

ORDINANCE NO. 6818

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, PROTECTING THE HEALTH, SAFETY, AND PROSPERITY OF GROCERY WORKERS AND THE GENERAL PUBLIC DURING THE EXISTING STATE OF EMERGENCY

WHEREAS, this ordinance relates to employment in Auburn; establishing labor standards requirements for additional compensation for grocery employees working in Auburn; and

WHEREAS, the new coronavirus 19 (COVID-19) disease is caused by a virus that spreads easily from person to person and may result in serious illness or death, and is classified by the World Health Organization as a worldwide pandemic; and

WHEREAS, COVID-19 has broadly spread throughout Washington State and remains a significant health risk to the community, especially members of our most vulnerable populations; and

WHEREAS, on January 30, 2020, the World Health Organization (WHO) declared that COVID-19 constituted a public health emergency of international concern, WHO's highest level of alarm; and

WHEREAS, on February 29, 2020, Washington Governor Jay Inslee declared a state of emergency for all counties throughout the state of Washington in response to new cases of COVID-19; and

WHEREAS, on March 3, 2020, Mayor Nancy Backus proclaimed a civil emergency in response to new cases of COVID-19, authorizing the Mayor to exercise the emergency powers necessary to take extraordinary measures to prevent death or injury of persons

and to protect the public peace, safety and welfare, and alleviate damage, loss, hardship or suffering; and

WHEREAS, on March 23, 2020, Washington Governor Jay Inslee issued Proclamation 20-25, a “Stay Home – Stay Healthy” order closing all non-essential workplaces, requiring people to stay home except to participate in essential activities or to provide essential business services, and banning all gatherings for social, spiritual, and recreational purposes. 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; and

WHEREAS, in October 2020, the British Medical Journal, *Occupational & Environmental Medicine*, reported that grocery employees face a serious risk of COVID-19 infection and associated psychological distress. A study of 104 grocery employees at a grocery store in Boston, Massachusetts found that 20 percent tested positive for COVID-19 despite 91 percent of employees reporting wearing a face mask at work and 77 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. Additionally, the study found that 76 percent of employees had no symptoms, suggesting that these employees could be an important reservoir of asymptomatic infection. Further, 24 of the 99 employees who filled out a related medical health questionnaire also reported experiencing anxiety, and eight employees were deemed depressed from their questionnaire answers; and

WHEREAS, in November 2020, the Brookings Metropolitan Policy Program reported that the profits of top retail companies, including grocery businesses, soared during the pandemic while their employees earned low wages and, with few exceptions, failed to receive consistent or meaningful additional compensation for performing life threatening work. The report found that the top retail companies in their analysis earned on average an extra \$16.7 billion in profit compared to the previous year – a 40 percent increase; and

WHEREAS, on January 3, 2021, the Center for Disease Control (CDC) reported that multiple COVID-19 variants are circulating globally that appear to spread more easily and quickly than other variations; and

WHEREAS, on January 5, 2021, Governor Jay Inslee announced the “Healthy Washington – Roadmap to Recovery,” a COVID-19 phased recovery plan; and

WHEREAS, the Brookings Metropolitan Policy Program has reported that the United States’ top retail companies, including grocery businesses, have generated record-breaking profits during the pandemic, with the top retail companies accumulating on average an additional \$16.7 billion in profits over the previous year amounting to a 40% increase in profits; and

WHEREAS, grocery employees have been supporting grocery businesses’ operations and facilitating community access to food during the pandemic, despite facing a clear and present danger of workplace exposure to COVID-19 and receiving limited or inconsistent additional pay in recognition of this hazard; and

WHEREAS, the dangers of working during the pandemic are especially significant for Black, Indigenous, and People of Color (BIPOC) employees who are overrepresented among the retail frontline workforce and who are disproportionately impacted by COVID-19; and

WHEREAS, establishing a requirement for grocery employees to receive hazard pay for work performed in Auburn during the COVID-19 emergency will promote job retention, compensate them for the risks of working on the frontlines of a global pandemic, improve their financial ability to access resources for protecting themselves and their families from catching or spreading the virus or coping with illness caused by the virus, and support the welfare of the greater community that depends on grocery employees for safe and reliable access to food; and

WHEREAS, recognizing the ongoing threat to frontline grocery employees, several cities have passed or have announced legislative efforts to require hazard pay of \$4 to \$5 per hour for grocery employees during the COVID-19 emergency; and

WHEREAS, establishing a labor standard that requires hazard pay for grocery employees is a subject of vital and imminent concern to the community and requires appropriate action by the City Council; and

WHEREAS, studies show that a variant first detected in the United Kingdom (UK) in September 2020, known as B.1.1.7, is 50 to 70 percent more transmissible than the previously circulating form of the COVID-19 virus and is responsible for more than half of new infections in the UK. The B.1.1.7 variant is now prevalent in 40 countries, and cases in the United States have been identified in nine states: California, Colorado, Connecticut, Georgia, Florida, Minnesota, New York, Pennsylvania, and Texas; and

WHEREAS, on April 19, 2021, Public Health – Auburn & King County reported that the current status is 199.7 positive cases per 100,000 residents; and

WHEREAS, as of April 19, 2021, Public Health – Auburn & King County reported a total of 6,161 positive cases including 99 deaths in Auburn. The Washington DOH reported a total of 359,810 positive cases including 5,394 deaths statewide; and

WHEREAS, the Washington DOH reported a total of 198 COVID-19 related outbreaks in retail settings, including 9 during the week of April 4-10, 2021; and

WHEREAS, the Washington DOH reported a total of 181 COVID-19 related outbreaks in grocery settings, including 4 during the week of April 4-10, 2021; and

WHEREAS, throughout the entirety of the COVID-19 emergency, grocery businesses have been operating in Auburn and relying upon the work of grocery employees who are highly vulnerable to health and safety risks; and

WHEREAS, grocery employees are essential workers performing services that are fundamental to the economy and health of the community during the COVID-19 crisis. They face clear and present dangers at their jobs and continue to risk their lives and the health of their families to keep the community's food supply chain operating; and

WHEREAS, grocery employees cannot choose to work from home and must come to work to perform their jobs, which can involve substantial interaction with customers and/or ventilation systems that could potentially spread the virus. They are wearing masks, trying as much as possible to social distance, performing safety protocols, and learning new skills to decrease transmission of the virus to protect themselves and the public; and

WHEREAS, the risks of working during the pandemic are especially significant for BIPOC employees because they are overrepresented among the retail frontline workforce and are disproportionately impacted by COVID-19. Data shows that people of color are disproportionately experiencing hospitalization and dying of COVID-19; and

WHEREAS, the CDC reports that Black and Indigenous people, followed by Pacific Islanders and Latinx people, are disproportionately affected by COVID-19 due to long-standing inequities in social determinants of health, including overrepresentation in jobs that require customer contact such as grocery stores; lower incomes and barriers to wealth accumulation; lack of access to quality healthcare and fair treatment in the healthcare system; difficulties in finding affordable and quality housing; and inequities in access to high-quality education. The CDC reports that these determinants may increase risk of COVID-19 exposure, illness, hospitalization, long-term health and social consequences, and death. To stop the spread of COVID-19, the CDC states that resources must be equitably available for everyone to maintain physical and mental health; and

WHEREAS, Science in the News (SITN), a graduate student group at the Harvard Graduate School of the Arts and Sciences, reports that it is more difficult for BIPOC communities to stay safe during the pandemic and notes the importance of keeping these vulnerable populations in mind as the country slowly reopens the economy. SITN states that social distancing is a privilege that many people of color cannot afford because they work and reside in situations with higher risk of exposure to the virus: people of color are more likely to live in densely populated areas; reside in multigenerational and multifamily households; and use public transportation. Furthermore, SITN reports that many

inequalities that pre-dated the pandemic have worsened, including limited access for Black and Latinx communities to primary care physicians, medical facilities, and COVID testing; and

WHEREAS, grocery businesses are profiting during the pandemic from the labor of employees who are working under dangerous conditions; and

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

WHEREAS, grocery employees working during the COVID-19 emergency merit hazard pay because they are performing hazardous duty or work involving physical hardship that can cause extreme physical discomfort and distress due to the significant risk of exposure to the COVID-19 virus; and

WHEREAS, grocery employees have been working under hazardous conditions month after month. They are working in these hazardous conditions now and will continue to face safety risks as the virus presents an ongoing threat, including the threat of more contagious variants, for an uncertain period; and

WHEREAS, ensuring that grocery employees are compensated for the substantial risks of working during the COVID-19 emergency promotes retention of these vital workers. Retention of grocery employees is fundamental to protecting the health of the community as these employees directly support public purchase of groceries and facilitate community access to food; and

WHEREAS, this ordinance is immediately necessary in response to the COVID-19 emergency because the health threats that grocery employees face are as significant

now as when this crisis began and are growing exponentially as community transmission is already surging, COVID-19 variants may further increase transmission of the virus and reduce therapeutic treatments. This is a rapidly evolving situation, with disproportionate risks and adverse impacts for BIPOC communities, that must be addressed without delay; and

WHEREAS, grocery employees are necessary to protect the public health because their work sustains access to groceries; hazard pay is one step to recognize the dangers facing these employees as they support our community, encourage them to continue their vital work, and provide them with additional financial resources; and

WHEREAS, an immediate requirement to provide grocery employees with hazard pay promotes retention of essential workers, improves the financial ability of grocery employees to access resources they need to stay safe and healthy, and ultimately supports the greater community that depends on grocery employees for consistent, safe and reliable access to food; and

WHEREAS, the Washington State Constitution Article XI, Section 11, empowers a city to “make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with general laws”; and

WHEREAS, RCW 35A.11.020 and 050 provide that the general grant of municipal power conferred to a non-charter code city shall be construed liberally and that such a city may adopt and enforce ordinances of all kinds appropriate to the good government of the City; and

WHEREAS, the Auburn City Council finds that this ordinance is consistent with good government of the City and in the public interest because it seeks to improve grocery

worker safety, compensation for risk by requiring compliance with the federal, state, and county health standards, and to pay employees a wage that reflects the risk to the employees, the employees' families, acquaintances, and the increased costs to be safe, to obtain and manage personal protective equipment and other expenses; and

WHEREAS, as the substantive effects of this ordinance are not permanent, this ordinance is not intended to be codified. Section numbers are for ease of reference within this ordinance, and section and subsection references refer to numbers in this ordinance unless stated otherwise.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, DO ORDAIN as follows:

Section 1. Definitions.

For purposes of this ordinance:

“City” means The City of Auburn.

“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.

“Employ” means to suffer or permit to work.

“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. More than one entity may be the “employer” if employment by one employer is not completely disassociated from employment by any other employer.

“Franchise” means an 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 affiliate;

2. The operation of the business is substantially associated with a trademark, service mark, trade name, advertising, or other commercial symbol; designated, 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.

“Franchisee” means a person to whom a franchise is offered or granted.

“Franchisor” means a person who grants a franchise to another person.

“Front pay” means the compensation the employee would earn or would have earned if reinstated to the employee's former position.

“Grocery business” means a retail store operating in Auburn that:

1. Has 250 or more employees worldwide, and is primarily engaged in retailing 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, and/or prepared foods; and
2. “Grocery business” does not include convenience stores or food marts primarily engaged in retailing a limited line of goods that generally includes milk, bread, soda, and snacks. “Grocery business” also does not include farmers’ markets.

“Grocery Employee” means any hourly individual employed by an employer in a retail store, including but not limited to full-time employees, part-time employees, and temporary workers in Auburn that work exclusively in a grocery store facility and is unable to work remotely due to employment requirements.

“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.

“Successor” means any person to whom an employer quitting, selling out, exchanging, or disposing of a business sells or otherwise conveys in bulk and not in the ordinary course of the employer’s business, a major part of the property, whether real or personal, tangible or intangible, of the employer’s business. For purposes of this definition, “person” means an individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, corporation, business trust, partnership, limited liability partnership, company, joint stock company, limited liability company, association, joint venture, or any other legal or commercial entity.

“Tips” means a verifiable sum to be presented by a customer as a gift or gratuity in recognition of some service performed for the customer by the employee receiving the tip.

Section 2. Employee coverage.

For the purposes of this ordinance:

- A. Covered employees are limited to those who perform work for a covered employer at a retail location in Auburn.
- B. Time spent by an employee in Auburn solely for the purpose of travelling through Auburn from a point of origin outside Auburn to a destination outside Auburn, with no employment-related or commercial stops in Auburn except for refueling or the employee's personal meals or errands, is not covered by this ordinance.

Section 3. Employer coverage.

- A. For the purposes of this ordinance, covered employers are limited to grocery businesses that employ 250 or more employees worldwide regardless of where those employees are employed, including but not limited to chains, or integrated enterprises.
- B. To determine the number of employees for the current calendar year:
 - 1. The calculation is based upon the average number per calendar week of employees who worked for compensation during the preceding calendar year for any and all weeks during which at least one employee worked for compensation. For employers that did not have any employees during the preceding calendar year, the number of employees(s) for the current calendar year is calculated based upon the average number per calendar week of employees who worked for compensation during the first 90 calendar days of the current year in which the employer engaged in business.
 - 2. All employees who worked for compensation shall be counted, including but not limited to:
 - a. Employees who are not covered by this ordinance;
 - b. Employees who worked in Auburn;
 - c. Employees who worked outside Auburn; and
 - d. 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. Separate entities that form an integrated enterprise shall be considered a single employer under this ordinance. Separate entities will be considered an integrated enterprise and a single employer under this ordinance where a separate entity controls the operation of another entity. The factors to consider in making this assessment may include, but are not limited to:
 - 1. Degree of interrelation between the operations of multiple entities;
 - 2. Degree to which the entities share common management;
 - 3. Centralized control of labor relations;
 - 4. Degree of common ownership or financial control over the entities; and
 - 5. Use of a common brand, trade, business, or operating name.
- D. For purposes of this ordinance, covered employers do not include franchisors, franchisees, or franchises.

Section 4. Hazard pay requirements. Employers shall provide each employee with hazard pay at a rate of four dollars per hour for each hour worked in Auburn. No employer shall, as a result of this ordinance going into effect, take steps to reduce employee compensation so as to prevent, in whole or in part, employees from receiving hazard pay at a rate of four dollars per hour for each hour worked in Auburn in addition to those employees' other compensation. Employers shall maintain records to establish the reason(s) for any reduction in employee compensation. Employers bear the burden the proof to show that the additional compensation is hazard pay for the purposes of working during the COVID-19 emergency.

Section 5. Enforcement power. Grocery employees who find that they have suffered or been injured physically or financially by a Grocery business by its failure to comply with this ordinance shall resort to any remedies that apply according to their employment contract or a collectively bargained agreement. Before resorting to remedies,

the Grocery employees shall give a supervisor notice of the violation and give the Grocery business a reasonable time to cure or correct the violation. Violations that do not relate to compensation shall be “grieved” consistent with the Grocery worker’s employment contract or an applicable collectively bargained agreement. If no collective bargaining agreement exists, or if those remedies have been exhausted, consistent with Article XI, Section 11, in addition to any existing right to pursue equitable or legal remedies, this ordinance authorizes Grocery employees or a union acting on a Grocery employee’s behalf to bring an equitable or legal action to enforce or recover unpaid hazard pay in the superior court of Washington that has jurisdiction.

Section 6. Penalties. For any successful claim by a Grocery employee against a Grocery business for unpaid hazard pay, the Grocery employee shall be entitled to recover all unpaid compensation; all attorneys’ fees, court costs, and expenses; and up to a 50% penalty of the unpaid compensation as a court of competent jurisdiction may find appropriate.

Section 7. Termination or revocation. This ordinance shall cease to be effective on December 31, 2021, or when the Governor declares that the Washington State of Emergency is over, whichever is sooner. The City Council may revoke or terminate this ordinance as and when it finds appropriate.

Section 8. Implementation. The Mayor is authorized to implement those administrative procedures necessary to carry out the directives of this legislation.

Section 9. Severability. The provisions of this ordinance are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section, or portion of this ordinance, or the invalidity of the application of it to any person

or circumstance, will not affect the validity of the remainder of this ordinance, or the validity of its application to other persons or circumstances.

Section 10. Effective date. This Ordinance will take effect and be in force five days from and after its passage, approval, and publication as provided by law.

INTRODUCED: _____

PASSED: _____

APPROVED: _____

NANCY BACKUS, MAYOR

ATTEST:

APPROVED AS TO FORM:

Shawn Campbell, MMC, City Clerk

Kendra Comeau, City Attorney

Published: _____