



Staff Reports

File #: 117-2021, **Version:** 1

To: Honorable Mayor and Members of City Council

From: Steve Potter, City Manager

Prepared By: Liz Habkirk, Deputy City Manager

TITLE:

Potential hazard pay for grocery store employees

RECOMMENDED ACTION:

Provide direction to staff on a proposed ordinance requiring hazard pay for grocery store employees.

DISCUSSION:

As a part of the Council's priority setting workshops in February and March, the possibility of requiring short-term hazard pay to certain retail employees was discussed. The City Council requested an ordinance similar to recently adopted ordinances in a variety of cities and counties throughout California. Many of these ordinances require grocery or retail stores of a certain size to institute a per hour increase to the base salary of employees for a specified duration in recognition of the hazardous work environment experienced throughout the COVID-19 pandemic.

On March 23, 2021, staff presented Council with a draft ordinance for review and requested direction on specific policy points that would form the criteria for the proposed hazard pay.

During the discussion, City councilmembers requested additional information to assist in formulating these policy points which included:

- Refinement of the definitions for "Grocery Store" and "Covered Employer"
- List of impacted stores within Napa
- Additional information on status of labor representation at listed stores
- Potential for a waiver or opt-out procedure
- Clarity on enforcement options by an individual
- Potential impacts to individuals who may receive public assistance

At today's meeting, staff will provide additional research and information on these points to form the basis for consideration of an ordinance at a future Council meeting.

Definitions of "Grocery Store" and "Covered Employer"

Council spent significant time discussing the type of retailer to be included within the ordinance. At the conclusion of the meeting on March 23rd, Council requested that staff refine the definition of

grocery store, as opposed to a wider definition that may include other types of retailers (such as supercenters, drug stores, or convenience stores) that also sell groceries.

Although the types of retailers included in ordinances have varied, most other jurisdictions, and including the City of American Canyon's recently adopted ordinance, have focused criteria on "grocery store."

In reviewing multiple definitions used in ordinances throughout the state as well as the previously drafted definition for a City of Napa ordinance, the most frequent definition includes phrases similar to the following:

"...an establishment **primarily** engaged in selling a range of foods, including fresh, frozen or canned meats, fish and poultry, fruits and vegetables, bread and/or grain products, dairy products, dry goods, beverages, and baked foods or prepared foods."

These phrases are likely drawn from the North American Industry Classification System (NAICS) which was developed as a classification system for use by agencies in the collection, analysis and publication of statistical data.

To assist in refining this definition, some agencies have also included minimum facility square footage requirements to ensure that only larger retailers are impacted. Others have developed a more precise definition to include a percentage of floor space dedicated to grocery items in combination with minimum square footages. Still others have included percentage of revenue derived from food product sales to be considered as meeting the definition of grocery store.

The definition of covered employer, in conjunction with the definition of grocery store within the ordinance, will determine which stores would be required to provide the hazard pay to employees. Most of the ordinances adopted in other locations define covered employer with some combination of total number of employees nationwide and/or within California. Based on questions raised during the March 23rd Council meeting, staff recommends that when measuring the "total number of employees" nationwide and within California that it includes the total of all employees under the umbrella of one franchisor.

Based on the Council discussion on March 23rd, staff would recommend that the definitions of "grocery store" and "covered employer" include the following:

- "Grocery Store" means a retail or wholesale store that is at least 15,000 square feet in facility size that is located within the geographic limits of the City, and that sells primarily household foodstuffs for offsite consumption, including the sale of fresh produce, meats, poultry, fish, deli products, dairy products, grain products, canned foods, dry foods, frozen foods, beverages, baked foods, or prepared foods. A "Grocery Store" may sell other household supplies or other products, or provide for some onsite consumption, that are secondary to the primary purpose of food sales. For the purposes of this Ordinance, there is a rebuttable presumption that a store meets the definition of "Grocery Store" if it devotes 70% or more of its interior space to the sale of household foodstuffs for offsite consumption, including the sale of fresh produce, meats, poultry, fish, deli products, dairy products, grain products, canned foods, dry foods, frozen foods, beverages, baked foods, or prepared foods.

- “Covered Employer” means any Person who (a) directly or indirectly or through an agent or any other Person owns or operates a Grocery Store and employs or exercises control over the wages, hours or working conditions of any Covered Employee; and (b) employs 300 or more employees nationwide, with 200 or more in California, or is a Franchisee associated with a Franchisor or a network of Franchises with Franchisees that employ more than 300 employees in the aggregate, regardless of where those employees are employed.

List of Impacted Stores within Napa

If the City Council directs staff to use the definition above, it is City staff's understanding that the following stores would fall under the criteria requiring hazard pay:

- Safeway
- Lucky's (2 locations)
- Raley's/Nob Hill Foods (2 locations)
- Grocery Outlet (2 locations)
- Whole Foods

Labor Representation

Staff research has determined that employees are represented by labor organizations at all of the above stores except for Whole Foods.

“Opt-Out” Provision

The draft ordinance presented to Council on March 23 includes the ability for a waiver through a collective bargaining agreement. The section currently prohibits an employer from requesting an individual waive their rights. Staff's recommendation is to maintain the language as drafted. Considering that 7 of the 8 presumably impacted stores have labor representation, staff believes this is the appropriate avenue for a waiver process. As discussed by Council, including an individual waiver process may lead to the types of potential abuses that the section currently guards against.

Enforcement Options

Staff recommends the currently drafted language within the urgency ordinance for enforcement of its provisions. The language provides the framework and right for an aggrieved individual to act against an employer for alleged violations of the Napa ordinance. Individual employees may act in whatever process they determine appropriate for their situation. This may include actions such as grievance processes established in labor agreements, a complaint filed with the Labor Commissioner's Office under the State of California Department of Industrial Relations, or an action filed in civil court (which includes a right to reasonable attorneys' fees and costs). The City Attorney's website page provides links for resources available to the general public for individuals seeking legal assistance.

The City as an agency would have no role in enforcing the ordinance for individuals. However, the City would conduct a communications campaign to notify the community of the ordinance and publish the ordinance on website.

Impacts on Public Assistance Qualification

Another item raised by Council was the potential impacts a short-term increase in salary may have on an individual's qualifications for public assistance programs. Staff contacted representatives of the County Health and Human Services Agency, as well as the City's Housing Division staff to gain a better understanding of how income levels are determined for these types of programs. This is not a comprehensive list of possible public assistance programs an individual may be eligible for or receiving, rather it is intended to provide the Council with a general indication of potential impacts which vary by program.

Medi-Cal

If the individual is receiving Medi-Cal this would not affect their benefits as the County is not discontinuing anyone during the COVID-19 Public Health Emergency.

CalFresh

For the CalFresh program, it depends on whether the individual is within their six-month reporting period or if the client's gross income is over the IRT (Income Reporting Threshold). The benefit may decrease or discontinue their benefits if the income is reasonably anticipated for *4 months*. If the client is not over IRT and they are not due to report income, then no action would be taken. The benefit is also dependent on household size.

CalWORKs

Similar to CalFresh.

Section 8 Housing Assistance

For Section 8 participants, a temporary increase in income would require reporting. The individual's share of the rent would then increase. Once the period of hazard pay is complete, they would report the change and their rent share would decrease. If the increase put them over income/in a position where they were paying the full rent, Section 8 allows them to remain on the program for up to six months at \$0 monthly rental assistance, so they would not lose their slot in the program.

If the Housing Authority selected the individual from the waiting list during the period of increased pay and this put them over the income limit, the Housing Authority would not be able to approve them, and they would be removed from the waiting list.

Conclusion

Council's direction on these various policy points will assist staff in drafting an urgency ordinance for consideration at a future regularly scheduled Council meeting.

FINANCIAL IMPACTS:

None.

CEQA:

The City Manager has determined that the recommended action described in this agenda report is

not subject to CEQA, pursuant to CEQA Guidelines Section 15060 (c).

DOCUMENTS ATTACHED:

ATCH 1 - Draft Urgency Ordinance with Exhibit A

NOTIFICATION:

None.