

**URGENCY ORDINANCE NO. 2354**

**AN URGENCY ORDINANCE OF THE CITY COUNCIL  
OF THE CITY OF SOUTH PASADENA, CALIFORNIA,  
ESTABLISHING PREMIUM PAY AND ASSOCIATED LABOR PROTECTIONS  
FOR GROCERY AND DRUG RETAIL WORKERS WORKING IN SOUTH PASADENA  
AND SETTING FORTH THE FACTS CONSTITUTING SUCH URGENCY**

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

**WHEREAS**, on March 16, 2020, the City Council of the City of South Pasadena 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; and

**WHEREAS**, 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 and drug retail 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 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 and drug retail 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**, 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 South Pasadena is a part of, was at zero percent ICU capacity on January 15, 2021. Nevertheless, grocery and drug retail workers report to work while others are directed to remain home to slow the spread of the virus; and

**WHEREAS**, on December 3, 2020, Governor Newsom extended the “Stay Home– Stay Healthy” proclamation; and

**WHEREAS**, on January 25, 2021 Governor Newsom lifted the statewide stay-at- home order, returning counties back to a tiered system; and

**WHEREAS**, 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; and

**WHEREAS**, Los Angeles County remains in the most restrictive purple tier where many non-essential business operations remain closed and the virus remains widespread; and

**WHEREAS**, 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 South Pasadena has reported 1,874 cases of COVID-19, including 24 deaths; and

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

**WHEREAS**, grocery and drug retail 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 and drug retail workers working during the COVID-19 emergency warrant 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. A study of grocery and drug retail 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 particular hard on grocery and drug retail 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; and

**WHEREAS**, establishing an immediate requirement for grocery and drug retail stores to provide premium pay to workers protects public health, supports stable incomes, and promotes job retention by ensuring that 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**, 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 and drug retail stores to provide premium pay for workers performing work in South Pasadena. Requiring grocery and drug retail stores to provide premium pay to compensate workers for the risks of working during a pandemic. Grocery and drug retail 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; and

**WHEREAS**, 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 South Pasadena Municipal Code to protect the peace, health, and safety of the public. The South Pasadena City Council finds that this ordinance is necessary for the preservation of the public peace, health, and safety of grocery and drug retail workers working in South Pasadena 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.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SOUTH PASADENA,**

**CALIFORNIA, DOES HEREBY ORDAIN AS FOLLOWS:**

**SECTION 1.** The foregoing Recitals are true and correct and incorporated by reference herein as if fully set forth.

**SECTION 2. PREMIUM PAY FOR GROCERY AND DRUG RETAIL WORKERS.****A. Definitions.**

For purposes of this Ordinance:

“Adverse action” means reducing the compensation to a covered worker, garnishing gratuities, temporarily or permanently denying or limiting access to work, incentives, or bonuses, offering less desirable work, demoting, terminating, deactivating, putting a covered worker on hold status, failing to rehire after a seasonal interruption of work, threatening, penalizing, retaliating, or otherwise discriminating against a covered 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 covered worker from exercising any right afforded by this ordinance.

“Aggrieved party” means a covered 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 South Pasadena.

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

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

“Drug retail store” means a store that sells a variety of prescription and nonprescription medicines and miscellaneous items, 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 (also referred to as drug retail products).

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

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

“Premium pay” means additional compensation owed to a covered worker that is separate from hiring entity payments for providing services, bonuses, and commissions, as well as tips earned from customers.

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

B. Grocery or Drug Retail worker coverage.

For the purposes of this Ordinance, covered workers are limited to those who perform work for a hiring entity where the work is performed by that worker in the City of South Pasadena.

C. Hiring entity coverage.

1. For purposes of this Ordinance, hiring entities are limited to those who employ three hundred (300) or more covered workers nationally and employ more than fifteen (15) employees per store in the City of South Pasadena.
2. To determine the number of covered workers employed for the current calendar year:
  - a. The calculation is based upon the average number per calendar week of grocery or drug retail workers who worked for compensation during the preceding calendar year for any and all weeks during which at least one (1) grocery or drug retail worker worked for compensation. For hiring entities that did not have any grocery or drug retail workers during the preceding calendar year, the number of grocery or drug retail workers employed for the current calendar year is calculated based upon the average number per calendar week of grocery or drug retail 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 or drug retail workers who worked for compensation shall be counted, including but not limited to:
    - i. Grocery or drug retail workers who are not covered by this Ordinance; and
    - ii. Covered grocery or drug retail workers who worked in South Pasadena.

D. Premium pay requirement.

1. Hiring entities shall provide each covered worker with premium pay consisting of an additional Three Dollars (\$3.00) per hour for each hour worked within the City of South Pasadena;
2. Hiring entities shall provide the pay required by Subsection D.1 for a minimum of

sixty (60) days from the effective date of this Ordinance; and

3. This terms of this Ordinance shall be in effect for sixty (60) days from the effective date of this Ordinance, unless extended by Council action.

E. Covered 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 covered worker's compensation;
  - b. Limit a covered 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 grocery or drug retail workers with a written notice of rights established by this Ordinance. The notice of rights shall be in a form and manner sufficient to inform grocery or drug retail 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 grocery or drug retail 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 store utilized by employees for breaks, and in an electronic format that is readily accessible to the covered workers. The notice of rights shall be made available to the covered workers via smartphone application or an online web portal, in English and any language that the hiring entity knows or has reason to know is the primary language of the grocery or drug retail worker(s).

G. Hiring entity records.

1. Hiring entities shall retain records that document compliance with this Ordinance for grocery or drug retail 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 grocery or drug retail worker for whom records were not retained.

H. Retaliation prohibited.

No hiring entity employing a grocery or drug retail worker shall discharge, reduce in compensation, or otherwise discriminate against any 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 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 grocery or drug retail 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 or drug retail 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 covered workers; and nothing in this Ordinance shall be interpreted or applied so as to create any power or duty in conflict with federal or state law. Nothing in this Section shall be construed as restricting a grocery or drug retail 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 covered 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 covered 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 South Pasadena 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 or drug retail workers continue working and providing this essential service to the residents of South Pasadena and the region generally. The workers have already been working for many months throughout this pandemic with new variants continuing to emerge. Grocery or drug retail 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 or drug retail services and access to food through grocery or drug retail store operations. Under Government Code Section 8634 and South Pasadena Municipal Code Chapter 11, 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 or drug retail 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 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. Authority.** This ordinance is enacted pursuant to Article XI, Section 7, of the California Constitution, and in compliance with Government Code section 36937.

**SECTION 7. Publication and Effective Date.** Upon adoption of this Urgency Ordinance by no less than four-fifths (4/5) vote of the Council, the Mayor shall sign and the City Clerk shall attest to the passage of this Ordinance. The City Clerk shall cause the same to be published once in newspaper of general circulation within fifteen (15) days after its adoption. This Urgency Ordinance shall become effective immediately upon its adoption.

**SECTION 8. Repeal.** This Ordinance shall be automatically repealed sixty (60) days after adoption.

**PASSED, APPROVED, AND ADOPTED** this 21<sup>st</sup> day of April, 2021.


DocuSigned by:  
*Diana Mahmud, Mayor*  
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Diana Mahmud, Mayor

**ATTEST:**

**APPROVED AS TO FORM:**

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Maria E. Ayala, Chief City Clerk

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Teresa L. Highsmith, City Attorney

Date: 4/22/2021  
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**I HEREBY CERTIFY** the foregoing ordinance was duly adopted by the City Council of the City of South Pasadena, California, at a regular meeting held on this 21st day of April, 2021, by the following vote:

**AYES:** Donovan, Primuth, Zneimer, Cacciotti, and Mayor Mahmud

**NOES:** None

**ABSENT:** None

**ABSTAINED:** None

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Maria E. Ayala, Chief City Clerk