

LOCATION:

El Monte City Hall – East
City Council Chambers
11333 Valley Boulevard
El Monte, CA 91731



DATE AND TIME:

Monday,
March 8, 2021
5:30 p.m.

CONCURRENT SPECIAL MEETING AGENDA OF THE CITY COUNCIL OF THE CITY OF EL MONTE

MEETING JOINTLY AND REGULARLY WITH THE EL MONTE HOUSING AUTHORITY; EL MONTE PUBLIC FINANCING AUTHORITY; EL MONTE WATER AUTHORITY; EL MONTE PARKING AUTHORITY; SUCCESSOR AGENCY TO THE FORMER EL MONTE COMMUNITY REDEVELOPMENT AGENCY; HOUSING SUCCESSOR AGENCY; AND, FROM TIME TO TIME, SUCH OTHER BODIES OF THE CITY WHOSE MEMBERSHIP IS COMPOSED EXCLUSIVELY OF THE MEMBERSHIP OF THE CITY COUNCIL

COUNCILMEMBERS/AUTHORITY MEMBERS:

Jessica Ancona, Mayor

- ♦ *Victoria Martinez Muela, Mayor Pro Tem* ♦ *Martin R. Herrera, Councilmember*
♦ *Dr. Maria Morales, Councilmember* ♦ *Alma D. Puente, Councilmember*

Members of the public wishing to observe the meeting may do so in one of the following ways:

- (1) Turn your TV to Channel 3;
- (2) City's website at <http://www.elmonteca.gov/378/Council-Meeting-Videos>; or

Members of the public wishing to make public comment may do so via the following ways:

- (1) Call-in Conference Line (888) 204-5987; Code 8167975 – comments/questions can be submitted per the instructions at the beginning of the meeting; and
- (2) Email – All interested parties can submit questions/comments in advance to the City Clerk's general email address: cityclerk@elmonteca.gov.

[Instruction regarding accommodation under the Americans with Disabilities Act can be found on the last page of this Agenda.](#)

Concurrent Special City Council Meeting of March 8, 2021

1. CALL TO ORDER:

2. ROLL CALL FOR CITY COUNCIL AND AUTHORITY BODIES:

Jessica Ancona, Mayor/Chair
Victoria Martinez Muela, Mayor Pro Tem/Authority Member
Martin R. Herrera, Councilmember/Authority Member
Dr. Maria Morales, Councilmember/Authority Member
Alma D. Puente, Councilmember/Authority Member

3. APPROVAL OF AGENDA:

4. INVOCATION:

5. FLAG SALUTE:

6. SPECIAL MEETING PUBLIC COMMENT REGARDING AGENDIZED MATTERS ONLY:

As provided under **Government Code Section 54954.3**, this time has been set aside for persons in the audience to provide comment or make inquiries on matters appearing on this **Special Meeting agenda only**. Although no person is required to provide their name and address as a condition to attending a meeting, persons who wish to address the body are asked to state their name and address. Each speaker will be limited to three (3) continuous minutes. Speakers may not lend any portion of their speaking time to other persons or borrow additional time from other persons. All comments or queries presented by a speaker shall be addressed to the body as a whole and not to any specific member thereof. No questions shall be posed to any member of the body except through the presiding official of the meeting, members of the body are under no obligation to respond to questions posed by speakers but may provide brief clarifying responses to any comment made or questions posed. The body may not engage in any sort of prolonged discussion or deliberation with any speaker or group of speakers on matters that are not listed on this Special Meeting agenda.

Enforcement of Decorum: The Chief of Police of the City of El Monte, or such member, or members of the Police Department as the Chief of Police may designate, shall serve as the Sergeant-at-Arms of the meeting. The Sergeant-at-Arms shall carry out all orders and instructions given by the presiding official for the purpose of maintaining order and decorum at the meeting. While members of the public are free to level criticism of policies and the action(s) or proposed action(s) of the body or its members, members of the public may not engage in behavior that is disruptive to the orderly conduct of the proceedings, including, but not limited to, conduct that



Concurrent Special City Council Meeting of March 8, 2021

prevents other members of the public from being heard when it is their opportunity to speak or which prevents members of the audience from hearing or seeing the proceedings.

Members of the public may not threaten any person with physical harm or act in a manner that may reasonably be interpreted as an imminent threat of physical harm. All persons attending the meeting must adhere to policies barring harassment based upon a person's race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, gender, sexual orientation or age.

7. CLOSED SESSION:

7.1 Closed Session Pursuant to Government Code Section 54956.9(d)(2) and 5495.69(e)(1) – Conference with Legal Counsel Regarding Anticipated Litigation – One (1) Matter.

8. PUBLIC HEARINGS:

8.1 A Public Hearing to Consider and Approve an Uncodified Urgency Ordinance Establishing Labor Standards and Requirements for “Hero” Pay for Front-Line Retail Establishment Employees in the City of El Monte for One Hundred Twenty Days; or, in the Alternative, Approving the Same Ordinance for First Reading as a Regular City Council Ordinance.

RECOMMENDATION OF BUSINESS ITEM UNDER CONSIDERATION:

It is recommended that the City Council:

1. Open public hearing;
2. Receive presentation from staff;
3. Pose questions to staff;
4. Allow members of the public to offer comment;
5. Pose follow-up questions to staff;
6. Conduct additional deliberation, if needed;
7. Adopt an uncodified urgency ordinance to establish a labor standards and requirements for “Hero” Pay for front-line retail establishment employees in the City of El Monte for hundred twenty days.

Total Cost: N/A

Account No: N/A

Is the cost of this item budgeted? N/A

Ordinance No. 2997



Concurrent Special City Council Meeting of March 8, 2021

9. ADJOURNMENT:

The next Regular Meeting of the City Council will be held on **March 16, 2021** at 6:00 p.m. This Agenda will be posted on the City's website, www.ci.el-monte.ca.us, and physically posted no less than 72 hours prior to the start of the subject regular meeting. Although it is the City's practice and desire to electronically post a copy of this Agenda along with supporting material as part of its website posting, the size or formatting of certain supporting materials may render their website posting infeasible. Nevertheless, all supporting materials related to any item on this Agenda, that is made available to the members of the council may be inspected by members of the public at the City Clerk's Office located at 11333 Valley Boulevard, El Monte, Monday through Thursday, 7:00 am – 5:30 pm. For more information, please call the City Clerk's Office at 626-580-2016.

All public meetings and events sponsored or conducted by the City of El Monte are held in sites accessible to persons with disabilities. Requests for accommodations may be made by calling the office of the City Clerk at (626) 580-2016 at least three (3) working days prior to the event, if possible. This Agenda and copies of documents distributed at the meeting are available in alternative formats upon request.

Posted: March 6, 2021 at 7:35 p.m.





CITY OF EL MONTE

CITY MANAGER'S OFFICE
CITY COUNCIL AGENDA REPORT

CITY COUNCIL CONCURRENT SPECIAL MEETING OF MARCH 8, 2021

March 5, 2021

The Honorable Mayor and City Council
City of El Monte
11333 Valley Boulevard
El Monte, CA 91731

Dear Mayor and City Council:

A PUBLIC HEARING TO CONSIDER AND APPROVE AN UNCODIFIED URGENCY ORDINANCE ESTABLISHING LABOR STANDARDS AND REQUIREMENTS FOR "HERO" PAY FOR FRONT-LINE RETAIL ESTABLISHMENT EMPLOYEES IN THE CITY OF EL MONTE FOR ONE HUNDRED TWENTY DAYS; OR, IN THE ALTERNATIVE, APPROVING THE SAME ORDINANCE FOR FIRST READING AS A REGULAR CITY COUNCIL ORDINANCE.

IT IS RECOMMENDED THAT THE CITY COUNCIL:

1. Open public hearing;
2. Receive presentation from staff;
3. Pose questions to staff;
4. Allow members of the public to offer comment;
5. Pose follow-up questions to staff;
6. Conduct additional deliberation, if needed;
7. Adopt an uncodified urgency ordinance to establish a labor standards and requirements for "Hero" Pay for front-line retail establishment employees in the City of El Monte for hundred twenty days.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

Since March of 2020, the COVID-19 pandemic has dramatically impacted the City of El Monte citizens, business owners, employees, and visitors. On March 17, 2020, the City Council declared a local emergency within the City.

Due to the virus, millions of frontline retail employees 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, are up exponentially since early November. Due to these shifting emergency circumstances, at the beginning

of the pandemic, a number of retail companies initially provided extra COVID-19 related compensation to their employees. This bonus, commonly known as “Hero Pay”, often was implemented as a temporary hourly wage increase or a one-off bonus for essential employees.

However, 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 employees, leaving some grocery employees as the primary earners in their households.

Covered retail establishments are essential businesses operating in El Monte during the COVID-19 emergency making retail establishment employees highly vulnerable to economic insecurity and health or safety risks. Retail establishment employees working for covered retail establishments are essential workers who perform services that are fundamental to the economy and health of the community during the COVID-19 crisis. They work in high risk conditions with inconsistent access to protective equipment and other safety measures; work in public situations with limited ability to engage in physical distancing; and continually expose themselves and the public to the spread of disease.

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.

Retail establishment employees working during the COVID-19 emergency merit additional compensation because they are performing hazardous duty due to the significant risk of exposure to the COVID-19 virus. Retail establishment employees have been working under these hazardous conditions for months. They are working in these hazardous conditions now and will continue to face safety risks as the virus presents an ongoing threat for an uncertain period, potentially resulting in subsequent waves of infection.

The availability of retail establishments is fundamental to the health of the community and is made possible during the COVID-19 emergency because retail establishment employees are on the frontlines of this devastating pandemic supporting public health, safety, and welfare by working in hazardous situations.

Establishing an immediate requirement for retail establishments to provide premium pay to designated retail employees protects public health, supports stable incomes, and promotes job retention by ensuring that designated retail employees are compensated for the substantial risks, efforts, and expenses they are undertaking to provide essential services in a safe and reliable manner during the COVID-19 emergency.

As a result of the COVID-19 pandemic, this Urgency Ordinance aims to protect and promote the public health, safety, and welfare during the COVID-19 emergency by requiring grocery stores to provide premium pay for grocery workers performing work in El Monte. Requiring retail establishments to provide premium pay to establishment

employees compensates establishment employees for the risks of working during a pandemic. Establishment employees face magnified risks of catching or spreading the COVID-19 disease because the nature of their work involves close contact with the public, including members of the public who are not showing symptoms of COVID-19 but who can spread the disease. The provision of premium pay better ensures the retention of these essential workers who are on the frontlines of this pandemic providing essential services and who are needed throughout the duration of the COVID-19 emergency. As such, they are deserving of fair and equitable compensation for their work.

The global health pandemic has emphasized the importance of workers in industries now highlighted as essential, including front-line grocery 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 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, are up exponentially since early November. An NBC Investigation article from January 15, 2021, discovered 146 outbreaks last month 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 COVID toll 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 virus have been detected in California, which is hitting California just as California begins to recover 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 30% 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

¹ <https://www.brookings.edu/research/reopening-america-low-wage-workers-have-suffered-badly-from-covid-19-so-policymakers-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.safetyandhealthmagazine.com/articles/20524-covid-19-pandemic-grocery-store-workers-face-accelerated-risk-of-infection-study-finds>.

⁴ <https://www.safetyandhealthmagazine.com/articles/20524-covid-19-pandemic-grocery-store-workers-face-accelerated-risk-of-infection-study-finds>

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/>

companies studied in the report received pay raises only an average of \$1.11 per hour since the pandemic began.

The attached urgency ordinance does not include a criminal penalty or enforcement by the City, however, violation of the ordinance would expose retail establishments to civil liability, enforceable via court action by any restaurant aggrieved by the failure to comply with the ordinance.

DISCUSSION

The proposed Urgency Ordinances would require certain retail establishments stores within the City to provide premium pay of an additional \$4.00 per hour to their employees in El Monte for 120 days from the effective date of this Urgency Ordinance.

The Urgency Ordinance would apply to retail establishments located in the City of El Monte that:

(a) are more than 15,000 square feet and (i) devotes seventy percent (70%) or more of its sales floor area to retailing a general range of food products, which may be fresh or packaged, or (ii) receives seventy percent (70%) or more revenue from retailing a general range of food products;

(b) greater than 50,000 square feet of gross buildable area that will generate sales or use tax pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200) of Division 2 of the Revenue and Taxation Code);

(c) is more than 50,000 square feet and devotes 10% or more of its sales floor area to the sale of merchandise that is non-taxable pursuant to Section 6359 of the Revenue and Taxation Code, including retail establishments with multiple tenants, so long as consumer goods and nontaxable items are sold under the same roof with shared checkout stands, entrances, and exits; or

(d) is retail pharmacy that sells a variety of prescription and nonprescription medicines, as well as any combination of miscellaneous items, including, but not limited to, sundries, dry foods, packaged foods, beverages, fresh produce, meats, deli products, dairy products, canned foods, or prepared foods.

Retail establishments may not, as a result of this Urgency Ordinances, retaliate against an employee by reducing compensation or otherwise limiting the employee's earning capacity. In addition, these establishments must provide their employees with notice of this Urgency Ordinance, including their right to premium pay, their right to be protected from retaliation, and their ability to bring a civil action if these rights are violated. Records showing compliance with these Urgency Ordinances must be kept for at least two years.

Any retail establishment that violates this Urgency Ordinances may be subject to any appropriate relief at law or equity including reinstatement of the aggrieved employee, front pay in lieu of reinstatement with full payment of unpaid compensation plus interest in favor of the aggrieved employee, and liquidated damages in an additional amount of up to twice the unpaid compensation. If an employee prevails in a civil action, reasonable attorney's fees and costs may be awarded, in addition other legal or equitable relief as may be appropriate. The attached urgency ordinance, however, does not include a criminal penalty or enforcement by the City.

PENDING LEGAL ISSUES

After passage of their HERO Pay ordinance the City of Long Beach was challenged by the California Grocers Association ("CGA"). A preliminary injunction hearing was heard on February 23, 2021. The CGA contends that the Long Beach ordinance unreasonably singles out specific employees for additional pay while ignoring workers outside the grocery industry. The specific causes of action alleged by the CGA include: (i) preemption under the National Labor Relations Act; (ii) violation of the Equal Protection clauses of the US and California Constitutions; and (iv) violation of the Contracts clauses of both the US and California Constitutions. In addition to injunctive relief, the CGA has also sought the recovery of attorneys' fees.

U.S. District Judge Otis Wright stated that the 120 day requirement is not tied to any ascertainable benchmark like number of new cases in Los Angeles County or the City of Long Beach, but if that ordinance had a rational basis for accomplishing a legitimate municipal purpose it may be upheld. He added that his decision would "follow shortly".

The CGA has so far filed suits against a majority of jurisdictions that has passed a similar ordinance including West Hollywood, Montebello, Oakland, San Jose, and San Leandro.

FISCAL IMPACT/FINANCING

There would be no fiscal impact to the City

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

There is no provision in the ordinance for City staff to enforce. Retail establishment employees pursue legal remedies in a court of law.

RECOMMENDATION:

If it is the desire of the City Council for the ordinance to take effect immediately, it is recommended that it be approved by 4/5 vote of the City Council pursuant to

HONORABLE MAYOR AND CITY COUNCIL
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Government Code Section 36937(b). Alternatively, the ordinance may be approved as a regular ordinance for first reading by simple majority of the City Council with the understanding that the ordinance will require a second reading and an additional 30 days after second reading before it can go into effect.

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Respectfully submitted,

ALMA K. MARTINEZ
City Manager

ATTACHMENT(S):

1. Ordinance

DATE: MARCH 8, 2021
PRESENTED TO EL MONTE CITY COUNCIL
<input type="checkbox"/> APPROVED <input type="checkbox"/> DENIED <input type="checkbox"/> PULLED <input type="checkbox"/> RECEIVE AND FILE <input type="checkbox"/> CONTINUED
<input type="checkbox"/> REFERRED TO
CHIEF DEPUTY CITY CLERK

[URGENCY] ORDINANCE NO. _____

**AN UNCODIFIED [URGENCY] ORDINANCE OF
THE CITY COUNCIL OF THE CITY OF EL MONTE
ESTABLISHING LABOR STANDARDS AND
REQUIREMENTS FOR “HERO” PAY FOR FRONT-
LINE RETAIL ESTABLISHMENT EMPLOYEES IN
THE CITY OF EL MONTE FOR ONE HUNDRED
TWENTY DAYS**

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 (“WHO”) as a worldwide pandemic; and

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

WHEREAS, the WHO has declared that COVID-19 is a global pandemic, which is particularly severe in high risk populations, such as people with underlying medical conditions and the elderly, and the WHO has raised the health emergency to the highest level, requiring dramatic interventions to disrupt the spread of this disease; and

WHEREAS, on March 4, 2020, California Governor Gavin Newsom proclaimed a state of emergency in response to new cases of COVID-19, directing state agencies to use all resources necessary to prepare for and respond to the outbreak; and

WHEREAS, on March 17, 2020, the City of El Monte (“City”) declared a local emergency to implement measures recommended by State and federal authorities; and

WHEREAS, on March 19, 2020 Governor Newsom issued an Executive Order that requires all persons to remain at home to the extent possible and requires all non-essential businesses to be closed; and

WHEREAS, on March 21, 2020 the Los Angeles County Department of Public Health issued a clarifying Safer at Home order, requiring all persons to remain at home to the extent possible, unless engaged in essential businesses; and

WHEREAS, on December 3, 2020, Governor Newsom extended the “Stay Home – Stay Healthy” proclamation; and

WHEREAS, on January 25, 2021 Governor Newsom lifted the statewide stay-at-home order, returning counties back to a tiered system; and

WHEREAS, the County Public Health Officer issued an order aligning Los

Angeles County with the State Health Officer order reopening key sectors; and

WHEREAS, Los Angeles County remains in the most restrictive purple tier where many non-essential business operations remain closed and the virus remains widespread; and

WHEREAS, as of March 5, 2021, the WHO Situation Report reported a global total of 115,289,961 cases of COVID-19, including 2,564,560 deaths; California reported 3,493,126 cases of COVID-19, including 53,448 deaths; and El Monte has reported 16,858 cases of COVID-19, including 394 deaths; and

[WHEREAS, Government Code Sections 36934 and 36937(b) authorize the City to adopt an Urgency Ordinance for the immediate preservation of the public peace, health and safety, provided that such Urgency Ordinance is passed by a four-fifths vote of the City Council]

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF EL MONTE, CALIFORNIA DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. The recitals above are true and correct and incorporated herein by reference.

SECTION 2. [Urgency] Findings.

- a) Covered retail establishments are essential businesses operating in El Monte during the COVID-19 emergency making retail establishment employees highly vulnerable to economic insecurity and health or safety risks.
- b) Retail establishment employees working for covered retail establishments are essential workers who perform services that are fundamental to the economy and health of the community during the COVID-19 crisis. They work in high risk conditions with inconsistent access to protective equipment and other safety measures; work in public situations with limited ability to engage in physical distancing; and continually expose themselves and the public to the spread of disease.
- c) 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.
- d) Retail establishment employees working during the COVID-19 emergency merit additional compensation because they are performing hazardous duty due to the significant risk of exposure to the COVID-19 virus. Retail establishment employees have been working under these hazardous conditions for months. They are working in these hazardous conditions

now and will continue to face safety risks as the virus presents an ongoing threat for an uncertain period, potentially resulting in subsequent waves of infection.

- e) The availability of retail establishments is fundamental to the health of the community and is made possible during the COVID-19 emergency because retail establishment employees are on the frontlines of this devastating pandemic supporting public health, safety, and welfare by working in hazardous situations.
- f) Establishing an immediate requirement for retail establishments to provide premium pay to designated retail employees protects public health, supports stable incomes, and promotes job retention by ensuring that designated retail employees are compensated for the substantial risks, efforts, and expenses they are undertaking to provide essential services in a safe and reliable manner during the COVID-19 emergency.
- g) Turnover, inability to pay for housing and increase childcare costs as a result of school closures and other necessities could become an immediate problem for certain grocery workers if they are not given immediate financial relief. To protect the food supply chain and the public health and safety, the City of El Monte must take also steps to guard against turnover and ensure that grocery stores in El Monte have well-trained, consistent and stable staffing.
- h) As a result of the COVID-19 pandemic, this Urgency Ordinance aims to protect and promote the public health, safety, and welfare during the coronavirus 19 (COVID-19) emergency by requiring grocery stores to provide premium pay for grocery workers performing work in El Monte. Requiring retail establishments to provide premium pay to establishment employees compensates establishment employees for the risks of working during a pandemic. Establishment employees face magnified risks of catching or spreading the COVID-19 disease because the nature of their work involves close contact with the public, including members of the public who are not showing symptoms of COVID-19 but who can spread the disease. The provision of premium pay better ensures the retention of these essential workers who are on the frontlines of this pandemic providing essential services and who are needed throughout the duration of the COVID-19 emergency. As such, they are deserving of fair and equitable compensation for their work.
- i) Government Code Sections 36934 and 36937(b) authorize the City to adopt an Urgency Ordinance for the immediate preservation of the public peace, health and safety, provided that such Urgency Ordinance is passed by a four-fifths vote of the City Council.

- j) The City Council finds that there is a current and immediate threat to the public health, safety and/or welfare and a need for the immediate preservation of the public peace, health, welfare and safety warrants this Urgency Ordinance on the facts stated above and in the corresponding staff report for the City Council Special Meeting of March 8, 2021, as well as any oral or written testimony entered into the record of the March 8, 2021 proceedings approving this Urgency Ordinance.

SECTION 3. Definitions:

- k) “Adverse action” means reducing the compensation to a designated retail employee, garnishing gratuities, temporarily or permanently denying or limiting access to work, incentives, or bonuses, offering less desirable work, demoting, terminating, deactivating, putting a covered retail employees on hold status, failing to rehire after a seasonal interruption of work, threatening, penalizing, retaliating, or otherwise discriminating against a designated retail employee for any reason prohibited by Section 7 and 10. “adverse action” also encompasses any action by the retail establishment or a person acting on the retail establishment’s behalf that would dissuade a covered retail employee from exercising any right afforded by this Urgency Ordinance.
- l) “Aggrieved party” means a designated covered retail employee or other person who suffers tangible or intangible harm due to a retail establishment or other person’s violation of this Urgency Ordinance.
- m) “City” means the City of El Monte.
- n) “Covered retail employee” means a retail employee employed directly by a retail establishment who is entitled to premium pay pursuant to this Urgency Ordinance.
- o) “Premium pay” means additional compensation owed to a designated retail employee that is separate from retail establishment payments for providing services, bonuses, and commissions, as well as tips earned from customers.
- p) “Respondent” means a retail establishment, parent company or any person who is alleged or found to have committed a violation of this Urgency Ordinance.
- q) “Retail establishment” means a retail establishment located in the City of El Monte that:

1. are more than 15,000 square feet and (i) devotes seventy percent (70%) or more of its sales floor area to retailing a general range of food products, which may be fresh or packaged, or (ii) receives seventy percent (70%) or more revenue from retailing a general range of food products;
2. greater than 50,000 square feet of gross buildable area that will generate sales or use tax pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200) of Division 2 of the Revenue and Taxation Code);
3. is more than 50,000 square feet and devotes 10% or more of its sales floor area to the sale of merchandise that is non-taxable pursuant to Section 6359 of the Revenue and Taxation Code, including retail establishments with multiple tenants, so long as consumer goods and nontaxable items are sold under the same roof with shared checkout stands, entrances, and exits; or
4. is retail pharmacy that sells a variety of prescription and nonprescription medicines, as well as any combination of miscellaneous items, including, but not limited to, sundries, dry foods, packaged foods, beverages, fresh produce, meats, deli products, dairy products, canned foods, or prepared foods.

SECTION 4. Designated retail employee coverage. For the purposes of this Urgency Ordinance, Designated retail employee are limited to those who perform work for a retail establishment where the work is performed in the City of El Monte.

SECTION 5. Retail establishment coverage.

- a) For purposes of this Urgency Ordinance, retail establishments are limited to those who employ three hundred (300) or more designated retail employees nationally and employ more than fifteen (15) employees per retail establishment in the City of El Monte.
- b) To determine the number of designated retail employee employed for the current calendar year:
 1. The calculation is based upon the average number per calendar week of designated retail employee who worked for compensation during the preceding calendar year for any and all weeks during which at least one (1) designated retail employee worked for compensation. For hiring entities that did not have any designated retail employees during the preceding calendar year, the number of designated retail employees employed for the current calendar year is calculated based upon the average number per calendar week of

designated retail employees who worked for compensation during the first ninety (90) calendar days of the current year in which the retail establishment engaged in business.

2. All designated retail employees who worked for compensation shall be counted, including, but not limited to:
 - i. Designated retail employees who are not covered by this Urgency Ordinance; and
 - ii. Designated retail employees who worked in the City.

SECTION 6. Premium pay requirement.

- a) Hiring entities shall provide each covered retail employee with premium pay consisting of an additional Four Dollars (\$4.00) per hour for each hour worked.
- b) Hiring entities shall provide the pay required by Section 6(a) for a minimum of one hundred twenty (120) days from the effective date of this Urgency Ordinance.
- c) Unless extended by the City Council, this Urgency Ordinance shall expire in one hundred twenty (120) days.

SECTION 7. Covered Retail Employees and consumer protection.

- a) No retail establishment shall, as a result of this Urgency Ordinance going into effect, take any of the following actions:
 1. Reduce a covered retail employee's compensation; or
 2. Limit a covered retail employee's earning capacity.
- b) It shall be a violation if this Urgency Ordinance is a motivating factor in a retail establishment's decision to take any of the actions in Section 6(a) unless the retail establishment can prove that its decision to take the action(s) would have happened in the absence of this Urgency Ordinance going into effect.

SECTION 8. Notice of rights.

- a) Hiring entities shall provide covered designated retail employees with a written notice of rights established by this Urgency Ordinance. The notice of rights shall be in a form and manner sufficient to inform designated retail employees of their rights under this Urgency Ordinance. The notice

of rights shall provide information on:

1. The right to premium pay guaranteed by this Urgency Ordinance;
 2. The right to be protected from retaliation for exercising in good faith the rights protected by this Urgency Ordinance; and
 3. The right to bring a civil action for a violation of the requirements of this Urgency Ordinance, including a retail establishment's denial of premium pay as required by this Urgency Ordinance and a retail establishment or other person's retaliation against a covered retail employees or other person for asserting the right to premium pay or otherwise engaging in an activity protected by this Urgency Ordinance.
- b) Hiring entities shall provide the notice of rights required by posting a written notice of rights in a location of the retail establishment utilized by employees for breaks, and in an electronic format that is readily accessible to the designated retail employees. The notice of rights shall be made available to the designated retail employees via smartphone application or an online web portal, in English and any language that the retail establishment knows or has reason to know is the primary language of the covered retail employee(s).

SECTION 9. Retail establishment records.

- a) Hiring entities shall retain records that document compliance with this Urgency Ordinance for covered designated retail employees.
- b) Hiring entities shall retain the records required by Section 9(a) for a period of two (2) years.
- c) If a retail establishment fails to retain adequate records required under Section 9(a), there shall be a presumption, rebuttable by clear and convincing evidence, that the retail establishment violated this Urgency Ordinance for each covered retail employee for whom records were not retained.

SECTION 10. Retail establishment records. No retail establishment employing a covered retail employees shall discharge, reduce in compensation, or otherwise discriminate against any covered retail employee for opposing any practice proscribed by this Urgency Ordinance, for participating in proceedings related to this Urgency Ordinance, for seeking to exercise their rights under this Urgency Ordinance by any lawful means, or for otherwise asserting rights under this Urgency Ordinance.

SECTION 11. Violation. The failure of any respondent to comply with any

requirement imposed on the respondent under this Urgency Ordinance is a violation. City shall not be responsible for any enforcement of this Urgency Ordinance

SECTION 12. Remedies.

- a) The payment of unpaid compensation, liquidated damages, civil penalties, penalties payable to aggrieved parties, fines, and interest provided under this Urgency Ordinance is cumulative and is not intended to be exclusive of any other available remedies, penalties, fines, and procedures.
- b) A respondent found to be in violation of this Urgency Ordinance for retaliation under Section 6 and 9 shall be subject to any appropriate relief at law or equity including, but, not limited to, reinstatement of the aggrieved party, front pay in lieu of reinstatement with full payment of unpaid compensation plus interest in favor of the aggrieved party under the terms of this Urgency Ordinance, and liquidated damages in an additional amount of up to twice the unpaid compensation.

SECTION 13. Private right of action.

- a) Any covered retail employee that suffers financial injury as a result of a violation of this Urgency Ordinance, or is the subject of prohibited retaliation under Section 9, may bring a civil action in a court of competent jurisdiction against the retail establishment or other person violating this Urgency Ordinance and, upon prevailing, may be awarded reasonable attorney fees and costs and such legal or equitable relief as may be appropriate to remedy the violation including, without limitation: the payment of any unpaid compensation plus interest due to the person and liquidated damages in an additional amount of up to twice the unpaid compensation; and a reasonable penalty payable to any aggrieved party if the aggrieved party was subject to prohibited retaliation.

SECTION 14. Encouragement of more generous policies.

- a) Nothing in this Urgency Ordinance shall be construed to discourage or prohibit a retail establishment from the adoption or retention of premium pay policies more generous than the one required herein.
- b) Nothing in this Urgency Ordinance shall be construed as diminishing the obligation of a retail establishment to comply with any contract or other agreement providing more generous protections to a covered retail employee than required by this Urgency Ordinance.

SECTION 15. Other legal requirements. This [*Urgency*] Ordinance provides minimum requirements for premium pay while working for a retail establishment during the COVID-19 emergency and shall not be construed to preempt, limit, or otherwise

affect the applicability of any other law, regulation, requirement, policy, or standard that provides for higher premium pay, or that extends other protections to designated retail employees; and nothing in this [Urgency] Ordinance shall be interpreted or applied so as to create any power or duty in conflict with federal or state law. Nothing in this Section shall be construed as restricting a covered retail employee's right to pursue any other remedies at law or equity for violation of their rights.

SECTION 16. Exemption for collective bargaining agreement. All of the provisions of this [Urgency] Ordinance, or any part thereof, may be expressly waived in a collective bargaining agreement, but only if the waiver is explicitly set forth in the agreement in clear and unambiguous terms. Unilateral implementation of terms and conditions of employment by either party to a collective bargaining relationship shall not constitute a waiver of all or any of the provisions of this [Urgency] Ordinance.

SECTION 17. No waiver of right. Except for a collective bargaining agreement provision made pursuant to Section 15, any waiver by a covered retail employee of any or all provisions of this [Urgency] Ordinance shall be deemed contrary to public policy and shall be void and unenforceable. Other than in connection with the bona fide negotiation of a collective bargaining agreement, any request by a retail establishment to a covered retail employee to waive rights given by this [Urgency] Ordinance shall be a violation of this [Urgency] Ordinance.

SECTION 18. Environmental. This [Urgency] Ordinance is exempt from the requirements of the California Environmental Quality Act ("CEQA") pursuant to State CEQA Guidelines, as it is not a "project" and has no potential to result in a direct or reasonably foreseeable indirect physical change to the environment. (Cal. Code Regs., tit.14, § 15378, subd. (a).) Further, this [Urgency] Ordinance is exempt from CEQA as there is no possibility that it or its implementation would have a significant negative effect on the environment. (Cal. Code Regs., tit.14, § 15061, subd. (b)(3).)

SECTION 19. Inconsistent Provisions. Any provision of the El Monte Municipal Code or appendices thereto inconsistent with the provisions of this [Urgency] Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to the extent necessary to implement the provisions of this [Urgency] Ordinance.

SECTION 20. Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this [Urgency] Ordinance, or any part thereof, is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this [Urgency] Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsection, subdivision, paragraph, sentence, clause or phrase would be subsequently declared invalid or unconstitutional.

SECTION 21. Construction. The City Council intends this [Urgency] Ordinance to supplement, not to duplicate or contradict, applicable state and federal law and this [Urgency] Ordinance shall be construed in light of that intent. To the extent the provisions of the El Monte Municipal Code amended by this [Urgency] Ordinance are substantially the same as the provisions of that Code as it read prior to the adoption of this [Urgency] Ordinance, those amended provisions shall be construed as continuations of the earlier provisions and not as new enactments.

SECTION 5. Publication and Effective Date.

[TEXT OPTION #1 (URGENCY ORDINANCE): This Urgency Ordinance is enacted pursuant to the authority conferred upon the City Council by Government Code Sections 36934 and 36937 and shall be in full force and effect upon its adoption by a four-fifths (4/5) vote of the City Council. The City Clerk shall cause this Urgency Ordinance to be published once in a newspaper of general circulation within fifteen (15) days after its adoption. This Urgency Ordinance shall become effective immediately and unless extended by the City Council, this Urgency Ordinance shall expire in one hundred twenty (120) days.]

[TEXT OPTION#2 (REGULAR ORDINANCE): The Mayor shall sign and the City Clerk shall attest to the passage of this Ordinance. The City Clerk shall cause the same to be published once in the official newspaper within fifteen (15) days after its adoption. This Ordinance shall become effective thirty (30) days after adoption.]

PASSED, APPROVED AND ADOPTED by the City Council of the City of El Monte at the concurrent special meeting of this 8th day of March, 2021.

Jessica Ancona, Mayor
City of El Monte

ATTEST:

Catherine A. Eredia, City Clerk
City Clerk

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES)
CITY OF EL MONTE) SS:

I, Catherine A. Eredia, City Clerk of the City of El Monte, hereby certify that the foregoing Urgency Ordinance No. ____ was passed and adopted by the City Council of the City of El Monte, signed by the Mayor and attested by the City Clerk at a concurrent special meeting of said Council held on this 8th day of March, 2021 and that said Urgency Ordinance was adopted by the following votes, to-wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

Catherine A. Eredia, City Clerk
City of El Monte