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Title:	Staff Report for a City of San Leandro City Council Ordinance to Require Large Grocery Stores in San Leandro to Pay Employees an Additional Five Dollars per Hour in Temporary Hazard Pay During a Specified Period of Time Associated with the Covid-19 Pandemic				
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Staff Report for a City of San Leandro City Council Ordinance to Require Large Grocery Stores in San Leandro to Pay Employees an Additional Five Dollars per Hour in Temporary Hazard Pay During a Specified Period of Time Associated with the Covid-19 Pandemic

SUMMARY AND RECOMMENDATIONS

Per the City Council's direction, staff presents this staff report and the attached ordinance. If adopted, it would require large retail grocery food stores in San Leandro to pay employees an additional five dollars per hour in temporary "hazard pay" during a specified period of time associated with the Covid-19 pandemic.

BACKGROUND

At the January 19, 2021 regular City Council meeting, Vice Mayor Aguilar made a request, which was affirmed by a majority vote of the City Council, for staff to bring forward a discussion and draft related to the possible adoption of an urgency ordinance that would require additional hourly pay for grocery store workers during the Covid-19 pandemic. Per that request, staff developed an urgency ordinance for the City Council's consideration. Staff presents this regular ordinance to address the possibility that the California Grocers' Association, through litigation against the City, is able to overturn the urgency findings of the urgency ordinance. The adoption of this "back up" ordinance by way of the usual procedure (two readings) will ensure that only those actions taken to comply with the Ordinance during the "gap" between the effective date of the urgency ordinance and this regular ordinance are then vulnerable to challenge.

If adopted, this ordinance would impose a temporary \$5 per hour increase (also referred to as "hazard pay") to the hourly wages earned by retail grocery store workers, as defined. It would require

the covered employers to pay hazard pay to all workers for any pay period for 120 days from the effective date of the ordinance, or during which the City of San Leandro is within a Widespread (purple), Substantial (red) or Moderate (orange) Risk Level and until such time as risk levels return to Minimal (yellow) under State Health Orders, or until such time as all Covered Employers' Covered Employees are vaccinated, excluding those Covered Employees who are prevented from receipt of vaccination by disability or sincerely held religious beliefs, whichever is later.

The ordinance would apply to employees of any retail food establishments as defined in the ordinance that employ 300 or more employees nationwide, regardless of where those employees are employed, including but not limited to chains, integrated enterprises, or franchises associated with a franchisor or network of franchises.

Retail food establishments means a retail store in the City of San Leandro that is either:

- a) over 15,000 square feet in size and that sells primarily household foodstuffs for offsite consumption, including the sale of fresh produce, meats, poultry, fish, deli products, dairy products, canned foods, dry foods, beverages, baked foods and/or prepared foods. Other household supplies or other products shall be secondary to the primary purpose of food sales;
- b) over 85,000 square feet and with 10% of its sales floor area dedicated to sale of non-taxable merchandise including, but not limited to, the sale of fresh produce, meats, poultry, fish, deli products, dairy products, canned foods, dry foods, beverages, baked foods and/or prepared foods; or
- c) a drug retail store in the City of San Leandro that sells a variety of prescription and nonprescription medicines and miscellaneous items, including but not limited to drugs, pharmaceuticals, sundries, fresh produce, meats, poultry, fish, deli products, dairy products, canned foods, dry foods, beverages, prepared foods, and other merchandise.

Attached to this staff report is a *preliminary draft* list of approximately 19 San Leandro businesses that would most likely be impacted by the draft ordinance. It is estimated these businesses employ approximately 2,105 workers in total who would be eligible for the proposed hazard pay. It is important to note that this is a preliminary estimated list, so it's possible that the ordinance's provisions would not necessarily be limited to only those identified businesses and their employees.

Staff also offers for the City Council's consideration that there likely exists at least one, if not other, local family-owned businesses in San Leandro that operate in a franchise framework associated with a larger nationwide company. As a result of that franchise association, they would most likely *not* be exempted from the ordinance as currently written.

The requested proposal comes on the heels of similar ordinances having been adopted by the cities of Long Beach, Montebello, and Oakland, California. It is staff's understanding that the California Grocers Association (CGA) has filed legal challenges to those ordinances, including requests for a temporary restraining order and preliminary injunction.

In summary, the proposed ordinance represents a significant policy decision for the City Council and the public to consider.

Fiscal Impacts

Based on the high likelihood of litigation being filed by the CGA and/or potentially impacted

businesses immediately subsequent to adoption of this ordinance, it is reasonably foreseeable that if the urgency ordinance and/or this ordinance is adopted the City will incur significant legal costs in defense of the urgency ordinance and this ordinance, and potential exposure to payment of attorneys' fees if the CGA's litigation is successful. Preliminary estimates provided by the City Attorney's Office estimate costs of defense all the way through hearings but not through appeals could be in the range of \$25,000 to \$75,000. Payment of CGA's attorneys' fees could be significantly higher; preliminary estimates are that they would be over \$100,000. Funds to offset the costs of such litigation were not appropriated in the adopted FY 2020-2021 City budget, nor would such costs be eligible for coverage under the City's existing program of self-insurance. As such, any related expenditures would likely need to be paid by drawing down from the City's undesignated General Fund reserves.

ATTACHMENT(S)

Attachment to Resolution

- Preliminary Draft List of Potentially Affected San Leandro Retail Food Establishments
- Ordinance

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