shall retain records that document compliance with this Ordinance for covered grocery workers.

2. Hiring entities shall retain the records required above for a period of two (2) years.

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

H. Retaliation prohibited.

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

I. Violation.

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

J. Remedies.

1. 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.

2. A respondent found to be in violation of this Ordinance for retaliation under Section H above 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.

K. Private right of action.

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

L. Encouragement of more generous policies.

1. 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.

2. 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 worker than required by this Ordinance.

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

N. 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 terms and conditions of employment by either party to a collective bargaining



relationship shall not constitute a waiver of all or any of the provisions of this Ordinance.

O. No waiver of rights.

Except for a collective bargaining agreement provision made pursuant to Section N, any waiver by a grocery 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 grocery worker to waive rights given by this Ordinance shall be a violation of this Ordinance.

SECTION 3. Urgency Findings. Pursuant to California Government Code Section 36937, this Ordinance is designed to protect the health, safety and welfare of the citizens of the City of West Hollywood 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. Given the uncertain and evolving nature of the pandemic, the premium pay and associated protections must be immediately implemented to ensure that grocery workers continue working and providing this essential service to the residents of West Hollywood and the region generally. The workers have already been working for many months throughout this 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. This urgency ordinance is needed during the emergency in the interest of maintaining access to and continuity in essential grocery services and access to food through grocery store operations. Under Government Code Section 8634 and WHMC Chapter 2.80, this ordinance is necessary to provide for the protection of life and property for the reasons set out herein. The Council therefore finds and determines that the immediate preservation of the public peace, health and safety, and protection of life and property, require that this Ordinance be enacted as an urgency ordinance pursuant to Government Code section 36937 and take effect immediately upon adoption by four-fifths of the City Council.

SECTION 4. 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. This ordinance only regulates the pay and protections for grocery workers those matters would not result in physical changes to the environment.

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

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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. Certification. The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same, or the summary thereof, to be published or posted in the manner required by law.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of West Hollywood at a regular meeting held this 16<sup>th</sup> day of February, 2021 by the following vote:

AYES:	Councilmember:	D'Amico, Erickson, Shyne, Mayor Pro Tempore Meister, and Mayor Horvath.
NOES:	Councilmember:	None.
ABSENT:	Councilmember:	None.
ABSTAIN:	Councilmember:	None.

DocuSigned by:  
  
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 LINDSEY P. HORVATH, MAYOR

ATTEST:  
 DocuSigned by:  
  
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 2072ACE2625D4B9  
 MELISSA CROWDER, ACTING CITY CLERK

STATE OF CALIFORNIA            )  
 COUNTY OF LOS ANGELES        )  
 CITY OF WEST HOLLYWOOD        )

I, MELISSA CROWDER, Acting City Clerk of the City of West Hollywood, do hereby certify that the foregoing Ordinance No. 21-1138U was duly passed, approved, and adopted by the City Council of the City of West Hollywood at a regular meeting held on this 16<sup>th</sup> day of February, 2021.

I further certify that this ordinance was posted in three public places as provided for in Resolution No. 5, adopted the 29<sup>th</sup> day of November, 1984.

WITNESS MY HAND AND OFFICIAL SEAL THIS 17<sup>th</sup> DAY OF FEBRUARY, 2021.

DocuSigned by:  
  
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 2072ACE2625D4B9  
 MELISSA CROWDER, ACTING CITY CLERK