



STAFF REPORT
2/10/2021

TO: Honorable Mayor and City Council Members

FROM: William B. Pattison, Jr., City Manager
Best Best & Krieger LLP, City Attorney

SUBJECT: Urgency Ordinance No. 1174, and Ordinance No. 1175, “Hero Pay” for Front-Line Agricultural, Grocery, Restaurant, and Retail Pharmacy Workers (*First Reading*)

RECOMMENDATION:

1. That the City Council consider and adopt Urgency Ordinance No. 1174, entitled “An Urgency Ordinance of the City Council of the City of Coachella, California, Amending the Coachella Municipal Code by Adding Chapter 5.100, Relating to Agricultural, Grocery, Restaurant, and Retail Pharmacy Workers in Coachella, and Establishing Labor Standards and Requirements for Premium Pay for Agricultural, Grocery, Restaurant, and Retail Pharmacy Workers Working in Coachella (four-fifths (4/5) vote required)”; and,
2. That the City Council consider and conduct first reading (introduction) of Ordinance No. 1175, entitled, “An Ordinance of the City Council of the City of Coachella, California, Amending the Coachella Municipal Code by Adding Chapter 5.100, Relating to Agricultural, Grocery, Restaurant, and Retail Pharmacy Workers in Coachella, and Establishing Labor Standards and Requirements for Premium Pay for Agricultural, Grocery, Restaurant, and Retail Pharmacy Workers Working in Coachella”

SUMMARY:

Due to the specific impacts to agricultural, grocery store, restaurant, and retail pharmacy workers during the COVID-19 pandemic, the City Council has requested consideration of the proposed urgency ordinance and corresponding regular ordinance, both of which would require certain agricultural operations, grocery stores, restaurants, and retail pharmacy stores to provide premium pay of an additional \$4.00 per hour to their workers in Coachella for at least 120 days.

BACKGROUND:

Since March of 2020, the COVID-19 pandemic has dramatically impacted Coachella citizens, business owners, employees, and visitors.

The global health pandemic has emphasized the importance of workers in industries now highlighted

as essential, including agricultural, grocery, restaurant, and retail pharmacy workers. Due to the virus, millions of these workers nationwide have had to face new job-related hazards not previously considered especially dangerous. In September 2020, Riverside County Public Health Director Dr. Kim Saruwatari reported that the highest number of COVID-19 outbreaks in the region between July and September were reported to stem from grocery stores, with 48 reported outbreaks. The data show the outbreaks impacted both store employees and customers. In a September 29, 2020 *Desert Sun* article, it was reported that the highest number of outbreaks in the beginning of September were reported in retail and grocery stores. This, while grocery stores across the country have seen record profits. The Brookings Institute found that top retail companies had a 39% increase in profit, averaging an extra \$16.9 billion in 2020. (<https://www.freep.com/story/news/local/michigan/2020/12/04/kroger-walmart-amazon-profits-covid-19-pandemic/6458910002/>)

Additionally, according to a new University of California San Francisco study, California agricultural and restaurant workers have suffered 50% to 60% higher death rates during the pandemic than before the pandemic. (<https://www.medrxiv.org/content/10.1101/2021.01.21.21250266v1>) The study's data shows that restaurant cooks carry the most risk of COVID-19-related death in the entire state. The National Center for Farmworker Health, Inc. reported that as of February 1, 2021 more than 480,000 agricultural workers have tested positive for COVID-19 nationwide, a figure likely to be underestimated. (<http://www.ncfh.org/msaws-and-covid-19.html>) The COVID-19 Farmworker Study (COFS) report entitled *Always Essential, Perpetually Disposable: California Farmworkers and the COVID-19 Pandemic* explores how the pandemic is exacerbating long-standing crises, vulnerabilities, and economic frailties within the food system and heightening insecurity, risk, and health disparities for farmworkers and their families through a survey of nearly 1,000 farm workers in California. (covid19farmworkerstudy.org)

Grocery store, retail pharmacy and restaurant workers have not only had to perform their jobs but have become “de facto public health marshals”, enforcing critical mask and social distancing protocols. Over three-quarters of workers (78%) report experiencing or witnessing hostile behavior from customers in response to staff enforcing COVID-19 safety protocols, and nearly 60% report experiencing such hostility at least weekly. (https://onefairwage.site/wp-content/uploads/2020/12/OFW_COVID_WorkerExp-1.pdf)

Due to these shifting emergency circumstances, at the beginning of the pandemic, a number of companies initially provided extra COVID-19 related compensation to their workers. This bonus, commonly known as “Hero Pay”, often was implemented as a temporary hourly wage increase or a one-off bonus for essential workers.

However, as the impacts of the pandemic subsided in June, many retail companies ended their temporary wage increase, and there has yet to be a meaningful commitment to restoring it. This has occurred even as the pandemic has continued to disproportionately impact low wage workers, leaving some grocery workers as the primary earners in their households. (<https://www.pewsocialtrends.org/2020/09/24/economic-fallout-from-covid-19-continues-to-hit-lower-income-americans-the-hardest/>)

The December 6, 2020 regional stay-at-home order was lifted on January 25, 2021, but the virus continues to be widespread throughout Southern California. Vaccines are being distributed throughout Riverside County to front-line essential workers in certain industries and persons who are age 65 and older. The vaccination effort is being done, in part, at retail pharmacies, putting those essential workers at an increased risk of exposure.

The City Council has requested that a “Hero Pay” ordinance be brought back for consideration and possible adoption.

DISCUSSION/ANALYSIS:

The proposed ordinance¹ would require agricultural operations, grocery stores, restaurants, and retail pharmacy stores within the City to provide premium pay of an additional \$4.00 per hour to their workers for at least 120 days.

“Agricultural operation” would mean any operation devoted to the bona fide production of crops, or animals, or fowl including the production of fruits and vegetables of all kinds; meat, dairy, and poultry products; nuts, tobacco, nursery, and floral products; and the production and harvest of products from silviculture (i.e., growing/cultivating trees) activity. “Grocery store” would include stores that devote 70% or more of their business to selling food products. “Retail pharmacy” would include commercial chain pharmacies. “Restaurant” would mean a building or place the principal purpose of which is the preparation and serving, on a retail basis, of food and drink to people for consumption on the premises, and where take away meals and drinks or entertainment are also provided. Additionally, agricultural operations, grocery stores, restaurants, and retail pharmacies would only be subject to the ordinance if they employ three hundred (300) or more workers nationally and more than fifteen (15) employees per location within the City.

Under the ordinance, agricultural operations, grocery stores, restaurants, and pharmacies may not retaliate against a worker by reducing compensation or otherwise limiting the worker’s earning capacity in order to avoid the application of the Hero pay. In addition, these businesses must provide their workers with notice of the ordinance, including their right to premium pay, their right to be protected from retaliation, and their ability to bring a civil action if these rights are violated. Records showing compliance with the ordinance must be kept by the stores for a time period of two years.

Any agricultural operation, grocery store, restaurant, or retail pharmacy that violates the ordinance is subject to appropriate relief at law or equity, including reinstatement of the aggrieved worker, front pay in lieu of reinstatement with full payment of unpaid compensation plus interest in favor of the aggrieved worker, and liquidated damages in an additional amount of up to twice the unpaid compensation. If a worker prevails in a civil action, reasonable attorneys’ fees and costs may be awarded against the employer, in addition other legal or equitable relief as may be appropriate.

¹ An urgency ordinance is being proposed, in order to go into effect immediately upon adoption, and a regular (non-urgency) ordinance is also being proposed, in an abundance of caution.

The provisions of the ordinance may be expressly waived in a collective bargaining agreement. Otherwise, any other waiver by a worker of any provision will be deemed contrary to public policy, void, and unenforceable.

There are several other jurisdictions that are adopting, or at least considering, similar “hero pay” or “hazard pay” ordinances. A summary chart including this information is attached to this report.

Latest Developments

On March 19, 2021, the City of Long Beach adopted a Hero Pay ordinance, covering grocery store workers. The following day, a lawsuit was filed by the California Grocers Association. On January 22, U.S. District Judge Dolly M. Gee denied the trade group’s request for a temporary restraining order to stop enforcement of the ordinance before a court could hear the case, and set a hearing for February 19 on the Association’s request for a preliminary injunction to halt the Long Beach ordinance while the case is pending.

Conclusion

Therefore, City staff and the City Attorney’s Office request that the City Council consider the accompanying ordinances, adopt the urgency ordinance and introduce the regular ordinance.

FISCAL IMPACT:

Unknown.

ATTACHMENTS:

- 1) Urgency Ordinance No. 1174
- 2) Ordinance No. 1175
- 3) Chart of Hero Pay Ordinance Action in other Jurisdictions