

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY OF OLYMPIA, WASHINGTON, RELATING TO
EMPLOYMENT IN OLYMPIA; ESTABLISHING LABOR STANDARDS
REQUIREMENTS FOR ADDITIONAL COMPENSATION FOR GROCERY EMPLOYEES
WORKING IN OLYMPIA; DECLARING AN EMERGENCY; AND ESTABLISHING AN
IMMEDIATE EFFECTIVE DATE**

WHEREAS, on January 31, 2020, the Secretary of the United States Department of Public Health and Human Services, Alex Azar, declared a public emergency effective January 27, 2020, for the novel coronavirus known as COVID-19; and

WHEREAS, on February 29, 2020, Governor Jay Inslee signed Proclamation 20-05 declaring that a State of Emergency exists in all counties in the State of Washington due to the number of confirmed cases of COVID-19 in the State, and that the risk of person-to-person transmission throughout Washington State and the United States of America would significantly impact the life and health of our people, as well as the economy of Washington State, and is a public disaster that affects life, health, property or the public peace. The Governor directed State agencies and departments to utilize State resources to do everything reasonably possible to assist political subdivisions of the State in an effort to respond and recover from the outbreak; and

WHEREAS, on March 17, 2020, the Olympia City Council enacted Ordinance No. 7233 declaring a state of public health emergency, and that the Olympia City Council will take all actions within its powers and resources to protect the public peace, health, safety and welfare of the citizens and businesses of the City of Olympia during the novel coronavirus COVID-19 pandemic to mitigate the consequences of the illness and public health emergency taking place and to maintain essential public services such as police, fire, public works and public utilities such as water and solid waste collection; and

WHEREAS, as a result of the continued worldwide spread of COVID-19, its significant progression in Washington State, and the high risk it poses to our most vulnerable populations, the Governor subsequently issued amendatory Proclamations 20-06 through 20-53, 20-55 through 20-67, and 20-69 through 20-70, exercising the Governor's emergency powers under RCW 43.06.220 by prohibiting certain activities and waiving and suspending specified laws and regulations; and

WHEREAS, on June 16, 2020, the Olympia City Council enacted Ordinance No. 7246 declaring a continuing state of public health emergency and authorizing actions as are reasonable and necessary to mitigate conditions caused by such public health emergency; and

WHEREAS, on September 15, 2020, the Olympia City Council enacted Ordinance No. 7248 declaring a continuing state of public health emergency and authorizing actions as are reasonable and necessary to mitigate conditions caused by such public health emergency; and

WHEREAS, on December 15, 2020, the Olympia City Council enacted Ordinance No. 7266 declaring a continuing state of public health emergency and authorizing actions as are reasonable and necessary to mitigate conditions caused by such public health emergency; and

WHEREAS, on February 23, 2021, the Olympia City Council enacted Ordinance No. 7274 declaring a continuing state of public health emergency and authorizing actions as are reasonable and necessary to mitigate conditions caused by such public health emergency until 11:59 p.m. on June 15, 2021; and

WHEREAS, on January 19, 2021, the Governor issued extensions of 26 emergency proclamations, which were extended by the Washington State Legislature on January 15, 2021, with the passage of Senate Concurrent Resolution 8402. The proclamations cover a broad range of statutory waivers that support

state and local services during the COVID pandemic, including those necessary to support long term care and behavioral health facilities, to provide access to government, to provide relief from tax penalties and fees, and to protect federal stimulus payments from collection for consumer debt. These emergency orders are effective throughout the state of emergency, unless rescinded by the Governor or the Legislature, whichever occurs first; and

WHEREAS, the COVID-19 disease, caused by a virus that spreads easily from person to person which may result in serious illness or death and has been classified by the World Health Organization as a worldwide pandemic continues to spread throughout Washington State, seriously increasing the threat of associated health risks statewide; and

WHEREAS, the health professionals and epidemiological modeling experts state the United States and the State of Washington must continue to modify and institute community mitigation efforts since the nature of COVID-19 viral transmission, including both asymptomatic and symptomatic spread as well as the relatively high infectious nature, suggests it is appropriate to slowly re-open Washington State only through a careful, phased, and science-based approach. Modelers continue to agree that fully relaxing social distancing measures will result in a sharp increase of cases; and

WHEREAS, the worldwide COVID-19 pandemic and its progression in Washington State continues to threaten the life and health of our people as well as the economy of Washington State, and remains a public disaster affecting life, health, property or the public peace; and

WHEREAS, the Washington State Department of Health continues to maintain a Public Health Incident Management Team in coordination with the State Emergency Operations Center and other supporting state agencies to manage the public health aspects of the incident; and

WHEREAS, on March 12, 2021, the Washington State Department of Health reported 350,661 confirmed cases and 5,167 deaths statewide due to COVID-19, and Thurston County reported 7,419 confirmed cases and 78 deaths due to COVID-19; and

WHEREAS, as of March 12, 2021, COVID-19 has resulted in 118,650,470 confirmed reported cases worldwide and worldwide deaths of 2,631,594, and 29,506,986 confirmed cases in the United States, and deaths totaling 535,758 within the United States; and

WHEREAS, in response to COVID-19, the federal and state governments have imposed eviction moratoria, provided financial support for persons and businesses, and imposed public health orders to protect people and businesses; and

WHEREAS, essential grocery workers cannot work remotely or by video; and

WHEREAS, according to the Brookings Metropolitan Policy Program, 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, these profits are at least in part due to the efforts of grocery employees and other essential workers working despite a lethal pandemic and an above-average susceptibility and risk of exposure to COVID-19 in their workplace; and

WHEREAS, in exchange for their brave efforts, grocery employees have received limited or inconsistent additional pay despite grocery businesses earning record-breaking profits; and

WHEREAS, some grocers and grocer associations argue that they have already provided grocery workers with (temporary) extra pay, paid leave, unemployment insurance, enhanced safety protocols

(professional deep cleaning sanitation sessions, social distancing, provided face masks, shielding, and limited store access), and they allege that they are paying increased taxes; and

WHEREAS, some grocery workers complain that stores are not thoroughly cleaned, mask requirements for the public are not enforced, and limited store access is not enforced; and

WHEREAS, in a study conducted by researchers including Dr. Justin Yang, an assistant professor at Boston University School of Medicine and researcher at Harvard TH Chan School of Public Health, found that 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; and

WHEREAS, the cities of Seattle, Berkeley, Burien, Long Beach, Los Angeles, Oakland, Santa Clara, and Tacoma, have considered, are considering, or have adopted ordinances requiring grocery worker hazard pay; and

WHEREAS, the public health emergency caused by COVID-19 continues to warrant the exercise of the City's powers under authority of Article XI, Section 11, of the Washington State Constitution; and

WHEREAS, RCW 35A.11.020 provides that legislative bodies of municipalities in noncharter and code cities may adopt and enforce ordinances of all kinds relating to and regulating their local or municipal affairs and appropriate to the good government of the city; and

WHEREAS, RCW 35A.11.050 provides in part that the general grant of municipal power conferred by the Optional Municipal Code in Title 35A RCW on legislative bodies of noncharter and charter code cities "is intended to confer the greatest power of local self-government consistent with the Constitution of this state and shall be construed liberally in favor of such cities;" and

WHEREAS, the Washington State Supreme Court has found the National Labor Relations Act ("NLRA") does not preempt the establishment of a minimum wage and other employee protections since the establishment of a minimum labor standard does not impermissibly intrude upon the collective-bargaining process. *FiloFoods, LLC v. City of SeaTac*, 183 Wn.2d 770, 797-798 (2015); and

WHEREAS, in Washington State, the Supreme Court has held that "Courts cannot interfere with legislative discretion, and are slow to declare ordinances invalid because unreasonable, when the power to legislate upon the subject has been conferred upon the common council. The council's discretion, and not the court's, must control. In such matters the city authorities are usually better judges than the courts. An ordinance to be void for unreasonableness must be plainly and clearly unreasonable. There must be evidence of weight that it took inception either in a mistake, or in a spirit of fraud or wantonness on the part of the enacting body." *Walla Walla v. Ferdon*, 21 Wash. 308, 311 (1899), citation omitted; and

WHEREAS, the City of Olympia 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;

NOW, THEREFORE, THE OLYMPIA CITY COUNCIL ORDAINS AS FOLLOWS:

Section 1. Findings of Fact and Statement of Intent. The Olympia City Council hereby incorporates the foregoing recitals as findings of fact and declares that the City Council is granted authority to pass regulations designed to protect and promote public health, safety, and welfare. It is the intent of the Olympia City Council to exercise the City of Olympia's police powers to pass regulations that promote public health, safety, and welfare during the COVID-19 public health emergency by requiring grocery businesses to provide hazard pay for qualifying grocery employees performing work in the City of Olympia, thereby increasing retention of employees who provide essential services on the frontlines of a global pandemic and paying additional compensation to those employees for the hazards of working with

significant exposure to an infectious disease. Grocery employees are essential and necessary workers 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 the Olympia community and to encourage grocery workers to continue their vital work, and provide them with additional financial resources.

Section 2. Definitions.

A. "Grocery business" means a retail store or entity operating in the City of Olympia 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.

B. "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 Olympia that works exclusively in a grocery store facility and is unable to work remotely due to employment requirements.

Section 3. Hazard Pay. As permitted under Washington State Constitution Article XI, Section 11, grocery businesses shall pay grocery employees \$4.00 an hour over the grocery employees' hourly rate of pay as hazard pay for any work performed during this Washington State of Emergency in the City of Olympia, in addition to the grocery employees' other compensation. This Ordinance shall not apply to those grocery employees that were receiving hazard pay before this Ordinance became effective, but if the hazard pay amount is less than \$4.00, the grocery business shall pay the difference between the regular rate and the hazard rate.

Section 4. Safety. Each grocery business shall comply with health, safety, staffing, and workplace requirements consistent with applicable federal, state, and local health district requirements. Grocery businesses must disclose any COVID-19 outbreak to grocery employees within 24 hours of notifying state and county public health authorities.

CDC COVID-19 Guidance or an equivalent must be conspicuously posted in the grocery employee breakrooms, locker rooms, or lunchrooms. This provision applies to all grocery businesses regardless of whether grocery employees are already receiving hazard pay.

Section 5. Enforcement. 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 Thurston County Superior Court.

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 fifty percent (50%) penalty of the unpaid compensation as a court of competent jurisdiction may find appropriate.

Section 7. Retaliation Prohibited. No grocery employer covered under the terms of this Ordinance shall, or any other person, interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right protected under this Ordinance.

Section 8. Termination or Revocation. This Ordinance shall cease to be effective on the date and at the time that the Washington State of Emergency ends either by proclamation or declaration of the Governor or by state law, whichever occurs first. Council may review whether the Ordinance should remain in effect after four (4) months from the effective date of this Ordinance. The Enforcement and Penalties sections of this Ordinance shall continue for an additional three (3) months, excluding any time that the grocery employee has been diagnosed with COVID-19 during those three (3) months. The City Council may revoke or terminate this Ordinance as and when it finds appropriate.

Section 9. Posting of Notice. Grocery businesses must post a copy of this Ordinance next to or near the CDC COVID-19 Guidance or CDC COVID-19 Guidance equivalent within three (3) calendar days of adoption.

Section 10. Severability. Should a court of competent jurisdiction find any section, paragraph, sentence, clause, or phrase of this Ordinance, or its application to any person or circumstance, unconstitutional or otherwise invalid for any reason, or should any portion of this Ordinance be preempted by state or federal law or regulation, such decision or preemption shall not affect the validity of the remaining portions of this Ordinance or its application to other persons or circumstances.

Section 11. Effective Date. This Ordinance is for the preservation of public peace, health, safety, and welfare, and shall take immediate effect upon adoption as provided by law.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

Mark Barber
CITY ATTORNEY

PASSED:

APPROVED:

PUBLISHED: