



City of Culver City

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Staff Report

File #: 21-794, **Version:** 1

Item #: A-3.

CC - (1) Discussion of a Potential Hero Pay Ordinance to Provide Additional Compensation to Grocery Workers, Retail Workers and Front-Line Workers at Southern California Hospital; and (2) Direction to the City Manager as Deemed Appropriate.

Meeting Date: March 22, 2021

Contact Person/Dept: Shelly Wolfberg/City Manager's Office
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Fiscal Impact: Yes ☐ No ☒

General Fund: Yes ☐ No ☒

Public Hearing: ☐ **Action Item:** ☒ **Attachments:** ☒

Commission Action Required: Yes ☐ No ☒ **Date:**

Public Notification: (E-Mail) Southern California Hospital, Culver City Chamber of Commerce, Downtown Business Association, and Meetings and Agendas - City Council (03/18/2021) and
Department Approval: John M. Nachbar (03/18/2021)

RECOMMENDATION

Staff recommends the City Council (1) discuss a potential Hero Pay Ordinance to provide additional compensation to grocery workers, retail workers and front-line workers at Southern California Hospital; and (2) provide direction to the City Manager as deemed appropriate.

BACKGROUND

At the February 22, 2021 City Council Meeting, there was consensus by City Council to agendaize consideration of a "Hero Pay" ordinance to provide additional compensation to grocery workers, retail workers and front-line workers at Southern California Hospital (SCH). Several other Southern California municipalities, including the County of Los Angeles, City of Los Angeles, West Hollywood, Long Beach, and Montebello as well as San Leandro, Oakland and San Jose in northern California, have adopted hero pay ordinances to require employers in the grocery, drug, and retail industries to provide additional compensation to their essential and public-facing employees during the COVID-19 crisis. Hero pay compensates employees for the risks and hazards encountered in providing access to food/medicine and maintaining functionality of key economic sectors during the COVID-19 pandemic.

A report from the City of Los Angeles Chief Legislative Analyst (“the Report”), dated February 19, 2021, provides a comprehensive overview of pertinent issues such as grocery industry economics, potential economic impacts, potential legal challenges, and a summary of similar programs ordinances enacted throughout California (Attachment 1). Subsequently, on March 4, 2021, the Los Angeles City Council adopted an addition to the Los Angeles Municipal Code to provide additional pay to grocery and drug retail workers on the frontlines of COVID-19. The Ordinance became effective on March 8, 2021 (Attachment 2).

Generally, most municipalities in Southern California have adopted ordinances that provide/require:

Additional Hourly compensation for a Specific Duration:

- Provide employees an additional \$4/hour - \$5/hour pay increase for a period of 120 days.

Business Type and Number of employees:

- Require grocery stores, drug stores and retail stores that are publicly traded or have at least 300 employees nationwide and more that 10-15 employees on site to comply.

Variations exist between other cities’ adopted and draft ordinances relative to:

Employee Eligibility:

- Only hourly, non-managerial employees affected; **or**
- All workers included.

Floor Area/Percent for food/retail threshold:

- Stores with 85,000 or more that dedicate 10% of floor to grocery/drug retail **and/or**
- 70% of business activity involves selling groceries; **or**
- No specific space requirement (if business type and number of employees threshold is met)

In Northern California, there are differences relative to the required timeframe to provide hero pay in conjunction with current state infection tiers (Widespread, Substantial and Moderate) and/or the duration of the public emergency. There are also lower square footage requirements for store compliance.

DISCUSSION

While COVID-19 cases in Los Angeles continue to decline, and vaccine availability increases, there is a continued risk of coronavirus infection in certain essential job sectors. Until potential variants are subdued, and “herd immunity” is achieved, frontline workers in grocery, drug retail and healthcare industries are potentially placed in a hazardous environment until they are fully vaccinated. Healthcare workers were among the first tier eligible to receive the COVID-19 vaccine and as of March 1st, food service workers became eligible to receive the vaccine based on availability.

In considering a potential “hero pay” ordinance, it is also important to consider potential economic impacts to businesses required to comply with the law as well as legal challenges.

Potential Economic Impacts

There are a number of potential economic impacts to private businesses in providing hazard pay for their employees. The Report notes that while these industries generated significant profit in the first quarter of 2020 as customers stocked up on essential food and home items, net profit margin for Kroger returned to the first quarter of the 2019 level, and Albertsons saw a slight increase over the same period. Additionally, stores are required to provide personal protective equipment, increased sanitation, cleaning protocols, installation of protective equipment, and COVID-19 testing costs, increasing overall expenses. Additionally, several of the large national grocery, retail and drug companies have already provided bonuses and other benefits to their employees related to COVID-19, also affecting profit margins related to ongoing operation. Requiring these businesses to provide hazard pay could potentially create the following economic impacts:

- Increased labor costs, which could require businesses to reduce costs or increase revenues.
- Potentially higher prices for consumers.
- Store closures, and/or
- Reduced hours, wages, or jobs.

Increased benefits to employees, however, could help spur the economy with the purchase of food and goods, payment of debt, or additional service support for family and childcare.

Potential Impacts to Culver City Business

Based on similar guidelines instituted in neighboring cities, numerous businesses in Culver City could be potentially affected if an ordinance comparable to other cities was enacted.

To date, two Kroger stores have been closed in response to similar hero pay ordinances adopted in Long Beach, though as noted in the Report, these stores were classified as “underperforming,” and other factors may have contributed to their closures.

Healthcare Workers

At this time, no other municipality has adopted an ordinance relative to providing healthcare worker hazard pay. If the City Council wishes to require hazard pay for frontline health care employees at Southern California Hospital, it could potentially include all public-facing staff including reception, janitorial, laboratory, nursing and medical personnel in a comparable bonus structure similar to those adopted directly by Kaiser Permanente and the Mayo Clinic (Attachment 3). The number of employees in these categories could prove significant and may encompass both hourly and salaried employees.

Potential Legal Challenges

As detailed in the Report, a number of federal lawsuits have been filed by the California Grocers

Association (CGA), the trade association for approximately 300 grocery retailers and 150 grocery supply companies in California. In the Long Beach case, the CGA alleges that the Long Beach ordinance violates the National Labor Relations Act (NLRA) by regulating activity that Congress intended to be left to economic forces; violates the Equal Protection Clause of the United States and California Constitutions for singling out certain workers but ignoring those in other industries; violates the Contract Clause of the United States and California Constitutions, by interfering with collective bargaining. Similar suits were filed against Montebello and West Hollywood, as well as the northern California cities.

The United Food and Commercial Workers Local 770, a union representing grocery and drugstore workers, filed a motion in federal court to intervene in the Montebello case, so their interests could be better represented. In the Long Beach matter, the federal court denied the CGA's motion for a temporary restraining order (TRO) and preliminary injunction against the City; the motion had requested that the court halt the implementation of the ordinance. The Court denied the motion for a preliminary injunction on the basis that CGA failed to establish a "likelihood of success on the merits." The CGA has filed an appeal to the Ninth Circuit Court of Appeals.

The City Attorney's office and City staff will be monitoring these cases as they progress through the courts.

FISCAL ANALYSIS

There is no fiscal impact relative to the discussion of a potential hazard "hero" pay ordinance. If directed to proceed with an urgency ordinance, there is the potential for exposure to litigation and related legal fees for enactment.

ATTACHMENTS

1. 2021-03-22__ATT__City of Los Angeles Report of the Chief Legislative Analyst - February 19, 2021
2. 2021-03-22__ATT__City of Los Angeles Ordinance No. 186940 Premium Hazard Pay for On-Site Grocery and Drug Retail Workers

MOTION

That the City Council:

1. Discuss a potential Hero Pay Ordinance to provide hazard pay for certain grocery, drug, retail, and healthcare workers; and
2. Provide direction to the City Manager as deemed appropriate.