



CITY of CALABASAS

CITY COUNCIL AGENDA REPORT

DATE: APRIL 1, 2021

TO: HONORABLE MAYOR AND COUNCILMEMBERS

FROM: SCOTT H. HOWARD, CITY ATTORNEY
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SUBJECT: COUNCIL CONSIDERATION OF POTENTIAL
"HAZARD/HAZARD/HERO PAY" ORDINANCE FOR FRONT-LINE
GROCERY, RESTAURANT, AND/OR HOSPITALITY WORKERS

**MEETING
DATE:** APRIL 14, 2021

RECOMMENDATION:

Receive a staff report regarding options for a potential "hazard/Hazard/Hero pay" ordinance requiring, or potentially paying for, increased pay for front-line grocery, restaurant, and/or hospitality workers and provide direction to staff regarding whether to move forward with preparation of an ordinance, and if so, how to structure it.

BACKGROUND:

Members of the City Council requested that staff conduct research on adopting a "Hazard/Hazard/Hero Pay" ordinance for front-line workers. This report is intended to serve as a brief summary of what "Hazard/Hazard/Hero Pay" is, the City's options for adopting a "Hazard/Hazard/Hero Pay" ordinance, and what other cities have done. Staff requests City Council direction as to whether a full staff report, including legal analysis, and/or a potential ordinance should be prepared.

The COVID-19 pandemic has placed increased stress on front-line workers, such as grocery store employees, restaurant staff, and workers in the hospitality industry. Due to these specific impacts, members of the City Council have requested more information about an ordinance which would require certain grocery stores, restaurants, and/or hospitality businesses to provide a pay increase to their workers in Calabasas for a limited period of time and/or use money that the City received from the American Rescue Act to increase the pay of front-line workers.

At the beginning of the pandemic, many retail companies provided extra COVID-19 related compensation to their workers. This bonus, commonly known as “Hazard/Hazard/Hero Pay,” was often implemented as a temporary hourly wage increase or a one-off bonus for essential workers. Several cities have passed “Hazard/Hazard/Hero Pay” ordinances. Most of these ordinances apply to large grocery or retail stores that employ more than 300 people nationally and have more than 15 employees in the city. Although all of the ordinances apply to grocery store workers, some are broader and apply to pharmacies, agricultural laborers, and other retail workers.

List of Jurisdictions which have Adopted Hazard/Hazard/Hero Pay Ordinances

[As of April 1, 2021]

- Berkeley
- Buena Park
- Coachella
- Costa Mesa
- Daly City
- El Monte
- Irvine
- Long Beach
- Los Angeles
- Montebello
- Oakland
- Palm Springs
- Pomona
- Santa Ana
- San Jose
- San Leandro
- Santa Monica
- South San Francisco
- West Hollywood
- Los Angeles County (only applies to unincorporated areas)
- Santa Clara County

The California Grocers Association (“CGA”), a trade group which represents more than 300 retailers, has filed a lawsuit against the City of Long Beach, the first city in California to adopt a “Hazard/Hazard/Hero Pay” ordinance.¹ The CGA alleged that Long Beach’s ordinance violated the Equal Protection Clause of the State and Federal constitutions, broke the Contracts Clause of the State and Federal constitutions, which prohibits governments from interfering with contracts except as necessary to promote public welfare, and was preempted under the National Labor Relations Act. The CGA sought a preliminary injunction to stop Long Beach’s ordinance from taking effect. The District Court denied CGA’s request. The CGA continues the lawsuit, which has not yet gone to trial. In the interim, Long Beach’s ordinance has gone into effect.

Potential Legal Liability if the City adopted a Hazard/Hazard/Hero Pay Ordinance

If the City were to adopt a “Hazard/Hazard/Hero Pay” ordinance, it would likely be sued by the CGA. In addition to suing Long Beach, the CGA has filed lawsuits against West Hollywood, Oakland, Irvine, Santa Ana, Montebello San Leandro, San Jose, and Daly City among others, and has declared an intention to bring suit against all such ordinances.²

Using Money from the American Rescue Plan to fund a “Hazard/Hazard/Hero Pay” Ordinance

All of the jurisdictions that have passed “Hazard/Hazard/Hero Pay” ordinances have required businesses to shoulder the burden of paying their workers the increase in pay. An alternative option for the City that could potentially avoid a lawsuit from CGA would be to distribute money received from the American Rescue Plan Act of 2021 as “Hazard/Hazard/Hero Pay” from the City to selected front-line workers. The purpose of the Act is to “respond to [the] public health emergency with respect to COVID-19 or its negative economic impacts, including assistance to households, small businesses, and nonprofits, or aid to impacted industries such as tourism, travel, and hospitality.” The “premium pay” provision of the Act allows local governments to provide money to eligible essential workers or provide grants to eligible employers that employ essential workers. Premium pay may not exceed \$13 per hour or \$25,000 per worker. The \$13 an hour limit is in addition to wages the eligible worker otherwise receives. The Act only sets a cap on premium pay eligible

¹ *California Grocers Ass’n v. City of Long Beach* (2021) WL 736627.

² *California Grocers Ass’n v. City of West Hollywood* (C.D. Cal. 2021) WL 625047; *California Grocers Ass’n v. City of Oakland* (N.D. Cal. 2021) 3:21CV00863; *California Grocers Ass’n v. City of Irvine* (Super Ct. Orange County, 2021, 30-2021-01189676-CU-MC-CXC); *California Grocers Ass’n v. City of Santa Ana* (Super Ct. Orange County, 2021, 30-2021-01189627-CU-MC-CXC); *California Grocers Ass’n v. City of Montebello* (C.D. Cal. 2021) 2:21-CV-01011; *California Grocers Ass’n v. City of San Leandro* (N.D. Cal. 2021) 3:21-CV-01175; *California Grocers Ass’n v. City of San Jose* (N.D. Cal. 2021) 5:21-CV-01772; *California Grocers Ass’n v. City of Daly City* (N.D. Cal. 2021) 3:21-CV-01773.

for payment from the federal stimulus funds; cities can choose to provide premium pay temporarily or permanently, and can use General Funds to do so.

The Act does not define who qualifies as “eligible employers,” and staff expects the federal government to apply a broad definition. For example, the City could feasibly provide grants to grocery store workers on the grounds they are eligible essential workers, with the caveat that City money only go to workers and not operations or management staff. There is very little guidance published by the Treasury Department on this issue and the Act is ambiguous. The City would have to provide “periodic reports providing a detailed accounting of the uses of such funds” to the Treasury Department. If the Treasury Department determines that the City misused its funds, then it would have to repay the Treasury. If a gift of public funds legal challenge were filed against the City, the City’s defense would be that the provision of additional pay to ensure continued existence of essential services is necessary for the maintenance of the public’s health and welfare.

Wages Comparison and Effect on Grocery Stores

One of the justifications for the existing cities’ ordinances requiring grocery stores to pay their workers “Hazard/Hero Pay” is that grocery stores have been more profitable than usual during the pandemic, yet have failed to increase their workers’ pay while those workers have continued to serve the public throughout the pandemic. As requested, staff has sought to determine if the first element of this common narrative is true – the greater profitability of grocery stores during the pandemic. However, the City was unable to determine how profitable the grocery stores located in the City have been using the information available to staff.

Hazard/Hero Pay -- Minimum Wage Comparison with Selected Cities:

Agency	Effective Date	Employers with 26 or more Employees	Employers with 25 or fewer Employees	Hazard/Hero Pay per Hour
Los Angeles City	7/1/2020	\$15.00	\$14.25 ³	\$5.00
Unincorporated LA County	7/1/2020	\$15.00	\$14.25 ⁴	\$5.00
State of CA	1/1/2020	\$14.00	\$13.00	N/A
Long Beach ⁵	1/1/2020	\$14.00	\$13.00	\$4.00
West Hollywood	1/1/2020	\$14.00	\$13.00	\$5.00
Calabasas	1/1/2020	\$14.00	\$13.00	N/A

³ Increases to \$15 on July 1, 2021.

⁴ Increases to \$15 on July 1, 2021.

⁵ Long Beach’s Minimum wage ordinance only applies to concessionaire and hotel workers. All other workers are subject to the State’s minimum wage law.

The City and West Hollywood have not adopted their own minimum wage ordinances; instead their minimum wage aligns with the State's. As a survey chart, this chart does not include all of the "Hazard/Hero Pay" ordinances.

FISCAL IMPACT/SOURCE OF FUNDING:

If the City decides to use money received from the American Rescue Plan to fund its "Hazard/Hero Pay" ordinance, then it will have to ensure that all the recipients of its funds are eligible under the Treasury Department's requirements, or otherwise fund the program with other available City funds.

It will be harder to predict what effect a "Hazard/Hero Pay" ordinance which places the burden on business to fund the pay increases of their workers will have on municipal finances. After Long Beach passed its "Hazard/Hero Pay" ordinance, multiple grocery stores closed in the City, potentially lowering the city's tax revenue. Staff reached out to the five grocery stores located in the City (Erewhon, Albertsons, Ralphs, Trader Joes, and Gelsons), based on the understanding that some of the corporate grocers were already offering incentives or increased pay. Attached to this report is a response letter from Ralphs. At the time of printing this report, staff have not received a response from the other stores, but will update the Council and community during the meeting as to additional correspondence received.

REQUESTED ACTION:

That the City Council direct City staff as to whether a full staff report, including legal risks and defense options analysis should be prepared, and if so, whether to also prepare a potential ordinance, and if so, how it be structured.

ATTACHMENT:

Correspondence Received