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Title: AN ORDINANCE relating to employment; establishing a hazard pay requirement for additional compensation for grocery employees working in the unincorporated area of King County from the effective date of this ordinance through the duration of the King County executive's proclamation of emergency for the coronavirus disease 2019.

Sponsors: Rod Dembowski, Dave Upthegrove

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Attachments: 1. Ordinance 19247, 2. 2021-0093 Amendment 1, 3. 2021-0093 Amendment 2B, 4. 2021-0093 ATT1 Proposed Ordinance.pdf, 5. 2021-0093_ATT2_Emergency Proclamation.pdf, 6. 2021-0093_ATT3_Governor's Proclamation 20-25-Appendix-WA Essential Workers.pdf, 7. 2021-0093_ATT4_Grocery Businesses List.pdf, 8. 2021-0093_ATT5_Food Access for Communities Potentially Affected.pdf, 9. 2021-0093_ATT6 Census Tract Income Info.pdf, 10. 2021-0093_AMD2_Indep-Limited Access-03-01-21.docx, 11. 2021-0093_AMD1_Council-Review bar2-upd 02-24kxm.docx, 12. 2021-0093_SR_Grocery Hazard Pay.docx, 13. 2021-0093-Amendment-Tracker-03-03-21.docx, 14. 2021-0093_Revised_SR_Grocery Hazard Pay.docx

Date	Ver.	Action By	Action	Result
3/9/2021	2	Metropolitan King County Council	Passed as Amended	Pass
3/3/2021	1	Committee of the Whole	Recommended Do Pass Substitute	Pass
2/16/2021	1	Metropolitan King County Council	Introduced and Referred	

AN ORDINANCE relating to employment; establishing a hazard pay requirement for additional compensation for grocery employees working in the unincorporated area of King County from the effective date of this ordinance through the duration of the King County executive's proclamation of emergency for the coronavirus disease 2019.

BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

SECTION 1. Findings:

A. The King County Charter grants the King County council the authority to act to preserve the public peace, health or safety.

B. This ordinance protects and promotes public peace, health and safety during the coronavirus disease 2019 emergency, proclaimed by the King County executive on March 1, 2020, by requiring grocery businesses located in unincorporated areas of King County to provide hazard pay for grocery employees, thereby compensating those employees for the hazards of working with significant exposure to an infectious disease and increasing retention of employees who provide essential services to local communities.

C. On January 30, 2020, the World Health Organization declared that coronavirus disease 2019 constituted a public health emergency of international concern, the highest level of alarm.

D. On February 29, 2020, Washington Governor Jay Inslee issued proclamation 20-05, proclaiming a state of emergency for all counties throughout the state of Washington in response to new cases of coronavirus disease 2019, and directing state agencies to use all resources necessary to prepare for and respond to the outbreak.

E. On March 1, 2020, King County executive Dow Constantine issued a proclamation of emergency enabling extraordinary measures to respond to the coronavirus disease 2019 pandemic. On March 3, 2020, the council passed Motion 15610, affirming the proclamation of emergency.

F. On March 23, 2020, Washington Governor Jay Inslee issued Proclamation 20-25, a "Stay Home - Stay Healthy" order that closed all nonessential workplaces, required people to stay home except to participate in essential activities or to provide essential business services and banned all gatherings for social, spiritual and recreational purposes. This order was extended through May 31, 2020. The "Stay Home - Stay Healthy" proclamation identified grocery employees as "Essential Critical Infrastructure Workers" performing work to protect communities and ensure continuity of functions critical to public health and safety, as well as economic and national security.

G. On May 4, 2020, Washington Governor Jay Inslee announced a "Safe Start" plan to start on June 1, 2020, to reopen Washington's economy in phases with adequate social distancing measures and health standards in place. On June 19, 2020, King County moved to Phase 2 of the "Safe Start" plan.

H. In October 2020, The British Medical Journal, Occupational & Environmental Medicine, reported that grocery employees face a serious risk of coronavirus disease 2019 infection and associated psychological distress. A study of one hundred four grocery employees at a grocery store in Boston, Massachusetts, found that twenty percent tested positive for coronavirus disease 2019 despite ninety-one percent of employees reporting wearing a face mask at work and seventy-seven percent of employees reporting wearing masks outside of work. The positive rate of infection among grocery employees was five times as likely for those who interacted with customers than for those who did not. The study also found that seventy-six percent of employees had no symptoms, suggesting that those employees could be a source of asymptomatic infection. Further, twenty-four of the ninety-nine employees who filled out a related medical health questionnaire also reported experiencing anxiety, and eight employees were deemed depressed from their questionnaire answers.

I. On January 3, 2021, the Centers for Disease Control reported that multiple variants of the coronavirus disease 2019 that are circulating globally appear to spread more easily and quickly than other variations.

J. The Washington state Department of Health reports that two coronavirus disease 2019 vaccines are authorized for emergency use by United States Food and Drug Administration. In December 2020, the Department of Health published an estimated timeline for vaccine implementation. The initial vaccine timeline indicated that all grocery employees would be eligible for vaccination in February 2021. A modified timeline, published in January 2021, clarified that only grocery employees fifty years old or older would be eligible in February 2021 and grocery employees under year years old would be eligible in April 2021.

K. On January 5, 2021, Governor Jay Inslee announced the "Healthy Washington-Roadmap to Recovery," a phased recovery plan beginning on January 11, 2021, that began with every region of the state in Phase 1, which prohibited indoor gatherings with people outside the household and limited business activity, with retail stores limited to twenty-five percent capacity. On February 1, 2021, King County moved to Phase 2 of the plan, which retains retail activity to twenty-five percent capacity.

L. Throughout the coronavirus disease 2019 emergency, grocery businesses have been operating in King County and relying upon the work of grocery employees who are highly vulnerable to health and safety risks.

M. Grocery employees are essential workers performing services that are fundamental to the economy and health of the community during the coronavirus disease 2019 emergency. They cannot choose to work from home and must come to work to perform their jobs, which can involve substantial interaction with customers.

N. The United States Centers for Disease Control and Prevention reports that Black and Indigenous people, followed by Pacific Islanders and Latinx people, are disproportionately affected by coronavirus disease 2019 due to long-standing inequities in social determinants of health, including overrepresentation in jobs that require customer contact, such as grocery stores. Those determinants may increase the risk of coronavirus disease 2019 exposure, illness, hospitalization, long-term health and social consequences and death.

O. Hazard pay is defined by the United States Department of Labor as additional pay for performing hazardous duty or work involving physical hardship. Work duty that causes extreme physical discomfort and distress, which is not adequately alleviated by protective devices, is deemed to impose a physical hardship.

P. Ensuring that grocery employees are compensated for the risks of working during the coronavirus disease 2019 emergency promotes retention of those essential workers. Retention of grocery employees is fundamental to protecting the health of the community, as those employees directly support public purchase of groceries and facilitate community access to food.

Q. The council intends to review the ordinance approximately ninety days from the effective date of the ordinance. The council may repeal all or part the ordinance as and when the council finds that such a repeal is appropriate.

R. The United States Department of Agriculture ("the USDA"), in its November 2017 report, Independent Grocery Stores in the Changing Landscape of the U.S. Food Retail Industry, defines independent

grocery stores as those that are independently owned and operated and whose owners operate fewer than four outlets simultaneously.

S. According to the USDA report, independent grocery stores play an important role for local communities, including improving food access, as areas with a high share of low-income households, as well as rural areas, tend to have more independent grocery stores. Also according to the report, stores with a higher share of total sales from USDA's Supplemental Nutrition Assistance Program redemptions are more likely to be independently owned.

T. The USDA report further notes that small-format grocery stores, known as supermarkets, which account for a large share of independent grocery stores, also mitigate food insecurity by improving physical access to grocery stores, particularly for individuals with limited options for transportation.

U. In its August 2012 report, Characteristics and Influential Factors of Food Deserts, the USDA defines communities with limited food access as being low-income census tracts in which a substantial number or proportion of the population has limited access to grocery stores. Low-income census tracts are characterized in the report as having a median family income that is eighty percent or less of the metropolitan area's median family income; and limited access is characterized by at least five hundred people or thirty-three percent of the population of the census tract living more than one mile from a supermarket or large grocery store in urban areas and more than ten miles in rural areas. The USDA's food access research atlas uses the definitions from this report to identify low-income and limited food access census tracts on a map.

V. In its June 2009 report, Access to Affordable and Nutritious Food: Measuring and Understanding Food Deserts and Their Consequences, the USDA found that areas with limited food access are characterized by higher levels of racial segregation, higher levels of poverty and greater income inequality, and that limited food access can contribute to increases in obesity and diet-related diseases. In response, the USDA report noted that addressing market conditions that contribute to differences in access to food may be critical in reducing access limitations.

SECTION 2. The definitions in this section apply throughout this ordinance unless the context clearly requires otherwise.

A. "Adverse action" means reducing compensation, garnishing gratuities, denying a job or promotion, demoting, terminating, failing to rehire after a seasonal interruption of work, threatening, penalizing, retaliating, engaging in unfair immigration-related practices, filing a false report with a government agency or otherwise discriminating against any person for any reason.

B. "Aggrieved party" means an employee or other person who suffers tangible or intangible harm due to an employer or other person's violation of this ordinance.

C. "Compensation" means the payment owed to an employee by reason of employment, including but not limited to, salaries, wages, tips, service charge distributions, overtime, commissions, piece rate, bonuses, rest breaks, promised or legislatively required pay or paid leave and reimbursement for employer expenses.

D. "Employ" means to hire or engage the services of a person or persons for compensation.

E. "Employee" means a person who is employed for wages or salary, including, but not limited to, a full-time employee, a part-time employee and a temporary worker. An employer bears the burden of proof that the individual is, as a matter of economic reality, in business for the individual's self as an independent contractor, rather than employed by the alleged employer.

F. "Employer" means any individual, partnership, association, corporation, business trust or any entity, person or group of persons or a successor thereof, that employs another person and includes any such entity or person acting directly or indirectly in the interest of the employer in relation to the employee.

G.1. "Grocery business" means a retail store operation that is either:

a. over ten thousand square feet in size and that is primarily engaged in the retail sale of groceries for offsite consumption, including but not limited to the sale of fresh produce, meats, poultry, fish, deli products, dairy products, canned and frozen foods, dry foods, beverages, baked foods or prepared foods. Other household supplies or other products shall be secondary to the primary purpose of groceries sales; or

b. over eighty-five thousand square feet and with thirty percent or more of its sales floor area dedicated to the retail sale of groceries, including but not limited to the sale of fresh produce, meats, poultry, fish, deli products, dairy products, canned and frozen foods, dry foods, beverages, baked foods or prepared foods.

2. "Grocery business" does not include convenience stores or food marts primarily engaged in retail sales of a limited line of goods that generally includes milk, bread, soda and snacks. "Grocery business" also does not include farmers' markets or farm stands.

H. "Grocery employee" means a person employed by a grocery employer, and works at a grocery business.

I. "Grocery employer" means an employer that matches the requirements in section 3 of this ordinance.

J. "Hazard pay" means additional compensation owed to an employee on top of the employee's other compensation, including but not limited to salaries, wages, tips, service charge distributions, overtime, commissions, piece rate, bonuses, rest breaks, promised or legislatively required pay or paid leave and reimbursement for employer expenses.

K. "Independently owned and operated" means a grocery business enterprise of four or less locations operating simultaneously and the owner independently manages and controls the day-to-day operations of the grocery business enterprise, including but not limited to hiring its employees.

L. "Limited food access community" means a low-income, historically underserved community that has one or no grocery businesses within its census tract as determined by the USDA food access research atlas.

M. "Unincorporated area" means those areas outside any city or town and under King County's jurisdiction.

SECTION 3.

A. For the purposes of this ordinance, "grocery employers" are those businesses that:

1. Employ at least one grocery employee who works at a grocery business located in unincorporated

King County; and

2. Employ five hundred or more employees worldwide 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 that employ five hundred or more employees in aggregate.

B. To determine the number of employees for the current calendar year for the purposes of this section:

1. The calculation is based upon the average number of employees who worked per calendar week during the preceding calendar year for any and all weeks during which at least one employee worked for the grocery employer. For employers that did not have any employees during the preceding calendar year, the number of employees for the current calendar year is calculated based upon the average number of employees who worked during the first ninety calendar days of the current year in which the grocery employer has engaged in the grocery business; or

2. All employees shall be counted, including, but not limited to:

- a. grocery employees;
- b. employees who are not grocery employees;
- c. employees who worked outside King County;
- d. employees who worked in incorporated and unincorporated areas of King County; and
- e. employees who worked in full-time employment, part-time employment, joint employment,

temporary employment or through the services of a temporary services or staffing agency or similar entity.

C.1. Business entities otherwise treated separately shall be, for the purposes of this ordinance, considered as:

- a. an integrated enterprise; and
- b. a single employer when one entity controls the operation of the other entity.

2. The factors to consider in determining the existence of a single enterprise may include, but are not limited to:

- a. degree of interrelation between the operations of multiple entities;
- b. degree to which the entities share common management;
- c. centralized control of labor relations;
- d. degree of common ownership or financial control over the entities; and
- e. use of a common brand, trade, business or operating name.

D. For the purposes of this ordinance a grocery business located in unincorporated King County located in a limited food access community is exempt from this ordinance if:

1. The exempt grocery business is independently owned and operated and the owner-operator has four or less grocery business operating simultaneously;
2. The nearest grocery business satisfying the requirements of subsection A. through C. of this section is over two miles from the exempt grocery business; and
3. Fewer than twenty-five employees regularly work at the exempt grocery business location.

SECTION 4. This ordinance applies to the time a grocery employee performs work for a grocery employer at a grocery business location. It does not apply to time spent by a grocery employee in unincorporated King County solely for the purpose of travelling through the unincorporated area, with no employment-related or commercial stops in the unincorporated area except for refueling or the grocery employee's personal meals or errands.

SECTION 5.

A. Grocery employers shall provide each grocery employee with hazard pay at a rate of four dollars per hour for each hour worked at the grocery employers' grocery businesses.

B. Grocery employers shall provide written notice of employment information that includes notice of hazard pay by thirty days after the effective date of this ordinance.

C. Grocery employers shall provide payment for hazard pay on the established, regular pay day on which wages are paid.

D. Grocery employers shall provide written itemization of the hazard pay separately from payment for wages and other compensation.

E. Grocery employers shall comply with the hazard pay requirements in this ordinance until the executive's March 1, 2020, proclamation of emergency is terminated in accordance with the provisions in the proclamation or such hazard pay requirements are repealed by ordinance, whichever happens sooner.

SECTION 6.

A. Within thirty days of the effective date of this ordinance, grocery employers shall display a written notice of rights established by this ordinance in a conspicuous and accessible place at all its grocery businesses. Grocery employers shall display the notice of rights in English and in the primary language or languages of the employee or employees at its grocery businesses.

B. The notice of rights shall provide information on:

1. The right to hazard pay guaranteed by this ordinance;
2. The right to be protected from retaliation for exercising in good faith the rights protected by this ordinance; and
3. The right to bring a civil action for a violation of this ordinance, including a grocery employer's denial of hazard pay as required by this ordinance and a grocery employer or other person's retaliation against a grocery employee or other person for asserting the right to hazard pay or otherwise engaging in an activity protected by this ordinance.

SECTION 7.

A. Grocery employers shall retain records that document compliance with this ordinance for each grocery employee.

B. Grocery employers shall retain the records required by this section for three years.

C. If a grocery employer fails to retain adequate records required under this section, there shall be a presumption, rebuttable by clear and convincing evidence, that the grocery employer violated this ordinance for

the periods and for each grocery employee for whom records were not retained.

SECTION 8.

A. A grocery employer or any other person shall not interfere with, restrain or deny the exercise of, or the attempt to exercise, any right protected under this ordinance.

B. A grocery employer or any other person shall not take any adverse action against any person because the person has exercised in good faith the rights protected under this ordinance. The rights include, but are not limited to:

1. The right to make inquiries about the rights protected under this ordinance;
2. The right to inform others about their rights under this ordinance;
3. The right to inform the person's employer, the person's legal counsel, a union or similar organization or any other person about an alleged violation of this ordinance;
4. The right to bring a civil action for an alleged violation of this ordinance;
5. the right to testify in a proceeding under or related to this ordinance;
6. The right to refuse to participate in an activity that would result in a violation of city, state or federal law; and
7. The right to oppose any policy, practice, or act that is unlawful under this ordinance.

C. A grocery employer or any other person shall not communicate to a person exercising rights protected in this section, directly or indirectly, the willingness to inform a government worker that the person is not lawfully in the United States, or to report, or to make an implied or express assertion of a willingness to report, suspected citizenship or immigration status of an employee or family member of an employee to a federal, state or local agency because the employee has exercised a right under this ordinance.

D. It shall be a rebuttable presumption of retaliation if a grocery employer or any other person takes an adverse action against a person within ninety days of the person's exercise of rights protected in this section. However, in the case of seasonal work that ended before the close of the ninety-day period, the presumption

also applies if the grocery employer fails to rehire a former grocery employee at the next opportunity for work in the same position. The grocery employer may rebut the presumption with clear and convincing evidence that the adverse action was taken for a permissible purpose.

E. Proof of retaliation under this section shall be sufficient upon a showing that a grocery employer or any other person has taken an adverse action against a person and the person's exercise of rights protected in this section was a motivating factor in the adverse action, unless the grocery employer can prove that the action would have been taken in the absence of the protected activity.

F. The protections afforded under this section shall apply to any person who mistakenly but in good faith alleges violations of this ordinance.

G. A complaint or other communication by any person triggers the protections of this section regardless of whether the complaint or communication is in writing or makes explicit reference to this ordinance.

SECTION 9. Any aggrieved party or any entity acting on behalf of an aggrieved party may bring a civil action in a court of competent jurisdiction against the grocery employer or other person violating this ordinance and, upon prevailing, may be awarded reasonable attorney fees and costs and such legal or equitable relief as may be appropriate to remedy the violation including, without limitation: the payment of any unpaid compensation plus interest due to the aggrieved party and liquidated damages in an additional amount of up to twice the unpaid compensation; and a penalty payable to any aggrieved party if the aggrieved party was subject to prohibited retaliation. Interest shall accrue from the date the unpaid compensation was first due at twelve percent per annum, or the maximum rate permitted under RCW 19.52.020.

SECTION 10. Any waiver by an individual of any provision of this ordinance shall be deemed contrary to public policy and shall be void and unenforceable.

SECTION 11.

A. Nothing in this ordinance shall be construed to discourage or prohibit an employer from the adoption or retention of hazard pay policies more generous than the one required.

B. Nothing in this ordinance shall be construed as diminishing the obligation of the employer to comply with any contract, collective bargaining agreement, employment benefit plan or other agreement providing more generous hazard pay policies to an employee than required in this ordinance.

SECTION 12.

A. This ordinance provides minimum requirements for hazard pay for grocery employees during the coronavirus disease 2019 emergency and shall not be construed to preempt, limit or otherwise affect the applicability of any other law, regulation, requirement, policy or standard that provides for hazard pay or that extends other protections to employees; and nothing in this ordinance shall be interpreted or applied so as to create any power or duty in conflict with federal or state law.

B. Nothing in this section shall be construed as restricting an employee's right to pursue any other remedies at law or equity for violation of the employee's rights.

SECTION 13. This ordinance takes effect March 22, 2021.

SECTION 14. This ordinance expires on the termination of the executive's March 1, 2020, proclamation of emergency in accordance with the provisions in the proclamation.

SECTION 15. If any provision of this ordinance of its application to any person or circumstance is held invalid, the remainder of the ordinance or the application of the provision to other persons or circumstances is not affected.