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Urgency Ordinance amending Title 8 of the South San Francisco Municipal Code to add Chapter 8.77 “COVID-19 Hazard Pay” to require large grocery and drug stores in the City to pay employees an additional ~~four~~ five dollars (\$45.00) per hour in hazard pay during the coronavirus (COVID-19) pandemic

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WHEREAS, on March 19, 2020, the California State Public Health Officer, designated specific sectors and their workers, including grocery and drug stores, as Essential Critical Infrastructure Workers (“essential workers”) to ensure the “continuity of functions critical to public health and safety, as well as economic and national security”; and

WHEREAS, since the beginning of the COVID-19 pandemic, grocery and drug store workers in the City of South San Francisco have continued to report to work and serve their communities, despite the ongoing hazards and danger of being exposed to and infected by the novel coronavirus, helping to ensure individuals throughout the City of South San Francisco have had access to the food and medicine they need during this pandemic; and

WHEREAS, essential grocery and drug store workers are not highly paid and cannot choose to work from home—they must come to work to do their jobs, which involve heightened risk of exposure and infection of COVID-19 through substantial interaction with customers on an ongoing basis and indoors where there is less air circulation; and

WHEREAS, according to an October 29, 2020 study published in the journal *Occupational and Environmental Medicine*, a comprehensive test of workers at one grocery store resulted in 20 percent of grocery workers testing positive for COVID-19, even though three of four workers were asymptomatic; and

WHEREAS, according to an August 2020 article in *The Washington Post*, at least 130 U.S. grocery workers had died from COVID-19, and more than 8,200 have tested positive for the virus; and

WHEREAS, according to a January 2021 article in *The Washington Post*, the United Food and Commercial Workers estimates 109 of its members have died to from COVID-19 and more than 20,000 have tested positive; and

WHEREAS, despite the efforts of grocery and drug stores to take precautions and keep customers and employees safe, including requiring masks, social distancing, and sanitizing cash registers, food conveyor belts, and shopping carts, there have been highly publicized outbreaks of COVID-19 among grocery store employees in the San Francisco Bay Area, and the health threats that these grocery and drug store workers face cannot be overstated; and

WHEREAS, Latinos comprise about 40 percent of California’s population but 55 percent of positive cases, according to state data as of February 4, 2021, and according to health experts, one of the main reasons Latinos are especially vulnerable to COVID-19 is because many work in jobs deemed “essential,” that require them to leave home and interact with the public, many in the retail

food industry, which includes grocery stores; and

WHEREAS, on August 28, 2020, the State released the “Blueprint for a Safer Economy” that assigns counties into color-coded tiers based on a county’s case rate and test positivity rate, and that permits operations of certain businesses and activities based on a county’s tier;

WHEREAS, Governor Gavin Newsom issued an emergency regional stay at home order on December 3, 2020, as a result of the critically low availability Intensive Care Unit (“ICU”) beds; and

WHEREAS, on January 17, 2021, the California Department of Public Health reported another COVID-19 variant that had grown more common across the state since December, with worrisome signs that this variant may be highly transmissible; and

WHEREAS, despite the rescinding of the statewide December 3, 2020 emergency order, the State is believed to be in the height of the pandemic with a stay at home order in many regions of the state, including the Bay Area region, where ICU capacity is ~~18-124~~ percent, and region are a long way from minimal risk where there would be one (1) daily new case per 100,000 or less than two (2) percent positivity; and

WHEREAS, based on the case rate and positivity rate, San Mateo county ~~is currently~~has been listed in the “purple” and most elevated risk tier under the State blueprint, representing “widespread” risk throughout the county, since November and continues to be listed in this tier; and

WHEREAS, grocery and drug stores are the primary points of distribution for food, medicine, and other daily necessities for the residents of the City of South San Francisco and are therefore essential to the vitality of our community;

WHEREAS, given this essential role, grocery and drug stores have largely remained open throughout the COVID-19 pandemic, with many workers continuing to perform their job duties in person; and

WHEREAS, the City of South San Francisco recognizes that grocery and drug store workers must be justly compensated for the clear and present dangers of doing their jobs during the pandemic, and increases in wages result in more money being spent to stimulate our local economy; and

WHEREAS, grocery and drug store workers—should they and members of their family become infected—risk being unable to work and earn an income, and an inability to pay for housing, childcare and healthcare costs; and

WHEREAS, the United States’ largest grocery and drug store retail companies have earned record profits during the pandemic, and this increase in profit has not transferred to workers, according to a Brookings Institution analysis published in November 2020; and

WHEREAS, the City of South San Francisco has adopted ordinances to address COVID-19-related

impacts, including eviction protections for tenants; and

WHEREAS, the City of South San Francisco has in the past adopted ordinance affecting the wages and conditions of employment locally; and

WHEREAS, premium pay, paid in addition to regular wages, is an established type of compensation for employees performing hazardous duty or work involving physical hardship that can cause extreme physical discomfort and distress; and

WHEREAS, there are several large grocery and drug store chains operating in South San Francisco that employ workers in South San Francisco, and have at least 500 employees nationwide, with workers who are facing the hazards of COVID-19 in the workplace every day; and

WHEREAS, in December 2020 and January 2021, a growing list of cities across California, including ~~San Francisco~~, Oakland, Los Angeles, Long Beach, San Jose, Berkeley, West Hollywood, Santa Monica, Montebello, and San Leandro began announcing legislation for hazard pay for essential grocery and drug store workers during the pandemic, including during the period where counties are in the Purple, Red, or Orange level of Community Transmission for COVID-19 under State Health orders; and

WHEREAS, the City Council desires to amend Title 8 of the City of South San Francisco Municipal Code to adopt Chapter 8.77 “COVID-19 Hazard Pay” to require large grocery and drug stores in the City to pay employees an additional ~~four~~ five dollars (\$~~40~~45.00) per hour in hazard pay during the coronavirus (COVID-19) pandemic; and

WHEREAS, California Government Code Section 36937 authorizes the City Council to introduce and adopt an ordinance it declares to be necessary as an emergency measure to preserve the public peace, health, and safety at one and the same meeting if passed by at least four-fifths affirmative votes; and

WHEREAS, this Ordinance is a temporary pay ordinance intended to compensate certain essential workers at high risk of COVID-19 infection within the workplace during the COVID-19 pandemic outbreak, and thus to serve the public peace, health, safety, and public welfare; and

WHEREAS, the City Council expressly intends this hazard pay requirement to apply retroactively to February 11, 2021, including all work performed on that date, in order to serve the public health, safety, and welfare in recognition that the risks posed to grocery and drug store workers continued during the time period when the City Council actively considered taking action to adopt an urgency ordinance establishing this hazard pay; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SOUTH SAN FRANCISCO DOES HEREBY ORDAIN AS FOLLOWS.

**SECTION 1. Findings**

The City Council finds that the foregoing recitals are true and correct and are incorporated into the Ordinance by this reference.

**SECTION 2.            Urgent Need**

The City Council of the City of South San Francisco hereby finds that there is a current and immediate threat to the public health, safety and/or welfare and a need for immediate preservation of the public peace, health, or safety that warrants this urgency measure, which finding is based upon the facts stated in the Recitals above, and in the staff report presented to the City Council- on February 10, 2021, and February 24, 2021, as well any oral and written testimony at the February 10, 2021 and February 24, 2021, City Council meetings.

This Ordinance and the hazard pay requirement that is established thereunder is declared by the City Council to be an urgency measure necessary for the immediate preservation of the public peace, health or safety. The facts constituting such urgency are all of those certain facts set forth and referenced in this Ordinance and the entirety of the record before the City Council.

**SECTION 3.            Amendments to the Municipal Code**

Chapter 8.77 (“COVID-19 Hazard Pay”) is hereby added to Title 8 of the South San Francisco Municipal Code to read as follows:

**8.77.010.            Title.**

This chapter shall be known as the “Grocery and Drug Store Worker Hazard Pay Emergency Ordinance.”

**8.77.020.            Authority.**

This chapter is adopted pursuant to the powers vested in the City of South San Francisco under the laws of the State of California, including, but not limited to, the police powers vested in the City pursuant to Article XI, Section 7 of the California Constitution and California Labor Code section 1205.

**8.77.030.            Definitions.**

The definitions set forth in this Section shall govern the construction and meaning of the terms used in this Chapter:

A.        “Base Wage” means the hourly wage paid to Covered Employees as of the effective date of this Chapter less Hazard Pay owed under this Ordinance or any other premium hourly rate already paid to compensate Covered Employees for working during the pandemic (referred to herein as “employer-initiated hazard pay”).

B.        “City” means the City of South San Francisco.

C.        “Covered Employee” means any individual who qualifies as an employee entitled to payment of a minimum wage from any employer under the California minimum wage law, as provided under Section 1197 of the California Labor Code and wage orders published by the California Industrial Welfare Commission, and who works in a Large Grocery Store or, a Large Drug Store, or an affiliated business operated by a Covered Employer on the same premises as a Large Grocery Store or Large Grocery Store, on either a full-time or part-time basis.

D. “Covered Employer” means any Person who (a) directly or indirectly or through an agent, ~~affiliated business~~, or any other Person owns or operates a Large Grocery Store or Large Drug Store, and employs or exercises control over the wages, hours or working conditions of any Covered Employee; and (b) employs 500 or more employees nationwide regardless of where those employees are employed, or is a Franchisee associated with a Franchisor or a network of Franchises with Franchisees that employ more than 500 employees in the aggregate, regardless of where those employees are employed. To determine the number of employees employed by a Large Grocery Store or Large Drug Store, the calculation shall be based upon:

- a. The actual number of employees who worked for compensation during the two workweeks preceding the effective date of this chapter; and
- b. All employees who worked for compensation shall be counted, including but not limited to:
  - i. Employees who are not covered by this chapter;
  - ii. Employees who worked within the geographic limits of the City;
  - iii. Employees who worked outside the geographic limits of the City; and
  - iv. 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.

E. “Employer-Initiated Hazard Pay” means a premium hourly rate to compensate Covered Employees for the hardships and/or risks associated with working during the COVID-19 pandemic. If a Covered Employer pays such Employer-Initiated Hazard pay on a flat rate basis, the premium hourly rate is derived by dividing the flat rate payment for a workweek by the number of hours worked in the workweek.

F. “Franchise” means a written agreement by which:

1. A Person is granted the right to engage in the business of offering, selling, or distributing goods or services under a marketing plan prescribed or suggested in substantial part by the grantor or its affiliates; and
2. The operation of the business is substantially associated with a trademark, service mark, tradename, advertising, or other commercial symbol; designating, owned by, or licensed by the grantor or its affiliate; and
3. The Person pays, agrees to pay, or is required to pay, directly or indirectly, a Franchise fee.

G. “Franchisee” means a Person to whom a Franchise is offered or granted.

H. “Franchisor” means a Person who grants a franchise to another Person.

I. “Hazard Pay” means an additional \$54.00 per hour wage bonus in addition to each Covered Employee’s Base Wage or Holiday Premium wage for each hour worked within the City.

J. “Holiday Premium” means the hourly wage paid to Covered Employees for performing work during a holiday or holiday season.

K. “Hours Worked” means the time during which a Covered Employee is subject to the control of a Covered Employer, including all the time the employee is suffered or permitted to work, and on-call.

L. “Large Drug Store” means a retail or wholesale store that is over 15,000 square feet in size, that is located within the geographic limits of the City, and that sells primarily a general range of drugs, pharmaceuticals, cosmetics and related products, including food products, which may be fresh or packaged.

ML. “Large Grocery Store” means (1) a retail or wholesale store that is over 105,000 square feet in 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, canned foods, dry foods, beverages, baked foods, or prepared foods; ~~Other household supplies or other products shall be secondary to the primary purpose of food sales or~~ (2) a retail or wholesale store that is over 85,000 square feet and with 10% of its sales floor area dedicated to sale of non-taxable foodstuffs 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.

NM. “Person” means any individual, corporation, partnership, limited partnership, limited liability partnership, limited liability company, business trust, estate, trust, association, joint venture, agency, instrumentality, or any other legal or commercial entity, whether domestic or foreign.

ON. “Retaliatory Action” means any adverse action taken by an employer that negatively and significantly affects the terms and conditions of employment, including but not limited to termination, demotion, suspension, harassment, threats, unequal discipline, reduction in pay (including Base Wage or Holiday Premium Wages) or work hours, or refusal to hire or promote.

#### **8.77.040. Payment of Hazard Pay to Covered Employees.**

A. *Hazard Pay.* Covered Employers shall pay Covered Employees a wage of no less than the premium hourly rate set under the authority of this Chapter. The premium hourly rate for each Covered Employee shall be four five dollars (\$45.00) per hour for all hours worked at a Large Grocery Store or, Large Drug Store, or an affiliated business operated by a Covered Employer on the same premises as a Large Grocery Store or Large Grocery Store, in addition to the Covered Employee’s Base Wage or Holiday Premium, whichever is applicable at the time of hours worked. The Hazard Pay rate shall not include compensation already owed to Covered Employees, Holiday Premium rates, gratuities, service charge distributions, or other bonuses.

B. *Credits.* Covered Employers providing employer-initiated hazard pay will be credited for doing so in accordance with Section 8.77.050.

C. *Duration of Hazard Pay.* Covered Employers shall pay Hazard Pay to all Covered Employees for any pay period during which the City of South San Francisco is within a “Widespread” (purple), “Substantial” (red), or “Moderate” (orange) risk level, or its equivalent, under an operative public health order issued by the State of California and until such time as the City’s risk level returns to “Minimal” (yellow) or its equivalent under an operative state health order.

**8.77.050. Credit for Employer-Initiated Hazard Pay.**

A. Employer-Initiated Hazard Pay shall be credited against the ~~four~~-five dollars (\$~~54~~.00) per hour for the hourly amount paid to each Covered Employee (e.g., a Covered Employer offering two dollars (\$2.00) per hour in Employer-Initiated Hazard Pay owes an additional ~~three~~two dollars (\$~~32~~.00) per hour in Hazard Pay per this chapter.)

B. To receive credit for paying a Covered Employee Employer-Initiated Hazard Pay, a Covered Employer must demonstrate that, as of the effective date of this chapter and in any subsequent covered workweeks, the Covered Employer paid such Employer-Initiated Hazard Pay to the Covered Employee.

C. No Covered Employer shall be credited prospectively for any past payments. No Covered Employer shall be credited for any hourly premiums already owed to Covered Employees, such as but not limited to, Holiday Premiums. Nothing herein shall be interpreted to prohibit any employer from paying more than ~~four~~-five dollars (\$~~54~~.00) per hour in Hazard Pay.

**8.77.060. Waiver**

The provisions of this chapter may not be waived by agreement between an individual Covered Employee and a Covered Employer. All the provisions of this Chapter, or any part thereof, may be waived in a bona fide collective bargaining agreement, but only if the waiver is explicitly set forth in such agreement in clear and unambiguous terms.

**8.77.070. Prohibitions.**

A. It shall be unlawful for a Covered Employer or any other Person to interfere with, restrain or deny the existence of, or the attempt to exercise, any rights protected under this chapter.

B. Employers shall not take Retaliatory Action or discriminate against any employee or former employee because the individual has exercised rights protected under this chapter. Such rights include, but are not limited to, the right to request Hazard Pay pursuant to this chapter; the right to file a complaint with the city or inform any person about an employer’s alleged violation of this chapter; the right to participate in an investigation, hearing or proceeding or cooperate with or assist the city in its investigations of alleged violations of this chapter, and the right to inform any person of their rights under this chapter. Protections of this chapter shall apply to any employee who mistakenly, but in good faith, alleges noncompliance with this chapter. Taking adverse action against an employee within 90 days of the employee's exercise of rights protected under this chapter shall raise a rebuttable presumption of having done so in retaliation for the exercise of such rights.

**8.77.080. Enforcement**

A. *Enforcement by the City.* A violation of this chapter by a Covered Employer may be remedied by any means available to remedy a violation of this code.

B. *Private Right of Action.* A Covered Employee claiming harm from a violation of this chapter may bring an action against the Covered Employer in court to enforce the provisions of this chapter and shall be entitled to all remedies available to correct any violation of this chapter, including, but not limited to, back pay, reinstatement, injunctive relief, or civil penalties as provided herein. A Covered Employee who is a prevailing party in an action to enforce this chapter is entitled to an award of reasonable attorney's fees, witness fees and costs.

C. *Remedies.* The remedies for violation of this chapter include, but are not limited to:

1. Reinstatement, the payment of back wages unlawfully withheld, and payment of an additional sum as a civil penalty in the amount of fifty dollars to each employee whose rights under this chapter were violated for each day or portion thereof that the violation occurred or continued, and fines imposed pursuant to other provisions of state law.

2. Interest on all due and unpaid wages at the rate of interest specified in subdivision (b) of Section 3289 of the California Civil Code, as amended by state law, which shall accrue from the date that the wages were due and payable as provided in Part 1 (commencing with Section 200) of Division 2 of the California Labor Code, as amended by state law, to the date the wages are paid in full.

3. Reimbursement of the city's administrative costs of enforcement and reasonable attorneys' fees, if the city undertakes enforcement action. The remedies, penalties and procedures provided under this chapter are cumulative and are not intended to be exclusive of any other available remedies, penalties and procedures established by law which may be pursued to address violations of this chapter.

**8.77.090. Retention of Records.**

Each Covered Employer shall maintain for at least three years for each Covered Employee, a record of his or her or their name, hours worked and pay rate. Each Covered Employer shall provide each Covered Employee with a copy of the records relating to such employee upon the employee's reasonable request.

**8.77.100. Conflict.**

Nothing in this article shall be interpreted or applied to create any power or duty in conflict with any federal or state law. The term "Conflict," means a conflict that is preemptive under federal or state law.

**8.77.110. Notice.**



A. The city shall, as expeditiously as possible, publish and make available on its website a notice suitable for Covered Employers to inform employees of their rights under this emergency chapter. Such notice shall be translated into Spanish, Chinese, and Tagalog.

B. Every Covered Employer shall, within three days after the city has published and made available the notice described in subsection A of this section, provide the notice to employees in a manner calculated to reach all employees, including, but not limited to, posting in a conspicuous place at the workplace; via electronic communication; or posting in a conspicuous place in a Covered Employer's web-based or app-based platform. The Covered Employer's notification shall be provided in all languages spoken by more than ten percent (10%) of Covered Employees.

C. Every Covered Employer shall, within three days after the City has published and made available the notice described in subsection A of this section or at the time of hire, whichever is later, provide each Covered Employee the Covered Employer and owner or manager's name; address; telephone number; and whether it is part of a franchise associated with a franchisor or network of franchises. If the information the Covered Employer provided to the Covered Employee changes, the Covered Employer shall provide the updated information in writing within ten days of the change.

D. Every Covered Employer shall provide notice to employees when the Risk Level in the City either moves from Widespread (purple), Substantial (red) or Moderate (orange) to Minimal (yellow), or from Minimal (yellow) to Widespread (purple), Substantial (red) or Moderate (orange) under a State of California Health Order. Notice shall be given in a manner calculated to reach all employees, including, but not limited to, posting in a conspicuous place at the workplace; via electronic communication; or posting in a conspicuous place in a Covered Employer's web-based or app-based platform. The Covered Employer's notification shall be provided in all languages spoken by more than ten percent (10%) of Employees

#### **8.77.110. No Preemption of Higher Standards.**

The purpose of this Chapter is to ensure minimum labor standards. This Chapter does not preempt or prevent the establishment of superior employment standards (including higher wages) or the expansion of coverage by ordinance, resolution, contract, or any other action of the city.

#### **SECTION 4. Emergency Grocery and Drug Store Worker Hazard Pay Sunset**

Section 3 of this Ordinance shall remain in effect during any period the City of South San Francisco is within a Widespread (purple), Substantial (red) or Moderate (orange) Risk Level and shall become ineffective during any period when the Risk Level in the City of South San Francisco returns to Minimal (yellow) under State of California Health Orders.

#### **SECTION 5. Severability**

If any provision or part of this ordinance, or the application thereof to any person or circumstance, is held invalid or unenforceable by a court of competent jurisdiction, the remainder of the ordinance and the application of such provision or part to other persons or circumstances shall not be affected thereby.

**SECTION 6.**

**Compliance with the California Environmental Quality Act**

The City Council hereby finds approval of this ordinance is exempt from the California Environmental Quality Act (Public Resources Code §§ 21000 et seq., “CEQA,” and 14 Cal. Code Reg. §§ 15000 et seq., “CEQA Guidelines”) under Section 15061(b)(3) of the CEQA guidelines.

**SECTION 7.**

**Publication and Effective Date**

As set forth in the recitals and findings above, this Ordinance is necessary for preserving the public peace, health, safety and welfare, and is adopted on an urgency basis. Pursuant to the provisions of Government Code section 36937(b), this Ordinance is effective immediately.

Further, all the provisions of the Ordinance shall be given retrospective application to February 11, 2021, including the requirement of hazard pay for work on and after that date, the prohibitions on certain conduct by Covered Employers, and the enforcement of the Ordinance.

The City Clerk shall post in the Clerk’s Office a certified copy of the full text of this Ordinance along with the names of those City Council members voting for and against this Ordinance or otherwise voting.