



Council Agenda Report

To: Mayor Pierson and the Honorable Members of the City Council

Prepared by: John C. Cotti, Interim City Attorney

Reviewed by: Reva Feldman, City Manager

Date prepared: April 8, 2021 Meeting date: April 12, 2021

Subject: Ordinance Establishing "Hero Pay" for Grocery Retail and Drug Retail Workers During the COVID-19 Pandemic

RECOMMENDED ACTION: After the City attorney reads the title, adopt urgency Ordinance No. 485U adding Chapter 5.70 to the Malibu Municipal Code relating to hazard pay requirements for employees working frontline positions in grocery retail and drug retail establishments in the City of Malibu during the COVID-19 pandemic, finding the same exempt from the California Environmental Quality Act, and declaring the urgency thereof. A four-fifths vote of the City Council is required and, if approved, it will take effect immediately.

FISCAL IMPACT: There is not likely to be any direct financial impact to the City as a result of the adoption of the proposed ordinance.

WORK PLAN: This item was not included in the Adopted Work Plan for Fiscal year 2019-2020. This project is part of emergency staff operations.

SUMMARY: Due to the specific impacts to grocery and drug retail workers during the COVID-19 pandemic, the City has requested consideration of the proposed urgency ordinance, which would require grocery and drug retail stores in Malibu to provide premium pay of an additional \$5.00 per hour to their workers in Malibu. Unless extended by the City Council, the ordinance is proposed to remain for as long as the Los Angeles County Hero Pay Ordinance No. 2021-0004U remains in effect. The Los Angeles County ordinance will expire on June 26, 2021, unless extended by Los Angeles County.

BACKGROUND: Since March of 2020, the COVID-19 pandemic has dramatically impacted Malibu citizens, business owners, employees, and visitors.

The global health pandemic has emphasized the importance of workers in industries now highlighted as essential, including front-line grocery and drug retail workers. According to the Brookings Institute, low-wage workers in America have suffered the worst economic pain of the pandemic. One of the reasons low-wage workers have suffered disproportionate job losses is their limited ability to telework. Low-wage workers are six times less likely to be able to work from home than high-income workers, according to Brookings.¹ Another report from last year also identifies that “the people likely to suffer most, both economically and health-wise, during the ongoing recession are those who are engaged in occupations where the ability to socially distance from customers and from each other is extremely low.”²

Due to the virus, millions of frontline grocery and drug retail workers nationwide have had to face new job-related hazards not previously considered especially dangerous. Los Angeles County public health data shows outbreaks at food facilities, like supermarkets, rose in early November and continued through the winter. An NBC Investigation article from January 15, 2021, discovered 146 outbreaks from the previous 30 days alone at supermarkets in LA and Orange County, according to data obtained from the United Food and Commercial Workers (UFCW) Local 324. The report included 31 Ralphs, 17 Vons and 16 Albertsons. Another report from CNBC reports how the toll of COVID has been particularly hard on grocery store workers who cannot work from home and often have low pay and limited benefits.³

A study of grocery store workers has also shown an accelerated risk of coronavirus infection faced by workers in customer-centric roles.⁴ Additionally, new and potentially more contagious variants of the coronavirus that have been detected in California, which is hitting California as California is recovering from the winter surge.⁵ At the same time, grocery stores across the country have seen record profits. The Brookings Institute, found that top retail companies had a 39% increase in profit over 2019, averaging an extra \$16.9 billion in 2020.⁶ The Brookings Report also establishes that frontline workers at the 13 companies studied in the report received pay raises of only an average \$1.11 per hour since pandemic began.

¹ <https://www.brookings.edu/research/reopening-america-low-wage-workers-have-suffered-badly-from-covid-19-so-policy-makers-should-focus-on-equity/>.

² <https://www2.deloitte.com/us/en/insights/economy/issues-by-the-numbers/covid-19-impact-on-income-inequality.html>.

³ <https://www.cnbc.com/2020/11/23/grocery-workers-face-new-challenges-as-covid-worsens-fatigue-sets-in.html>.

⁴ <https://www.safetyandhealthmagazine.com/articles/20524-covid-19-pandemic-grocery-store-workers-face-accelerated-risk-of-infection-study-finds>; <https://www.bmj.com/company/newsroom/high-rate-of-symptomless-covid-19-infection-among-grocery-store-workers/> (this study also showed that the positivity rates of grocery workers were higher than that of the community generally). While data and case rates are constantly changing, this data illustrates the higher risks associated with grocery work during a health pandemic of a virus that is spread through the air and at higher rates indoors, such as in grocery stores.

⁵ <https://www.latimes.com/california/story/2021-01-20/vaccines-aggressive-strains-and-fatigue-california-hits-3-million-covid-cases-and-a-crossroads>.

⁶ <https://www.brookings.edu/essay/windfall-profits-and-deadly-risks/>.

Frontline grocery and drug retail workers have not only had to perform their jobs but have become “de facto public health marshals”, enforcing critical mask and social distancing protocols. Over three-quarters of workers (78%) report experiencing or witnessing hostile behavior from customers in response to staff enforcing COVID-19 safety protocols, and nearly 60% report experiencing such hostility at least weekly.⁷

Due to shifting emergency circumstances, at the beginning of the pandemic, a number of grocery companies initially provided extra COVID-19 related compensation to their workers. This bonus, commonly known as hero pay or hazard pay often was implemented as a temporary hourly wage increase or a one-off bonus for essential workers.

As the impacts of the pandemic subsided in June, many retail companies ended their temporary wage increase, and there has yet to be a meaningful commitment to restoring it. This has occurred even as the pandemic has continued to disproportionately impact low wage workers, leaving some grocery workers as the primary earners in their households.

The December 6, 2020, stay-at-home order was lifted on January 25, 2021, but the virus continues to be widespread throughout Southern California. Vaccines are being distributed throughout Los Angeles County with over 3.8 million first doses and 1.2 million second doses given. While the State and County are easing some COVID-19 restrictions, frontline grocery retail and drug retail workers are facing increased dangers because a greater number of customers are beginning to resume their pre-COVID-19 activities and may be less vigilant in practicing distancing and personal protective equipment (PPE) requirements and recommendations.

Los Angeles County has adopted a similar ordinance but has made it applicable to only the unincorporated areas of the County. A number of the incorporated areas in the County, including the City of Los Angeles, Santa Monica, and West Hollywood have adopted their own ordinances in order to provide the same benefit to Hero workers within their city limits. Malibu Hero workers should be included with these similarly situated Hero workers in Los Angeles County and receive Hero Pay.

Given the urgent nature of the health pandemic and need to provide immediate assistance to those at higher risk of infection, the City Council may choose to adopt the Urgency Ordinance, which goes into effect immediately. Adoption of an urgency ordinance requires specific findings and a four-fifths vote of City Council. (Gov. Code, § 36937, subd. (d).)

⁷ https://onefairwage.site/wp-content/uploads/2020/12/OFW_COVID_WorkerExp-1.pdf.

ANALYSIS:

Key Ordinance Provisions

The proposed ordinance would require grocery and drug retail stores of a specified size within the City to provide premium pay of an additional \$5.00 per hour to their workers for as long as the Los Angeles County Hero Pay Ordinance remains in effect, which is set to continue through June 26, 2021, unless extended by Los Angeles County. The City Council may also extend Hero Pay after the Los Angeles County ordinance expires.

Cities that have adopted such “Hero Pay” ordinances have provided a range of extra pay ranging from \$3.00 to \$5.00 per hour. For example, Los Angeles County -- \$5.00/hr.; Los Angeles -- \$5.00/hr.; Santa Monica -- \$5.00/hr.; Seattle -- \$4.00/hr.; San Jose -- \$3.00/hr.; Montebello -- \$4.00/hr.; Oakland -- \$5.00/hr.; Coachella -- \$4.00/hr. The specific dollar amount remains within the discretion of the City Council.

The ordinance applies to all retail grocery or drug store employers that (1) are publicly traded or employ 300 or more people nationwide, and (2) employ more than ten employees per store in Malibu.

The ordinance specifically prohibits employers from lowering employees’ wages to offset the Hero Pay increase. The Ordinance prohibits retaliation against employees who assert their rights pursuant to the Ordinance—which includes discharge, suspension, demotion, penalization, discipline, lowering wages or holiday premium pay, and discrimination.

If an employer has, on or after the effective date of the ordinance, voluntarily implemented a hazard pay increase, that employer will be entitled to credit such voluntary hazard pay increase amount against the increased amount required by the ordinance. Employers will not be entitled to any credit for any voluntarily paid hazard pay increase that was paid prior to the effective date of the ordinance.

The ordinance requires that employers post a notice of the Ordinance in a conspicuous place, which could be in a break room or on an employee bulletin board.

The ordinance also requires that employers maintain records evidencing compliance with the ordinance for at least four years. Such records include payroll records and wage statements.

All employees have a private right of action to challenge any retaliation against them in superior court, including recovery of attorney’s fees for up to three years after the violations occurred. Additionally, the City may issue administrative citations to employers

for violations of the ordinance. For example, failure to pay “Hero Pay” to an employee could result in a \$100 citation fine for each day that a violation occurs.

Latest Developments

On January 19, 2021, the City of Long Beach adopted a Hero Pay ordinance, covering grocery store workers. The following day, the California Grocers Association filed a lawsuit against the City. On January 22, U.S. District Judge Dolly M. Gee denied the Association’s request for a temporary restraining order to stop enforcement of the ordinance before a court could hear the case. On February 25, 2021, Judge Gee issued a ruling, denying the Grocers Association’s request for a preliminary injunction. In doing so, the court ruled that the Grocers Association failed to demonstrate that it would likely prevail at trial.

On February 1, 2021, the Los Angeles Times reported that Kroger, which owns several supermarket chains, announced that it would close two stores in Long Beach, claiming the closures to be in response to the city’s adoption of a “Hero Pay” ordinance. The stores slated for closure are a Ralphs and a Food 4 Less store, affecting 200 workers.

Conclusion

Therefore, City staff and the City Attorneys’ Office request that the City Council consider and adopt the accompanying urgency ordinance and provide direction on any modifications to be covered in any subsequent ordinance.

ENVIRONMENTAL ASSESSMENT: The adoption of this ordinance is exempt from environmental review under the California Environmental Quality Act (“CEQA”) pursuant to the following provisions of the CEQA Guidelines, 14 California Code of Regulations, Chapter 3: this Urgency Ordinance is exempt under CEQA Guidelines Section 15378(b)(5) in that it is not a “project” under CEQA, and will not result in direct or indirect physical changes in the environment.

ATTACHMENTS:

1. Ordinance No. 485U
2. Chart Comparing “Hero Pay” Ordinances in other Jurisdictions

ORDINANCE NO. 485U

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MALIBU, CALIFORNIA, ADDING CHAPTER 5.70 TO THE MALIBU MUNICIPAL CODE RELATING TO HAZARD PAY REQUIREMENTS FOR EMPLOYEES WORKING FRONTLINE POSITIONS IN GROCERY RETAIL AND DRUG RETAIL ESTABLISHMENTS IN THE CITY OF MALIBU DURING THE COVID-19 PANDEMIC, FINDING THE SAME EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, AND DECLARING THE URGENCY THEREOF

The City Council of the City of Malibu ordains as follows:

SECTION 1. Amendment to the Malibu Municipal Code. Malibu Municipal Code Chapter 5.70 is hereby added to the Malibu Municipal Code as follows:

“CHAPTER 5.70 COVID-19 Hero Pay.

5.70.010 Findings and Purpose.

To protect the public health and welfare during the COVID-19 pandemic, California Governor Gavin Newsom issued a “Safer at Home” declaration that has affected every sector of the economy. While many sectors were able to transition their workforce to working from home, millions of workers in face-to-face service industries were deemed essential to ensure that our communities continue to operate, and basic needs continue to be fulfilled.

The City Council finds that frontline grocery retail and drug retail workers are essential workers who face potential exposure to COVID-19 through interactions with customers and co-workers. Because of their work on the frontlines, grocery retail and drug retail workers have been met with COVID-19 exposures and outbreaks in their workplaces. Their work has increased the workers’ COVID-19 exposure risks and contributed to the psychological distress workers have felt during the pandemic.

The City Council finds that frontline grocery retail and drug retail workers are among the heroes of this pandemic, putting their lives on the line – often for low wages and minimal benefits – to maintain the food supply and distribution system necessary for healthy communities. Despite their importance to our communities, their employers have not all provided sufficient wages during the COVID-19 pandemic to compensate frontline employees for their critical function to our society and the significant risk they face in the workplace. Working in an essential industry, grocery and drug retail employees have not had the luxury of working from home to help their children with distance-learning and, as a result, have incurred additional childcare expenses.

The City Council finds that frontline grocery retail and drug retail workers are facing increased dangers as the State and County ease their COVID-19 restrictions because a greater number of customers are beginning to resume their pre-COVID-19 activities and may be less vigilant in practicing distancing and personal protective equipment (PPE) requirements and recommendations.

The City of Malibu has an interest in protecting the employment environment for frontline grocery retail and drug retail workers and in maintaining the supply and distribution-chain of food. Through this ordinance, the City seeks to sustain the stability of the food supply chain by supporting the essential workers who continue to work during the pandemic, and thereby safeguard the health, safety, and welfare of the public. The City Council further finds it is imperative to act with urgency to support these frontline workers to be justly compensated for the unprecedented risks they encounter on the job during this pandemic and require their employers to provide for additional hazard pay, or “Hero Pay.”

5.70.020 Definitions.

A. “Base Wage” means the hourly wage paid to Employees as of the effective date of this Chapter, less Hero Pay owed under this Chapter or any other premium hourly rate already paid to compensate Employees for working during the COVID-19 pandemic, such as Voluntary Hazard Pay or Holiday Premium Pay.

B. “City” means the City of Malibu.

C. “Employee” means any person who:

1. In a particular week performs at least two hours of work within the City for an Employer; and

2. 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.

3. Presumption of Employee. For purposes of this Chapter, a person performing work for an Employer is presumed to be an Employee of that Employer. If an Employer asserts a person is not an Employee covered by this Chapter either due to the person’s status as a bona fide independent contractor, or due to the person not being required to physically appear at a Store to perform their job function during the COVID-19 pandemic, then the Employer has the burden to demonstrate that the person is not an Employee.

D. “Employer” means a person, as defined in section 18 of the California Labor Code, including a corporate officer or executive, that meets all of the following:

1. Directly or indirectly or through an agent or any other person, including through the services of a temporary service or staffing agency or similar entity, employs or exercises control over the wages, hours, or working conditions of any Employee;

2. Operates at least one Store;

3. Either is (a) a corporate entity the stock of which is traded on a public stock exchange, or (b) employs 300 or more workers for compensation nationwide in the pay period preceding the effective date of this Chapter; and

4. Employs more than 10 Employees per Store in the pay period preceding the effective date of this Chapter.

E. “Hero Pay” means the additional wage Employers are required to pay Employees for work performed at Stores due to the risks associated with COVID-19 pursuant to Section 5.70.040 A., in addition to an Employee’s Base Wage or Holiday Premium Pay, whichever is applicable at the time of hours worked. The Hero Pay rate shall not include compensation already owed to Employees, Holiday Premium rates, gratuities, service charge distributions, or other bonuses.

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

G. “Pay Day” means a specific date designated by an Employer on which wages are paid for hours worked during a Pay Period, as defined.

H. “Pay Period” means a defined time frame for which an Employee will receive a paycheck as provided in the California Labor Code.

I. “Retaliatory Action” means the refusal to hire, or the discharge, suspension, demotion, penalization, discipline, lowering of the Base Wage or Holiday Premium Pay, discrimination, or any other adverse action taken against an Employee regarding the terms and conditions of the Employee’s employment, for opposing any practice proscribed by this Chapter, for participating in proceedings related to this Chapter, for seeking to enforce rights under this Chapter by any lawful means, or for otherwise asserting rights under this Chapter.

J. “Store” means any of the following located within the City:

1. A retail grocery store that sells primarily food or household goods; including fresh produce, meats, poultry, fish, deli products, dairy products, canned foods, dry foods, beverages, baked goods, and/or prepared foods; or

2. Are retail drug store that sells a variety of prescription and non-prescription medicines and miscellaneous items, including but not limited to drugs, pharmaceuticals, sundries, fresh produce, meats, poultry, fish, deli products, dairy products, canned foods, dry foods, beverages, and prepared foods.

K. “Voluntary Hazard Pay” means additional premium pay for COVID-19 related purposes above and beyond an Employee’s Base Wage.

5.70.030 Exemptions.

This Chapter does not apply to public entities, including federal entities, State entities, the County, the City, or the school district.

5.70.040 Hero Pay Requirement.

A. **Hero Pay Amount.** For each hour of work performed by an Employee at a Store operated by an Employer, the Employer shall pay the Employee no less than five dollars (\$5) per hour, in addition to the Employee's Base Wage. Such Hero Pay is intended to compensate an Employee for time spent physically present performing work at a Store where there is a heightened potential for exposure to COVID-19. Hero Pay shall not be required for any time an Employee is not physically present to perform work at a Store location, such as when remote working, teleworking, or on paid leave.

B. **Offsets Prohibited.** Employers shall not reduce an Employee's Base Wage, Holiday Premium Pay, or other Employee benefits to offset the requirements of this Chapter.

C. **Election to Receive Hero Pay as Paid Leave.** An Employee may elect to receive paid leave in lieu of Hero Pay.

1. **Must be in Writing.** An election to receive paid leave in lieu of Hero Pay must be made in a writing signed by the Employee. If the Employee elects to receive paid leave in lieu of Hero Pay, the Employer shall convert the Hero Pay into paid leave.

2. **Calculation of Paid Leave.** An Employee accrues one full hour of paid leave when the Hero Pay earned totals one hour of the Employee's Base Wage.

3. **Paid Leave Increments.** An Employee is entitled to earn paid leave in less than one hour increments.

4. **Use of Paid Leave.** Employers must allow Employees to use accrued paid leave under this subsection in the same way Employers allow other paid leaves to be used by their Employees.

5.70.050 Employer Credit for Voluntary Hazard Pay.

A. If an Employer provides an Employee Voluntary Hazard Pay, the obligation to provide Hero Pay under this Chapter shall be reduced for each cent the Employer provides an Employee with such Voluntary Hazard Pay. No Employer shall be credited prospectively for any past payments. No Employer shall be credited for any hourly premiums already owed to Employees, such as, but not limited to, Holiday Premiums. Nothing in this Chapter shall be interpreted to prohibit an Employer from paying more than five dollars (\$5) per hour in Hero Pay.

B. In the event the credit for Voluntary Hazard Pay is challenged, the City is authorized to evaluate the credibility and sufficiency of proof to determine if the Employer shall receive credit. An Employer must maintain and make available for inspection by the City the following showings of proof to receive credit for Voluntary Hazard Pay:

1. A copy of the Employer's Voluntary Hazard Pay policy.

2. A concise statement explaining Employees' hourly base wages, hourly Holiday Premiums, hourly Voluntary Hazard Pay, and any other wage bonuses received during the prior 12 months. Records and other information that allows the City to review for compliance by

assessing wages for the prior 12 months and that is itemized in such a way that the City can understand an Employee's Base Wage distinguished from Holiday Premiums and other bonuses or pay increases that are separate and distinct from Voluntary Hazard Pay. Acceptable evidence of Voluntary Hazard Pay wage includes:

i. A spreadsheet of all Employees and their wages for each pay period for the prior 12 months that allows the City to distinguish Base Wage from Holiday Premium Pay and other bonuses or pay increases that are separate and distinct from Voluntary Hazard Pay. The foregoing does not exempt any Employer from maintaining, and providing access to, the underlying payroll records described above.

ii. Any offer of proof under this subsection B shall be accompanied by a written acknowledgement that it was submitted under penalty of perjury.

5.70.060 Employer Notification Requirements.

A. Hero Pay Workplace Posting. Every Employer shall post in a conspicuous place at every Store located within the City where any Employee works a written notice prepared and made available electronically by the City informing Employees of the Hero Pay Ordinance and of their rights under this Chapter.

B. Pay Period Statement. Each Pay Day, Employers shall provide each Employee with all information required by section 226(a) of the California Labor Code, as well as the following additional information: (1) the hourly rate of Hero Pay required by this Chapter or Voluntary Hazard Pay paid by the Employer; (2) the amount of Hero Pay, Paid Leave in lieu of Hero Pay, or Voluntary Hazard Pay earned by the Employee in the pay period; and (3) the number of hours of work performed that entitled the Employee to Hero Pay or Voluntary Hazard Pay in the pay period.

C. Supplemental Disclosure Allowed. Nothing in this Section shall require Employers to duplicate disclosures required by State law, including sections 226 and 2810.5 of the California Labor Code. Disclosures required by this Section may be satisfied by supplementing any State-mandated disclosure.

5.70.070 Employer Record Keeping and Access Requirements.

A. Payroll Records. Employers shall keep records necessary to demonstrate compliance with this Chapter, including accurate and complete payroll records pertaining to each Employee that document the name, address, occupation, dates of employment, rate or rates of pay, amount paid each Pay Period, the hours worked for each Employee, and the formula by which each Employee's wages are calculated.

B. Retention Period. Every Employer shall retain payroll records required in subsection A pertaining to each Employee for a period of four years.

C. Records and Interview Access; Cooperation with Investigations. To monitor and investigate compliance with the requirements of this Chapter, every Employer shall: (a) allow the

City access to such records required in subsection A; (b) allow the City to interview persons, including Employees, during normal business hours; and (c) cooperate with the City investigators.

D. **Presumption of Violation.** There shall be a rebuttable presumption that an Employer violated this Chapter if an allegation is made concerning an Employee's entitlement to Hero Pay under this Chapter and an Employer does not comply with the requirements of this Section to maintain or retain payroll records, or does not allow the City reasonable access to such records.

E. **Records Access Charges.** When an Employer demonstrates to the City that the Employer will incur a fee or charge for providing the records required in this Section, the Employer shall be required to provide the City with only the prior two years of records, unless the City determines that obtaining four years of records is reasonable and necessary for the enforcement of this Chapter.

5.70.080 Retaliatory Action Prohibited.

A. No Employer may discharge, reduce in compensation, or otherwise discriminate against any Employee for opposing any practice proscribed by this Chapter, for requesting Hero Pay under this Chapter, for participating in proceedings related to this Chapter, for seeking to enforce rights under this Chapter by any lawful means, or for otherwise asserting rights under this Chapter. Rights protected under this Chapter include: the right to file a complaint or inform any person about any party's alleged noncompliance with this Chapter; and the right to inform any person of potential rights under this Chapter and to assist in asserting such rights. Protections of this Chapter shall apply to any Employee who mistakenly, but in good faith, alleges noncompliance with this Chapter.

B. **Rebuttable Presumption of Retaliation.** Taking adverse action against an Employee, including lowering Employees' Base Wage or Holiday Premium Pay or reduction of hours, within 90 days of the Employee's exercise of rights protected under this Chapter, shall raise a rebuttable presumption of the Employer having done so in retaliation for the exercise of such rights.

5.70.090 Administrative Citation Fines for Violations.

A. **Administrative Citations.** An administrative citation fine payable to the City and/or Employee may be assessed for a violation of any provision of the Chapter as specified below. An administrative citation fine may be assessed pursuant to Chapter 1.10.

VIOLATION AND FINE AMOUNT			
Violation	Municipal Code Section	Fine Per Violation Payable to the City	Fine Per Violation Payable to the Employee

Failure to pay Hero Pay to Employee	Municipal Code Section 5.70.040.A	Up to \$100 per day, per Employee, for each day that an Employee is not paid all wages owed	Up to \$100 per day for each day that an Employee is not paid all wages owed
Improper offset of Employee Base Wage, Holiday Premium Pay, or other benefits to satisfy Hero Pay Requirement	Municipal Code Section 5.70.040.C	Up to \$100 per day, per Employee, for each day that an Employee is not paid all wages owed	Up to \$100 per day for each day that an Employee is not paid all wages owed
Failure to post written Notice at Store location	Municipal Code Section 5.70.060.A	Up to \$500 per violation	
Failure to provide complete, accurate, and timely Pay Period Statement to Employee	Municipal Code Section 5.70.060.B	Up to \$500 per Employee	Up to \$500 per Pay Period
Failure to maintain payroll records or to retain payroll records for four years	Municipal Code Section 5.70.070.A/B	Up to \$500 per violation	
Failure to allow access for inspection of books and records or to interview Employees or cooperate with investigation	Municipal Code Section 5.70.070.C	Up to \$500 per violation	
Retaliation for exercising rights under this Chapter	Municipal Code Section 5.70.080	Up to \$1,000 per employee subject to retaliation	Up to \$1,000 per employee, plus \$100 per day until reinstatement, if ordered

B. Calculation of Administrative Citation Fines. Each and every day that a violation exists constitutes a separate and distinct violation. The maximum administrative citation fine may be increased cumulatively by 50 percent for each subsequent violation of the same provision by the same Employer within a three-year period. The maximum administrative citation fine that may be imposed in a calendar year for each type of violation listed above shall be \$20,000 per Employee, per year, with the exception of a retaliation violation in which case the maximum fine shall be \$30,000 per Employee, per year.

C. Payments to the City, Due Date, Late Payment Fee. Administrative citation fines payable to the City are due within 30 days from the date the citation is issued. The failure of any Employer to pay an administrative citation fine within 30 days shall result in the assessment of an additional late fee. The amount of the additional late fee shall be ten percent of the total amount of the administrative citation fine assessed for each month the amounts are unpaid, compounded to include already accrued late administrative citation fines that remain unpaid. The City may exercise its discretion regarding the fines, penalties, and fees levied based on the severity of the violation, the length of the violation, and whether the violation was the first of its kind for the Employer.

D. Collections of Amounts Due. The failure of any Employer to pay amounts owed to the City under this Chapter when due shall constitute a debt to the City. The City may file a civil action or, to the extent feasible under State law, create and impose a lien against any property owned or operated by an Employer or other person who fails to pay an administrative fine assessed by the City, or pursue any other legal remedy to collect such money.

E. Successor Liability. If any Employer ceases its business operations, sells out, exchanges, or otherwise disposes of the Employer's business or stock of goods, then any person who becomes a successor to the business shall become liable for the unpaid amount of the administrative citation fine if, at the time of the conveyance of the business, the successor has actual knowledge of the fact and amount of the administrative citation fine.

F. Payments to Employees; Fines and Restitution. Every Employer who violates this Chapter, or any portion thereof, shall be liable to the Employee whose rights were violated for back wages unlawfully withheld and fines of \$100 for each day that the violation occurred or continued. A violation for unlawfully withholding wages shall be deemed to continue from the date immediately following the date that the wages were due and payable as provided in Part 1 (commencing with section 200) of Chapter 2 of the California Labor Code, to the date immediately preceding the date the wages are paid in full. For retaliatory action by the Employer, the Employee shall be entitled to reinstatement of his or her prior position, assignment, or job, if applicable, and a trebling of all back wages, fines, and penalties.

G. Interest. In any administrative or civil action brought forth for the nonpayment of wages under this Chapter, the City or the court, shall award interest on all due and unpaid wages, fines, and penalties at the rate of interest specified in subdivision (b) of section 3289 of the California Civil Code, which shall accrue from the date the wages were due and payable as provided in Part 1 (commencing with section 200) of Division 2 of the California Labor Code, to the date immediately preceding the date the wages are paid in full.

5.70.100 Private Right of Action.

An Employee claiming a violation of this Chapter may file an action in the Superior Court of the State of California against an Employer, within three years of the occurrence of the alleged violation, and may be awarded:

- A. Reinstatement to the position from which the Employee was discharged in violation of this Chapter.
- B. Back pay unlawfully withheld.
- C. All penalties and/or fines imposed pursuant to other provisions of this Chapter or State law, as determined by the court.
- D. For retaliatory action by an Employer, the Employee shall be entitled to a trebling of lost wages and penalties and/or fines imposed, in addition to reinstatement, as determined by the court.
- E. Interest on all due and unpaid wages at the rate of interest specified in subdivision (b) of Section 3289 of the California Civil Code, 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, to the date the wages are paid in full.
- F. Other legal or equitable relief the court may deem appropriate.
- G. If an Employee is the prevailing party in any legal action taken pursuant to this Chapter, the court may award reasonable attorneys' fees and costs as part of the costs recoverable.

5.70.110 No Waiver of Rights.

Any waiver by an Employee of any or all of the provisions of this Chapter shall be deemed contrary to public policy and shall be void and unenforceable.

5.70.120 Coexistence with Other Available Relief.

A. The remedies, fines, penalties, and procedures provided under this Chapter are cumulative and are not intended to be exclusive of any other available remedies, fines, penalties, and procedures. The procedures established in this Chapter shall be in addition to any other criminal, civil, or other remedy established by law that may be pursued to address violations of this Chapter. An administrative citation issued pursuant to this Chapter, or Chapter 1.10, shall not prejudice or adversely affect any other action, civil or criminal, that may be filed to prosecute or abate a violation, or to seek compensation for damages suffered.

B. Any Employee aggrieved by a violation of this Chapter, the City, or any other person or entity acting on behalf of the public, as provided for under applicable State law, may file a civil action in a court of competent jurisdiction against the Employer violating this Chapter and, upon prevailing, shall be entitled to such legal or equitable relief as may be appropriate to remedy

the violation including, without limitation, the payment of any back wages unlawfully withheld, the payment of fines in the amount of \$100 to each Employee whose rights under this Chapter were violated for each day that the violation occurred or continued, reinstatement in employment and/or injunctive relief, and shall be awarded reasonable attorneys' fees and costs. Any person or entity enforcing this Chapter on behalf of the public, as provided for under applicable State law, upon prevailing, shall be entitled only to equitable, injunctive, or restitutionary relief, and reasonable attorneys' fees and costs. Nothing in this Chapter shall be interpreted as restricting, precluding, or otherwise limiting a separate or concurrent criminal prosecution under the Malibu Municipal Code or State law. Jeopardy shall not attach as a result of any administrative or civil enforcement action taken under this Chapter.

5.70.130 Conflicts.

Nothing in this Chapter shall be interpreted or applied to create any power or duty in conflict with any federal or State law.

5.70.140 Operative Period.

A. Operative Date and Duration of Hero Pay Requirement. The requirement to pay Hero Pay, as provided in this Chapter, shall commence at 9:00 a.m. on the third day following adoption of this Chapter by the City Council (the "Operative Date"), and shall continue for as long as the Los Angeles County COVID-19 Hero Pay Ordinance No. 2021-0004U remains in effect, unless otherwise extended by the city council.

B. Grace Period. An Employer shall be relieved of liability for non-payment of Hero Pay during the first 45 days this Chapter is operative, so long as Hero Pay begins accruing on the Operative Date of this Chapter, and the accrued amount is paid in full on or before the next Pay Day immediately following the 45th day."

SECTION 2. Environmental Review. The City Council determines that the adoption of this Urgency Ordinance is exempt from environmental review under the California Environmental Quality Act ("CEQA") pursuant to the following provisions of the CEQA Guidelines, 14 California Code of Regulations, Chapter 3: this Urgency Ordinance is exempt under CEQA Guidelines Section 15378(b)(5) in that it is not a "project" under CEQA, and will not result in direct or indirect physical changes in the environment.

SECTION 3. Urgency Declaration; Effective Date. This Urgency Ordinance is necessary for the protection of life, property, health, safety, and welfare of the public and is adopted pursuant to the powers vested in the City of Malibu under the laws and the Constitution of the State of California, including the police powers vested in the City pursuant to Article XI, section 7 of the California Constitution, and section 1205(b) of the California Labor Code. This Ordinance is approved pursuant to section 36937 of the California Government Code, allowing for ordinances of immediate presentation of the public peace, health, or safety. The City Council finds and declares that the adoption and implementation of this ordinance is necessary for the immediate preservation and protection of the public peace, health and safety as detailed above and as the City and public would suffer potentially irreversible impacts if this ordinance is not immediately implemented.

The Council therefore finds and determines that the immediate preservation of the public peace, health and safety requires that this Ordinance be enacted as an urgency ordinance pursuant to Government Code section 36937 and take effect immediately upon adoption by four-fifths of the City Council.

SECTION 4. Severability. If any section, subsection, provision, sentence, clause, phrase or word of this Ordinance is for any reason held to be illegal or otherwise invalid by any court of competent jurisdiction, such invalidity shall be severable, and shall not affect or impair any remaining section, subsection, provision, sentence, clause, phrase or word included within this Ordinance, it being the intent of the City that the remainder of the Ordinance shall be and shall remain in full force and effect, valid, and enforceable.

SECTION 5. Certification. The City Clerk shall certify the adoption of this Ordinance.

PASSED, APPROVED AND ADOPTED this 12th day of April 2021.

MIKKE PIERSON, Mayor

ATTEST:

(seal)

Date: _____

APPROVED AS TO FORM:

THIS DOCUMENT HAS BEEN REVIEWED
BY THE CITY ATTORNEY'S OFFICE
JOHN COTTI, City Attorney

CHART OF HERO PAY ORDINANCE ACTION IN OTHER JURISDICTIONS

City	Adopted	Key Language	Businesses Regulated	Status
Long Beach	Adopted Urgency Ordinance on January 22, 2021	<ul style="list-style-type: none"> • + \$4/hr • Applies to grocery stores with more than 300 employees nationally/more than 15 per grocery store within City • In effect for 120 days 	<ul style="list-style-type: none"> • Grocery stores who employ 300 or more grocery workers nationally and employ more than 15 employees per grocery store in the City 	<ul style="list-style-type: none"> • Litigation pending; California Grocers Association v. Long Beach (2:21-cv-00524-DMG-AS) • US District Court Wright denied CGA argument for a preliminary injunction concluding that CGA failed to establish a likelihood of success on the merits.
Los Angeles County	Enacted Ordinance requiring HERO Pay for grocery store employees (February 22, 2021)	<ul style="list-style-type: none"> • +\$5/hr • Applies to grocery stores with more than 300 employees nationally/more than 10 employees per store • In effect for 120 days 	<ul style="list-style-type: none"> • Grocery and Drug Retail Stores with 300 or more employees nationally and 10 or more employees on-site 	
Los Angeles City	Approved an emergency ordinance to require large grocery and pharmacy	<ul style="list-style-type: none"> • +\$5/hr 	<ul style="list-style-type: none"> • Grocery and Drug Retail Stores with 300 or more 	Kroger has announced the closure of 3 stores in the City of Los Angeles citing

CHART OF HERO PAY ORDINANCE ACTION IN OTHER JURISDICTIONS

City	Adopted	Key Language	Businesses Regulated	Status
	retailers to provide hazard pay (March 3, 2021)	<ul style="list-style-type: none"> Applies to grocery stores with more than 300 employees nationally In effect for 120 days 	employees nationally and 10 or more employees on-site	underperformance and the increase cost of the HERO Pay ordinance.
City and County of San Francisco	Adopted emergency ordinance for Hazard Pay for grocery and retail workers (March 9, 2021)	<ul style="list-style-type: none"> +\$5/hr Duration that City/County is in Purple, Red or Orange level of Community Disease Transmission 	<ul style="list-style-type: none"> Grocery stores with at least 40 locations nationwide who employ workers in the City 	Adopted resolution after passing non-binding resolution in January
Pomona	Adopted urgency ordinance requiring Hazard Pay for “big box” retailers (March 1, 2021)	<ul style="list-style-type: none"> +\$4/hr Would apply to all retail stores that are publicly traded with at least 300 employees nationwide and more than 10 employees per store 	<ul style="list-style-type: none"> Would apply to grocery stores, retail drug stores and “big box” retailers 	

CHART OF HERO PAY ORDINANCE ACTION IN OTHER JURISDICTIONS

City	Adopted	Key Language	Businesses Regulated	Status
		<ul style="list-style-type: none"> • Would apply to ALL RETAIL WORKERS • Duration of 120 days 		
Santa Ana	Adopted ordinance requiring HERO Pay for grocery and retail pharmacy workers (March 2, 2021)	<ul style="list-style-type: none"> • +\$4/hr • Applies to grocery stores with more than 300 employees nationally • In effect for 120 or 180 days 	<ul style="list-style-type: none"> • Would apply to grocery retail employees within City 	
Santa Monica	Adopted ordinance requiring grocery store chains and drug retailers to provide HERO Pay (March 9, 2021)	<ul style="list-style-type: none"> • +\$5/hr • 120 days 	<ul style="list-style-type: none"> • Public stock exchange or more than 300 workers nationwide and more than 10 employees per store per pay period 	
Coachella	Passed urgency ordinance requiring grocery stores, retail pharmacy, restaurant, and agricultural employers	<ul style="list-style-type: none"> • +\$4/hr • Applies to employers who 	<ul style="list-style-type: none"> • Agricultural operations, grocery store, restaurant, or retail pharmacy 	

CHART OF HERO PAY ORDINANCE ACTION IN OTHER JURISDICTIONS

City	Adopted	Key Language	Businesses Regulated	Status
	provide HERO Pay to their employees (February 10, 2021)	<p>have 300 employees nationwide and at least 5 per location in the City</p> <ul style="list-style-type: none"> • 120 days 	<p>locations with 300 or more workers nationally and employs more than 5 employees per location in the City</p>	
Berkeley	Adopted emergency ordinance requiring Hazard Pay for Grocery Store workers during the pandemic (February 23, 2021)	<ul style="list-style-type: none"> • +\$5/hr • Would last until City returns to Yellow Tier 4 designation 	<ul style="list-style-type: none"> • Applies to commercial establishments classified as Industry 445110 under the North American Industry Classification System with a total floor area over 2,500 square feet and selling 25 linear feet of more of food 	
West Hollywood	Adopted HERO Pay ordinance (February 16, 2021 and expanded on March 1, 2021)	<ul style="list-style-type: none"> • +\$5/hr • In effect for 120 days 	<ul style="list-style-type: none"> • Applies to publicly traded or have at least 300 employees nationwide and more than 15 employees per store in the City • Additionally, expanded to include 	<ul style="list-style-type: none"> • California Grocers Association filed a lawsuit against the City immediately

CHART OF HERO PAY ORDINANCE ACTION IN OTHER JURISDICTIONS

City	Adopted	Key Language	Businesses Regulated	Status
Montebello	Adopted HERO Pay Ordinance at January 27, 2021 meeting	<ul style="list-style-type: none"> • +\$4/hr • In effect for 180 days • Applies to Grocery and large drug store employees 	<ul style="list-style-type: none"> • drug stores with national chains • Also included Target which carries drug and grocery stores • Grocery and drug retail workers at publicly traded or employers who have at least 300 employees nationwide and more than 15 employees per grocery or drug store location in the City 	California Grocers Association filed a lawsuit
Oakland	Adopted HERO Pay Ordinance on February 2, 2021	<ul style="list-style-type: none"> • +5/hr • Applies to grocery chains with more than 500 employees • Duration while threat of COVID-19 stays above the minimum level in the City 	<ul style="list-style-type: none"> • Grocery store chains with 500 or more employees nationwide 	California Grocers Association filed a lawsuit

CHART OF HERO PAY ORDINANCE ACTION IN OTHER JURISDICTIONS

City	Adopted	Key Language	Businesses Regulated	Status
San Jose	Enacted ordinance establishing Hazard Pay for grocery store employees	<ul style="list-style-type: none"> • +\$3/hr • 120 days 	<ul style="list-style-type: none"> • Over 15,000 square feet in size that sells household foodstuffs for offsite consumption • At least 10% of its sales floor area dedicated to sale non-taxable merchandise • At least 300 employees nationwide 	California Grocers Association filed a lawsuit
Irvine	Adopted ordinance requiring “HERO Pay” (February 9, 2021)	<ul style="list-style-type: none"> • +\$4/hr • 120 days 	<ul style="list-style-type: none"> • Any retail establishment that employs at least 15 employees at a retail establishment and whose owner, parent company, franchisor or network of franchises employees 300 or more employees nationally 	
San Leandro	Adopted Hazard Pay Ordinances for Local	<ul style="list-style-type: none"> • +\$5/hr 	<ul style="list-style-type: none"> • Any retail food establishment with 300 or more 	California Grocers Association filed a lawsuit

CHART OF HERO PAY ORDINANCE ACTION IN OTHER JURISDICTIONS

City	Adopted	Key Language	Businesses Regulated	Status
	Grocery Workers (February 17, 2021)	<ul style="list-style-type: none"> 120 days or until city exits yellow tier under the current statewide health order framework 	employees nationwide	
Calexico	Considered ordinance at next council meeting March 3, 2021	<ul style="list-style-type: none"> +\$4/hr Applies to employers who have 300 employees nationwide and at least 5 per location in the City 120 days 	<ul style="list-style-type: none"> Agricultural operations, grocery store, restaurant, or retail pharmacy locations with 300 or more workers nationally and employs more than 5 employees per location in the City 	Ordinance failed to pass on a 3-2 vote.
El Monte	Adopted HERO Pay ordinance at its March 16, 2021 council meeting	<ul style="list-style-type: none"> +\$4/hr Earlier of either: <ol style="list-style-type: none"> 120 days from March 16, 2021; or 15 days after County of Los 	<ul style="list-style-type: none"> 300 or more employees nationally and more than 10 employees per location in El Monte 	Council would like more time for business input.

CHART OF HERO PAY ORDINANCE ACTION IN OTHER JURISDICTIONS

City	Adopted	Key Language	Businesses Regulated	Status
Palm Springs	Adopted Ordinance establishing ordinance requiring “HERO Pay” for front-line grocery workers (March 11, 2021)	<p>Angeles is classified in Tier 4 Minimal (Yellow) Covid Threat Category</p> <ul style="list-style-type: none"> • +\$4/hr • 120 days 	<ul style="list-style-type: none"> • 300 employees of more nationally and more than 15 employees per location in the City 	