



Agenda Report

Fullerton City Council

MEETING DATE: JUNE 1, 2020

TO: CITY COUNCIL / SUCCESSOR AGENCY

SUBMITTED BY: STEVE DANLEY, ACTING CITY MANAGER

PREPARED BY: ANISSA LIVAS, ADMINISTRATIVE ANALYST II

SUBJECT: HERO PAY

SUMMARY

During the May 4, 2021 City Council meeting, Council Members Zahra and Jung directed staff to research the concept of "Hero Pay", including actions taken by other cities.

RECOMMENDATION

Discuss Hero Pay ordinance concept and provide direction on any next steps.

PRIORITY POLICY STATEMENT

Not applicable.

FISCAL IMPACT

None.

DISCUSSION

Governor Newsom issued several statewide stay-at-home orders during the pandemic to address rises in COVID-19 infections and impacts to hospital capacity. This required many "nonessential" businesses to shut down or operate with strict limitations. In contrast, grocery and retail drug stores remained open to ensure customer access to essential goods such food and medicine. Workers at these stores could not telecommute or work remotely and in many instances often worked in close contact with customers.

Due to the increased exposure to hazards encountered by these workers, and the need to retain experienced staff, many grocery and retail drug companies voluntarily provided

extra compensation to their employees during the initial months of the pandemic, commonly referred to as “Hero Pay”. Employers who implemented “Hero Pay” generally did so as a temporary hourly wage increase or a one-time bonus for essential workers. As the impacts of the pandemic began to subside in early June 2020, many companies terminated their temporary wage-increase programs and have not renewed them despite the continuation of the pandemic and retailers experiencing increases sales.

Due to the ongoing nature of the pandemic, a number of cities have decided to adopt ordinances mandating hero pay for grocery and retail drug store workers who must report to work. Some cities also required large retail stores with a certain square footage and percent of floor space for food products, pharmacy and other essential products, such as Target and Walmart, to provide hero pay. These ordinances typically apply to establishments with 300 to 500 employees nationwide with 10 to 20 employees at each site in the City. The ordinances typically mandate temporary \$4 or \$5 increases in hourly wages for workers for a specified period of time (varies by city). Attachment 2 contains specific information about “Hero Pay” ordinances enacted in other cities.

Out of thirty-four Orange County cities, six have discussed the concept of “Hero Pay,” with four approving it:

City/County	Ordinance	Increase	Approved
Santa Ana	Grocery and pharmacy workers with 300 workers nationally and more than 15 workers per location in Santa Ana.	\$4/hr	Yes
Costa Mesa	Grocery and retail drugstores with 15 or more staff and those who employ at least 300 workers nationwide.	\$4/hr	Yes
Irvine	Retail establishments including grocery stores, drug stores, or certain large retail stores that employ 20 or more employees at the location and who employ 500 or more employees nationally.	\$4/hr	Yes
Tustin	Business employs at least 15 employees at the establishment in Tustin, and 300 or more employees nationally.	\$4/hr	No
Buena Park	Retail establishment employs at least 20 employees at the site, or a network of franchises employing 500 or more employees nationwide. (120 days or until the City is classified within the Moderate Tier – Orange. Amended April 13, 2021 to only 90 days - July 23, 2021)	\$4/hr	Yes
Anaheim	Discussion on Direction. Returning with Ordinance (60 day ordinance)	\$3/hr	Pending

The California Grocers Association opposes “Hero Pay” ordinances and has filed several lawsuits challenging city ordinances, in cities such as:

<ul style="list-style-type: none">• Irvine• Santa Ana• Costa Mesa• Long Beach• Pomona• Buena Park• Montebello• Coachella	<ul style="list-style-type: none">• West Hollywood• Santa Monica• Los Angeles• Berkeley• Daly City• San Leandro• Oakland• San Jose.
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These lawsuits seek to invalidate the ordinance on several grounds including violation of the National Labor Relations Act, violation of equal protection afforded by the U.S. Constitution and violation of the Contracts Clause of the U.S. Constitution / California Constitution. Many of the lawsuits are currently pending.

Some grocers have closed store locations citing the increased costs from “Hero Pay” ordinances to borderline or underperforming stores. Such closures include two stores in Long Beach and three stores in Los Angeles.

Arguments in support of hero pay ordinances include:

- Addressing the disparity in working conditions and wages for essential grocery and retail drug store workers in comparison to other workers.
- Need to incentivize experienced grocery and retail drug store workers to remain at their jobs and ensure continuity of services to the public during the pandemic.

Arguments against the ordinance include:

- Possible legal challenges and associated costs.
- The ordinance excludes many other groups or employees also regularly exposed to pandemic-related risks.
- Potentially negative impact on store revenues, possibly resulting in store closures.

Fullerton has approximately two retail establishments, nine grocery stores and nine retail drug stores / pharmacies potentially impacted by such an ordinance. In addition, the average expiration date for currently enacted “Hero Pay” Ordinances in Southern California is July 14, 2021.

A regular ordinance adoption requires 30-days’ notice, first reading, second reading and adoption and becomes effective 30 days after adoption. The soonest City Council could consider an ordinance for first reading would be July 4, 2021. If City Council adopts an

urgency ordinance, which requires 4/5 majority vote and waives the second reading, the soonest the ordinance could be put in place is June 15, 2021.

Any aggrieved grocery worker can enforce the ordinance (as opposed to affirmatively by the City) and create a right for employees to bring a civil action against their employer for violations to recover compensation due. The ordinance could punish willful or intentional violations of by doubling the compensation owed to successful plaintiffs.

Attachments:

- Attachment 1: Presentation
- Attachment 2: Hero Pay – Cities in Southern California