

1 [Emergency Ordinance - COVID-Related Hazard Pay]

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3 **Emergency ordinance to temporarily require certain ~~grocery stores, drug stores~~ retail**
 4 **locations that include grocery stores or pharmacies, and property service contractors**
 5 **for ~~grocery stores and drug stores~~ retail locations that include grocery stores or**
 6 **pharmacies to pay employees an additional five dollars per hour during the public**
 7 **health emergency related to COVID-19.**

8 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
 9 **Additions to Codes** are in *single-underline italics Times New Roman font*.
 10 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
 11 **Board amendment additions** are in double-underlined Arial font.
 12 **Board amendment deletions** are in ~~strikethrough Arial font~~.
 13 **Asterisks (* * * *)** indicate the omission of unchanged Code
 14 subsections or parts of tables.

12

13 Be it ordained by the People of the City and County of San Francisco:

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15 Section 1. Declaration of Emergency Pursuant to Charter Section 2.107.

16 (a) Section 2.107 of the Charter authorizes passage of an emergency ordinance in
 17 cases of public emergency affecting life, health, or property, or for the uninterrupted operation
 18 of any City or County department or office required to comply with time limitations established
 19 by law.

20 (b) On February 25, 2020, Mayor London Breed proclaimed a state of emergency in
 21 response to the spread of the novel coronavirus COVID-19. On March 3, 2020, the Board of
 22 Supervisors concurred in the February 25 Proclamation and in the actions taken by the Mayor
 23 to meet the public health emergency related to COVID-19.

24 (c) The Board of Supervisors hereby finds and declares that an actual emergency
 25 exists that requires the passage of this emergency ordinance to address the COVID-19

1 pandemic by reducing the likelihood of COVID-19 infection among workers at grocery stores
2 and drug stores, their families and coworkers, and the members of the public with whom they
3 interact.

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5 Section 2. Findings and Purpose.

6 (a) On March 19, 2020, the California State Public Health Officer designated
7 specific sectors and their workers, including workers supporting grocery stores and
8 pharmacies, as Essential Critical Infrastructure Workers to ensure the continuity of functions
9 critical to public health and safety, as well as economic and national security. These essential
10 workers include grocery store and drug store employees, as well as on-site workers employed
11 by third-party contractors, such as janitorial and security companies. Over the last year,
12 workers in grocery stores and drug stores have continued to report to work and serve their
13 communities, despite the ongoing hazards, including the high risk of contracting COVID-19
14 due to their frequent interaction with members of the public. Their commitment to essential
15 work has ensured that residents of San Francisco and elsewhere have had access to food,
16 medication, and other essential goods during this pandemic.

17 (b) Unlike workers in many sectors of the economy, grocery and drug store workers
18 cannot work from home. The nature of their jobs requires them to come to work at a store,
19 usually indoors, with less air circulation than an open outdoor environment, which presents a
20 heightened risk of contracting COVID-19. Further, at the work site, these workers face
21 heightened risks of contracting COVID-19 due to their frequent interactions with customers
22 and coworkers on an ongoing basis, often in close contact. Security workers incur the
23 additional risk of physical confrontations with individuals posing security risks. Janitorial
24 workers must sanitize surfaces that may harbor viral contaminants. These various risks are
25 so stark that researchers estimate that food and agricultural workers in California have

1 experienced a 39% increase in mortality during the pandemic compared with prior periods, the
2 highest of any sector. Yea-Hung Chen, et al. "Excess Mortality Associated with the COVID-19
3 Pandemic among Californians 18-65 Years of Age, by Occupational Sector and Occupation:
4 March through October 2020-2021," Jan. 21, 2021, on file with the Clerk of the Board of
5 Supervisors in File No. _____210181.

6 (c) Many employers have made efforts to protect workers, including requiring
7 workers to wear personal protective equipment, requiring social distancing from each other
8 and from customers, and sanitizing cash registers, food conveyor belts, and shopping carts.
9 To enhance the health and safety of frontline workers, the City enacted Ordinance No. 74-20
10 to require grocery store, drug store, restaurant, and on-demand delivery service employers to
11 provide health and scheduling protections to employees during the public health emergency
12 related to COVID-19. The City reenacted that emergency ordinance in Ordinance Nos. 110-
13 20, 156-20, 230-20, and 010-21. Even with those protections, however, the health threats
14 that these workers face have been and continue to be substantial.

15 (d) It is of paramount importance to the public health to ensure that these workers
16 are able to protect themselves from COVID-19 infection, both to ensure the health of the
17 workers and their families and to minimize the risk of transmission to customers and
18 coworkers at their work sites. It is therefore critical that workers be able to afford protections
19 to avoid exposure to COVID-19. Grocery workers and drug store workers, including janitorial
20 and security workers hired through contractors at grocery stores and stores, are not highly
21 paid. Yet, to maximize protection and reduce risk, many of these workers must take
22 expensive precautions away from the work site. While employers must provide workers
23 personal protective equipment at work, it is in the public interest for workers to purchase and
24 use personal protective equipment when they are not at work, including when they are
25 commuting to and from work. Workers generally must use their own personal funds to pay for

1 off-the-job protective equipment. And, some workers also use personal funds to buy on-the-
2 job protective equipment; reports indicate that front-line workers often have concerns about
3 COVID safety at their workplace, which may lead them to incur additional expenses when
4 they believe that their employers' prevention measures at the workplace are insufficient.
5 Workers may similarly incur extra costs to ensure safe commutes to and from work to
6 minimize exposure to other individuals on public transit. Among other costs, some workers
7 may pay for parking, tolls, and vehicle expenses to provide a safer commute.

8 (e) Public schools in the City and several other Bay Area school districts continue to
9 offer only remote learning opportunities for students. Additionally, child care may be more
10 expensive and difficult to locate due to child care program closures, public health restrictions,
11 and other pandemic-related challenges. These factors have created a child care emergency
12 for grocery and drug store workers and other essential workers who cannot work remotely and
13 thus cannot care for their children during work hours, which is sometimes possible for people
14 who work from home. By offsetting some of the additional child care costs that grocery and
15 drug store workers may incur, this emergency ordinance reduces the risk that children will be
16 left without care or with inadequate care due to pandemic-related school and child care
17 disruptions.

18 (f) Additionally, there is a strong public interest in minimizing the need for workers
19 to have multiple jobs, because working multiple jobs increases their exposure to others and
20 contributes to the spread of COVID-19. Workers who receive lower wages are more likely to
21 need to take on more than one job to support their families and pay bills. This emergency
22 ordinance reduces that need, and therefore reduces that risk, by increasing the wages of low-
23 wage workers in frontline positions.

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1 Section 3. Definitions.

2 For purposes of this emergency ordinance, the following definitions apply.

3 “Agency” means the Office of Labor Standards Enforcement.

4 “Base Wage” means the hourly wage (or, for salaried Employees, the hourly wage
5 equivalent calculated based on a 40-hour work week) paid to an Employee by a Covered
6 Employer on the effective date of this emergency ordinance, ~~including, when applicable, any~~
7 ~~wage enhancement provided by the Covered Employer for overtime, holiday, or other~~
8 ~~premium pay.~~ Base Wage shall not include any Employer-Initiated Hazard Pay, Hazard Pay,
9 or Wage Enhancement.

10 “City” means the City and County of San Francisco.

11 “Covered Employer” means any person, as defined in Section 18 of the California
12 Labor Code, including corporate officers or executives, who directly or indirectly or through an
13 agent or any other person, including through the services of a temporary services or staffing
14 agency or similar entity, employs, suffers or permits to work, or exercises control over the
15 wages, hours, or working conditions of 500 or more persons worldwide, including at least 20
16 Employees of who work on-site at a retail sales and service use that operates any General
17 Grocery, Specialty Grocery, or Pharmacy (excluding pharmacies provided as part of a
18 Hospital or Health Service use) ~~retail store,~~ as each of those terms ~~are~~ is defined in Planning
19 Code Section 102, within the geographic boundaries of the City. Further, “Covered Employer”
20 also means any Property Services Contractor.

21 “Employee” means any person providing labor or services for remuneration for a
22 Covered Employer on-site at a retail sales and service use that operates any General
23 Grocery, Specialty Grocery, or Pharmacy (excluding pharmacies provided as part of a
24 Hospital or Health Service use), as each of those terms is defined in Planning Code Section
25 102, within the geographic boundaries of the City, who is an employee under California Labor

1 Code Section 2775, as may be amended from time to time, including a part-time or temporary
2 employee.

3 “Employer-Initiated Hazard Pay” means a premium pay rate to compensate Employees
4 for the hardships and risks associated with working during the COVID-19 pandemic, that the
5 Covered Employer provided to its Employees on or after February 1, 2020, including
6 collectively bargained Employer-Initiated Hazard Pay. “Employer-Initiated Hazard Pay”
7 additionally includes a premium pay rate provided under a collective bargaining agreement
8 predating February 1, 2020, that clearly and unambiguously requires the Covered Employer to
9 pay increased compensation to Employees working under hazardous conditions including
10 conditions that could expose Employees to contagious disease. If a Covered Employer pays
11 such Employer-Initiated Hazard Pay on any basis other than an hourly rate, such as a flat rate
12 per week, the premium hourly rate shall be determined by dividing the Employer-Initiated
13 Hazard Pay for the applicable pay period by the number of Hours Worked during such pay
14 period.

15 “Hazard Pay” means a \$5 per hour wage bonus in addition to an Employee’s Base
16 Wage, ~~including any premium pay applicable at the time~~ and any Wage Enhancement in
17 effect for each hour worked (or, for salaried Employees, for 40 hours per week); except that
18 for Employees whose Base Wage plus any Wage Enhancement in effect is between \$30 per
19 hour and \$34.99 per hour, “Hazard Pay” means a wage bonus for each hour worked in an
20 amount calculated to increase the Employee’s hourly wage to \$35 per hour.

21 “Hours Worked” means the time during which an Employee is subject to the control of a
22 Covered Employer, including all the time the Employee is suffered or permitted to work, and
23 all the time the Employee is on-call.

24 “Property Services Contractor” means a contractor or subcontractor that provides on-
25 site janitorial or security services for a Covered Employer at any retail sales and service use

1 that operates any General Grocery, Specialty Grocery, or Pharmacy retail store (excluding
2 pharmacies provided as part of a Hospital or Health Service use), as each of those terms
3 are defined in Planning Code Section 102, within the geographic boundaries of the City, ~~who~~
4 ~~directly or indirectly or through an agent or any other person, including through the services of~~
5 ~~a temporary services or staffing agency or similar entity, employs, suffers or permits to work,~~
6 ~~or exercises control over the wages, hours, or working conditions of 500 or more persons~~
7 ~~worldwide, including at least 20 Employees within the geographic boundaries of the City.~~

8 “Wage Enhancement” means premium or additional wages paid to an Employee by a
9 Covered Employer above the Base Wage, including without limitation additional pay for
10 overtime or holiday work, but excluding Employer-Initiated Hazard Pay and Hazard Pay.

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12 Section 4. Hazard Pay Requirement.

13 (a) Hazard Pay. Beginning on the effective date of this emergency ordinance, every
14 Covered Employer shall pay Hazard Pay to all Employees whose Base Wage plus any Wage
15 Enhancement in effect is less than \$35 per hour.

16 (b) Credit for Employer-Initiated Hazard Pay. If a Covered Employer provides
17 Employer-Initiated Hazard Pay to an Employee, the Covered Employer may reduce the
18 amount of Hazard Pay required under subsection 4(a) by the amount of Employer-Initiated
19 Hazard Pay for the Hours Worked.

20 (1) Illustrative Examples. By way of example and not limitation, if a Covered
21 Employer provides Employer-Initiated Hazard Pay of \$4 per hour to an Employee with a Base
22 Wage of \$20 per hour, such that the Employee’s total wage is \$24 per hour, then the Covered
23 Employer must provide an additional \$1 Hazard Pay under subsection (a) to bring the
24 Employee’s total wage to \$25 per hour. As another illustrative example, if a Covered
25 Employer provides Employer-Initiated Hazard Pay of \$4 per hour to an Employee with a Base

1 Wage of \$32 per hour, such that the Employee's total wage is \$36 per hour, then the Covered
2 Employer has no obligation to provide additional Hazard Pay under subsection (a).

3 (2) Past Payments and Payments for Past Work. A Covered Employer may
4 not reduce the amount of Hazard Pay under this subsection (b) to account for Employer-
5 Initiated Hazard Pay that the Covered Employer owed or previously paid to a Covered
6 Employee for work previously performed.

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8 Section 5. Notice to Employees.

9 (a) The Agency shall, within seven days of the effective date of this emergency
10 ordinance, publish and make available on its website a notice suitable for Covered Employers
11 to inform Employees of their rights under this emergency ordinance. The Agency shall
12 publish such notice in English, Spanish, Chinese, and Filipino. The Agency shall make best
13 efforts to provide such notice to each Covered Employer through electronic communication on
14 the same date that it is published.

15 (b) A Covered Employer shall within three days after the Agency has published and
16 made available the notice described in subsection (a), provide the notice to Employees in a
17 manner calculated to reach all Employees: by posting in a conspicuous place at the
18 workplace, via electronic communication, and/or by posting in a conspicuous place in a
19 Covered Employer's web-based or app-based Employee platform. Every Covered Employer
20 shall provide the notice in English, Spanish, Chinese, Filipino, and any language spoken by at
21 least 5% of the Employees at the workplace or job site.

22 (c) To the extent feasible, on the same written notice that a Covered Employer is
23 required to provide under Section 226(a) of the California Labor Code, a Covered Employer
24 shall set forth the amount of Hazard Pay paid to the Employee under this emergency
25 ordinance.

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Section 6. Exercise of Rights Protected; Retaliation Prohibited.

(a) It shall be unlawful for a Covered Employer or any other person to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right protected under this emergency ordinance.

(b) It shall be unlawful for a Covered Employer or any other person to discharge, threaten to discharge, demote, suspend, reduce other Employee benefits, or in any manner discriminate or take adverse action against any person in retaliation for exercising rights protected under this emergency ordinance. Such rights include but are not limited to the right to receive Hazard Pay pursuant to this emergency ordinance; the right to file a complaint or inform any person about any Covered Employer's alleged violation of this emergency ordinance; the right to cooperate with the Agency in its investigations of alleged violations of this emergency ordinance; and the right to inform any person of that person's potential rights under this emergency ordinance.

(c) Protections of this emergency ordinance shall apply to any person who mistakenly but in good faith alleges violations of this emergency ordinance.

(d) Taking adverse action against a person within 90 days of the person's filing a complaint with the Agency or a court alleging a violation of any provision of this emergency ordinance; informing any person about a Covered Employer's alleged violation of this emergency ordinance; cooperating with the Agency or other persons in the investigation or prosecution of any alleged violation of this emergency ordinance; opposing any policy, practice, or act that is unlawful under this emergency ordinance; or informing any person of that person's rights under this emergency ordinance, shall raise a rebuttable presumption that such adverse action was taken in retaliation for the exercise of one or more of the aforementioned rights.

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Section 7. Records, Implementation, and Enforcement.

(a) Covered Employers shall retain records related to Hazard Pay in the same manner and to the same extent as records that must be retained under Administrative Code Section 12R.5(c) and Agency rules and guidelines governing retention of such records.

(b) Additionally, Covered Employers shall retain and disclose to the Agency upon request any records related to Employer-Initiated Hazard Pay, including but not limited to (1) copies of the Covered Employer’s Employer-Initiated Hazard Pay policy; (2) copies of written notifications to Employees regarding the policy; and (3) for any Employee as to whom a Covered Employer seeks credit under section 4(b) of this emergency ordinance, documentation reflecting that Employer-Initiated Hazard Pay payments were made for each hour claimed.

(c) The Agency is authorized to implement and enforce this emergency ordinance and may promulgate rules and guidelines for such purposes. Except as otherwise provided by Agency rules or guidelines, the administrative and civil enforcement provisions of Administrative Code Sections 12R.7 and 12R.16-24 apply to this emergency ordinance. Until such time as the Agency promulgates any additional rules or guidelines, the rules and guidelines adopted by the Agency interpreting Administrative Code ~~Section~~Chapter 12R-7 shall apply to this emergency ordinance.

Section 8. Waiver Through Collective Bargaining.

(a) All or any portion of the applicable requirements of this emergency ordinance shall not apply to Employees covered by a bona fide collective bargaining agreement to the extent that such requirements are expressly waived in a collective bargaining agreement in clear and unambiguous terms.

1 (b) The requirements of this emergency ordinance may not be waived by
2 agreement between an individual Employee and a Covered Employer.

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4 Section 9. Preemption.

5 Nothing in this emergency ordinance shall be interpreted or applied so as to create any
6 power or duty in conflict with federal or state law. The term “conflict,” as used in this Section 9
7 means a conflict that is preemptive under federal or state law.

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9 Section 10. City Undertaking Limited to Promotion of the General Welfare.

10 In undertaking the adoption and enforcement of this emergency ordinance, the City is
11 undertaking only to promote the general welfare. The City is not assuming, nor is it imposing
12 on its officers and employees, an obligation for breach of which it is liable in money damages
13 to any person who claims that such breach proximately caused injury. This emergency
14 ordinance does not create a legally enforceable right by any member of the public against the
15 City.

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17 Section 11. Severability.

18 If any section, subsection, sentence, clause, phrase, or word of this emergency
19 ordinance, or any application thereof to any person or circumstance, is held to be invalid or
20 unconstitutional by a decision of a court of competent jurisdiction, such decision shall not
21 affect the validity of the remaining portions or applications of this emergency ordinance. The
22 Board of Supervisors hereby declares that it would have passed this ordinance and every
23 section, subsection, sentence, clause, phrase, and word not declared invalid and
24 unconstitutional without regard to whether any other portion of this emergency ordinance or
25 application thereof would be subsequently declared invalid or unconstitutional.

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Section 12. Effective Date; Operative Date; Expiration.

Consistent with Charter Section 2.107, this emergency ordinance shall become effective immediately upon enactment, and shall expire on the 61st day following enactment unless reenacted as provided by Section 2.107, or upon the termination of the local health emergency, whichever occurs first. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the Mayor's veto of the ordinance. This emergency ordinance shall become operative on the third day following enactment.

Section 13. Suspension of Charter Section 14.101.

To address the emergency conditions described above, and to the extent this emergency ordinance temporarily modifies the City's Minimum Wage Ordinance, the Board of Supervisors finds that it is necessary to temporarily modify the Minimum Wage Ordinance, Section 12R.13, which provides that the Board of Supervisors may not amend the substantive requirements or scope of that Ordinance, and to suspend the restriction in Charter Section 14.101 for that limited purpose.

Section 14. Supermajority Vote Required.

In accordance with Charter Section 2.107, passage of this emergency ordinance by the Board of Supervisors requires an affirmative vote of two-thirds of the Board of Supervisors.

1 APPROVED AS TO FORM:
2 DENNIS J. HERRERA, City Attorney

3 By: /s/ _____
4 LISA POWELL
5 Deputy City Attorney

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