

ORDINANCE NO. 5999

AN UNCODIFIED ORDINANCE OF THE COUNCIL OF THE  
CITY OF SANTA BARBARA ESTABLISHING HAZARD-  
BASED PREMIUM PAY FOR GROCERY AND DRUG  
RETAIL WORKERS

THE CITY COUNCIL OF THE CITY OF SANTA BARBARA DOES ORDAIN AS  
FOLLOWS:

SECTION 1. Findings and Determinations.

A. The City of Santa Barbara is a chartered city organized pursuant to Article XI of the California Constitution. The City has the police power to make and enforce all laws and regulations in respect to municipal affairs, subject only to such restrictions and limitations as may be provided in this Charter or in the Constitution of the State of California; and

B. On March 16, 2020, the City Administrator, acting as the Director of Emergency Services, issued a Proclamation Declaring the Existence of a Local Emergency in the City of Santa Barbara that was ratified by the City Council in Resolution No. 20-021 on March 17, 2020; and

C. 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

D. As of April 23, 2021, there have been over 33,900 COVID-19 cases reported in Santa Barbara County, including 448 deaths; and

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

F. Grocery and drug retail workers face increased exposure risk due to their inability to physically distance themselves from others in the workplace. One research group reported that employees with direct customer exposure are five times more likely to test positive for the COVID-19 virus than those employees without such exposure (Lan F, Suharlim C, Kales SN, et al., *Association Between SARS-Cov-2 Infection, Exposure*

*Risk and Mental Health Among a Cohort of Essential Retail Workers in the USA, Occupational and Environmental Medicine 2021;78:237-243.*); and

G. Frontline grocery and drug retail workers have been unable to work from home, including those with children engaged in distance learning, and have therefore likely incurred additional childcare expenses; and

H. During the early stages of the COVID-19 pandemic, many grocery companies provided “Hero Pay, ” which was generally implemented as either a temporary hourly wage increase or a one-time bonus for certain essential workers; and

I. Hero Pay has been generally phased out or terminated; however, according to the Brookings Institute, the top retail companies earned on average an extra \$16.7 billion in profit in 2020 compared to 2019; and

J. 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

K. Grocery and drug retail workers working during the COVID-19 pandemic 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 continue to work in these hazardous conditions 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

L. 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

M. Establishing a requirement for grocery and drug retail stores to provide hazard-based 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 pandemic.

**SECTION 2. Hazard-based Premium Pay for Grocery and Drug Retail Workers Established.**

A. Definitions. For purposes of this Ordinance, the following definitions apply:

1. “Adverse action” means reducing compensation, garnishing gratuities, temporarily or permanently denying or limiting access to work, incentives, or

bonuses, offering less desirable work, demoting, terminating, deactivating, placing on hold status, failing to rehire after a seasonal interruption of work, threatening, penalizing, retaliating, or otherwise discriminating against a grocery or drug retail worker. "Adverse action" may involve any aspect of employment, including pay, work hours, responsibilities, or other material change in the terms and condition of employment.

2. "Aggrieved party" means a grocery or drug retail worker or other person who suffers tangible or intangible harm due to a Covered Employer or other person's violation of this Ordinance.

3. "Base wage rate" means the regular hourly wage rate paid to a grocery or drug retail worker.

4. "City" means the City of Santa Barbara.

5. "Grocery or drug retail worker" means an individual who performs at least two (2) hours of work in a calendar week for a Covered Employer within the City of Santa Barbara, but does not include managerial, supervisory, or confidential employees of a Covered Employer.

6. "Covered Employer" means any retail establishment, as defined below, that is located in the City of Santa Barbara, employs at least 1 employee in Santa Barbara, and whose owner, parent company, franchisor, or network of franchises employs three hundred (300) or more employees nationally. All employees who worked for compensation shall be counted in determining the number of local or national employees, including but not limited to salaried employees who are not covered by this Ordinance; and employees who worked in full-time employment, part-time employment, joint employment, temporary employment, or through the services of a temporary services or staffing agency.

7. "Hour worked" means the time during which a grocery or drug retail worker is subject to the control of a Covered Employer, including any time that the employee is suffered or permitted to work or on-call.

8. "Person" means any individual, corporation, partnership, limited partnership, limited liability partnership, limited liability company, business trust, estate, trust, association, joint venture, agency, instrumentality, or any other legal or commercial entity, whether domestic or foreign.

9. "Hazard-based Premium pay" means an additional \$5.00 per hour wage premium for each hour worked that is in addition to a grocery or drug retail worker's base pay rate and any commissions, gratuities, bonuses or any other form of regular or premium pay that is owed to the grocery or drug retail worker, including but not limited to, any holiday, overtime, or vacation pay.

10. "Retail establishment" means a retail business located in the City of Santa Barbara that:

a. is 15,000 square feet or more and (i) devotes seventy percent (70%) or more of its sales floor area to retailing a general range of food products, which may be fresh or packaged, (ii) or receives seventy percent (70%) or more of its revenue from retailing a general range of food products; or

b. is more than 85,000 square feet and devotes 10% or more of its sales floor area to the sale of merchandise that is non-taxable pursuant to Section 6359 of the Revenue and Taxation Code, including retail establishments with multiple tenants, so long as consumer goods and non-taxable items are sold under the same roof with shared checkout stands, entrances, and exits; or

c. is a retail pharmacy that sells a variety of prescription and non-prescription medicines, as well as any combination of miscellaneous items, including but not limited to, sundries, dry foods, packaged foods, beverages, fresh produce, meats, deli products, dairy products, canned foods, or prepared foods.

B. Hazard-based Premium Pay Requirement.

1. Covered Employers shall pay each grocery or drug retail worker hazard-based premium pay consisting of an additional five dollars (\$5.00) per hour for each hour worked above the base wage rate for that employee.

2. All compensation above the base wage rate shall be credited against the hazard-based premium pay requirement, as follows:

a. A Covered Employer that is already providing additional compensation above the base wage rate in a manner similar to the hazard-based premium pay requirement set forth above, on an ongoing basis prior to the effective date of this Ordinance, may use the hourly rate of that additional compensation to offset the amount due under this Ordinance (e.g., a Covered Employer who is already paying two dollars (\$2.00) per hour above base wage rate owes an additional three dollars (\$3.00) per hour in hazard-based premium pay under this Ordinance).

b. The Covered Employer bears the burden of proof that the additional compensation is part of the base wage rate. No Covered Employer shall be credited prospectively for any past payments. No Covered Employer shall be credited for any hourly premiums already owed to Covered Employees, such as but not limited to, holiday premiums, however there shall be a rebuttable presumption that compensation paid by a Covered Employer in January 2020 was paid at the base wage rate for purposes of calculating the hazard-based premium pay at that particular employer.

C. Grocery or Drug Retail Worker Protections.

1. It is unlawful for a Covered Employer to offset or reduce the hazard-based premium pay required under this Ordinance by reducing the base wage rate, overtime, holiday or other premium pay rate, hours of work, vacation, pension contributions, or other non-wage benefits of any grocery or drug retail worker, or by increasing charges to any grocery or drug retail worker for parking, uniforms, meals, or other work-related materials or equipment. A Covered Employer violates this prohibition if the requirements of this Ordinance are shown to be a motivating factor in the Covered Employer's decision to take any adverse actions, unless the Covered Employer proves that it would have taken the same action at the time that it did irrespective of the Ordinance's operation.

D. Notice of Rights.

1. Covered Employers shall provide each grocery or drug retail worker with written notice of the rights established by this Ordinance, as provided in this Section. The notice of rights shall be in a form and manner sufficient to inform grocery or drug retail workers of their rights under this Ordinance. The notice of rights shall provide information on:

a. The right to hazard-based 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 Covered Employer's denial of hazard-based premium pay as required by this Ordinance and a Covered Employer's or other person's retaliation against a grocery or drug retail worker or other person for asserting the right to hazard-based premium pay or otherwise engaging in an activity protected by this Ordinance.

2. Covered Employers shall also post the notice of rights in a conspicuous location at each work site. The notice shall be in English, Spanish, and any other primary language spoken by at least 10% of the Covered Employer's retail establishment.

E. Record Keeping.

1. Covered Employers shall retain records that document compliance with this Ordinance, including payroll records listing the hazard-based premium pay required by this Ordinance as a separate item, for a period of two years.

2. If a Covered Employer fails to retain adequate records required, there shall be a presumption, rebuttable by clear and convincing evidence, that the Covered Employer violated this Ordinance for each grocery or drug retail worker for whom records were not retained.

F. Retaliation Prohibited.

No Covered Employer shall discharge, reduce in compensation, or take any other adverse action against a grocery or drug retail 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, or for otherwise asserting rights under this Ordinance. The protections of this Ordinance shall apply to any grocery or drug retail worker who mistakenly, but in good faith, alleges non-compliance with this Ordinance.

G. Civil Violations.

The failure of any person to comply with any requirement imposed on it under this Ordinance is a violation for the purposes of civil enforcement and remedies.

H. Civil Enforcement and Remedies.

1. The remedies provided for in this Ordinance are cumulative and are not intended to be exclusive of any other available remedies, damages, penalties, fines, or relief.

2. Any grocery or drug retail worker aggrieved by a violation of this Ordinance may bring a civil action in a court of competent jurisdiction against the Covered Employer or other person violating this Ordinance and, upon prevailing, shall be awarded reasonable attorneys' 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 due under this Ordinance plus interest, back pay, reinstatement, front pay in lieu of reinstatement, and rescission.

3. In addition to any other remedies set forth in this Ordinance, a person that acts with malice, fraud, or oppression in violating a grocery or drug retail worker's rights shall be liable for exemplary damages in the amount of two times the monetary damages suffered by the aggrieved grocery or drug retail worker.

### SECTION 3. General Provisions.

#### A. Encouragement of More Generous Policies.

1. Nothing in this Ordinance shall be construed to discourage or prohibit a Covered Employer from the adoption or retention of hazard-based premium pay policies more generous than the one required herein.

2. Nothing in this Ordinance shall be construed as diminishing the obligation of a Covered Employer to comply with any contract or other agreement providing more generous protections to a grocery or drug retail worker than those required by this Ordinance.

B. Minimum Requirements. This Ordinance provides minimum requirements for hazard-based premium pay while working for a Covered Employer 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 premium pay, or that extends other protections to grocery or drug retail workers. 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 Ordinance shall be construed as restricting a grocery or drug retail worker's right to pursue any other remedies at law or equity for violation of their rights.

C. This Ordinance shall not apply to hours worked before the effective date.

D. This Ordinance shall be enforceable as provided in Santa Barbara Municipal Code Chapters 1.25 and 1.28.

E. Severability. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is held for any reason 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 Ordinance. The City Council hereby declares that it would have adopted this Ordinance and each section, subsection, clause, phrase or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or portions be declared invalid or unconstitutional.

SECTION 4. Expiration. Section 2.B. of this Ordinance (Hazard-based Premium Pay Requirement) will expire sixty (60) days from the effective date of this Ordinance, unless extended by action of the City Council.

**ORDINANCE NO. 5999**

STATE OF CALIFORNIA                    )  
  )  
COUNTY OF SANTA BARBARA        ) ss.  
  )  
CITY OF SANTA BARBARA                )

I HEREBY CERTIFY that the foregoing ordinance was introduced on May 4, 2021 and adopted by the Council of the City of Santa Barbara at a meeting held on May 11, 2021, by the following roll call vote:

- AYES:                    Councilmembers Alejandra Gutierrez, Oscar Gutierrez, Meagan Harmon; Mayor Cathy Murillo
- NOES:                    Mike Jordan
- ABSENT:                 None
- ABSTENTIONS:        Eric Friedman, Kristen W. Sneddon

IN WITNESS WHEREOF, I have hereto set my hand and affixed the official seal of the City of Santa Barbara on May 12, 2021.



  
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Sarah P. Gorman, MMC  
City Clerk Services Manager

I HEREBY APPROVE the foregoing ordinance on May 12, 2021.

  
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Cathy Murillo  
Mayor