

1 [Emergency Ordinance - COVID-Related Hazard Pay]

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3 **Emergency ordinance to temporarily require certain grocery stores, drug stores, and**  
4 **property service contractors for grocery stores and drug stores to pay employees an**  
5 **additional five dollars per hour during the public health emergency related to**  
6 **COVID-19.**

7 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.  
8 **Additions to Codes** are in *single-underline italics Times New Roman font*.  
9 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.  
10 **Board amendment additions** are in double-underlined Arial font.  
11 **Board amendment deletions** are in ~~strikethrough Arial font~~.  
12 **Asterisks (\* \* \* \*)** indicate the omission of unchanged Code  
13 subsections or parts of tables.

11

12 Be it ordained by the People of the City and County of San Francisco:

13

14 Section 1. Declaration of Emergency Pursuant to Charter Section 2.107.

15 (a) Section 2.107 of the Charter authorizes passage of an emergency ordinance in  
16 cases of public emergency affecting life, health, or property, or for the uninterrupted operation  
17 of any City or County department or office required to comply with time limitations established  
18 by law.

19 (b) On February 25, 2020, Mayor London Breed proclaimed a state of emergency in  
20 response to the spread of the novel coronavirus COVID-19. On March 3, 2020, the Board of  
21 Supervisors concurred in the February 25 Proclamation and in the actions taken by the Mayor  
22 to meet the public health emergency related to COVID-19.

23 (c) The Board of Supervisors hereby finds and declares that an actual emergency  
24 exists that requires the passage of this emergency ordinance to address the COVID-19  
25 pandemic by reducing the likelihood of COVID-19 infection among workers at grocery stores

1 and drug stores, their families and coworkers, and the members of the public with whom they  
2 interact.

3  
4 Section 2. Findings and Purpose.

5 (a) On March 19, 2020, the California State Public Health Officer designated  
6 specific sectors and their workers, including workers supporting grocery stores and  
7 pharmacies, as Essential Critical Infrastructure Workers to ensure the continuity of functions  
8 critical to public health and safety, as well as economic and national security. These essential  
9 workers include grocery store and drug store employees, as well as on-site workers employed  
10 by third-party contractors, such as janitorial and security companies. Over the last year,  
11 workers in grocery stores and drug stores have continued to report to work and serve their  
12 communities, despite the ongoing hazards, including the high risk of contracting COVID-19  
13 due to their frequent interaction with members of the public. Their commitment to essential  
14 work has ensured that residents of San Francisco and elsewhere have had access to food,  
15 medication, and other essential goods during this pandemic.

16 (b) Unlike workers in many sectors of the economy, grocery and drug store workers  
17 cannot work from home. The nature of their jobs requires them to come to work at a store,  
18 usually indoors, with less air circulation than an open outdoor environment, which presents a  
19 heightened risk of contracting COVID-19. Further, at the work site, these workers face  
20 heightened risks of contracting COVID-19 due to their frequent interactions with customers  
21 and coworkers on an ongoing basis, often in close contact. Security workers incur the  
22 additional risk of physical confrontations with individuals posing security risks. Janitorial  
23 workers must sanitize surfaces that may harbor viral contaminants. These various risks are  
24 so stark that researchers estimate that food and agricultural workers in California have  
25 experienced a 39% increase in mortality during the pandemic compared with prior periods, the

1 highest of any sector. Yea-Hung Chen, et al. "Excess Mortality Associated with the COVID-19  
2 Pandemic among Californians 18-65 Years of Age, by Occupational Sector and Occupation:  
3 March through October 2020-2021," Jan. 21, 2021, on file with the Clerk of the Board of  
4 Supervisors in File No. 210181.

5 (c) Many employers have made efforts to protect workers, including requiring  
6 workers to wear personal protective equipment, requiring social distancing from each other  
7 and from customers, and sanitizing cash registers, food conveyor belts, and shopping carts.  
8 To enhance the health and safety of frontline workers, the City enacted Ordinance No. 74-20  
9 to require grocery store, drug store, restaurant, and on-demand delivery service employers to  
10 provide health and scheduling protections to employees during the public health emergency  
11 related to COVID-19. The City reenacted that emergency ordinance in Ordinance Nos. 110-  
12 20, 156-20, 230-20, and 010-21. Even with those protections, however, the health threats  
13 that these workers face have been and continue to be substantial.

14 (d) It is of paramount importance to the public health to ensure that these workers  
15 are able to protect themselves from COVID-19 infection, both to ensure the health of the  
16 workers and their families and to minimize the risk of transmission to customers and  
17 coworkers at their work sites. It is therefore critical that workers be able to afford protections  
18 to avoid exposure to COVID-19. Grocery workers and drug store workers, including janitorial  
19 and security workers hired through contractors at grocery stores and stores, are not highly  
20 paid. Yet, to maximize protection and reduce risk, many of these workers must take  
21 expensive precautions away from the work site. While employers must provide workers  
22 personal protective equipment at work, it is in the public interest for workers to purchase and  
23 use personal protective equipment when they are not at work, including when they are  
24 commuting to and from work. Workers generally must use their own personal funds to pay for  
25 off-the-job protective equipment. And, some workers also use personal funds to buy on-the-

1 job protective equipment; reports indicate that front-line workers often have concerns about  
2 COVID safety at their workplace, which may lead them to incur additional expenses when  
3 they believe that their employers' prevention measures at the workplace are insufficient.  
4 Workers may similarly incur extra costs to ensure safe commutes to and from work to  
5 minimize exposure to other individuals on public transit. Among other costs, some workers  
6 may pay for parking, tolls, and vehicle expenses to provide a safer commute.

7 (e) Public schools in the City and several other Bay Area school districts continue to  
8 offer only remote learning opportunities for students. Additionally, child care may be more  
9 expensive and difficult to locate due to child care program closures, public health restrictions,  
10 and other pandemic-related challenges. These factors have created a child care emergency  
11 for grocery and drug store workers and other essential workers who cannot work remotely and  
12 thus cannot care for their children during work hours, which is sometimes possible for people  
13 who work from home. By offsetting some of the additional child care costs that grocery and  
14 drug store workers may incur, this emergency ordinance reduces the risk that children will be  
15 left without care or with inadequate care due to pandemic-related school and child care  
16 disruptions.

17 (f) Additionally, there is a strong public interest in minimizing the need for workers  
18 to have multiple jobs, because working multiple jobs increases their exposure to others and  
19 contributes to the spread of COVID-19. Workers who receive lower wages are more likely to  
20 need to take on more than one job to support their families and pay bills. This emergency  
21 ordinance reduces that need, and therefore reduces that risk, by increasing the wages of low-  
22 wage workers in frontline positions.

23

24 Section 3. Definitions.

25 For purposes of this emergency ordinance, the following definitions apply.

1           “Agency” means the Office of Labor Standards Enforcement.

2           “Base Wage” means the hourly wage paid to an Employee by a Covered Employer on  
3 the effective date of this emergency ordinance, including, when applicable, any wage  
4 enhancement provided by the Covered Employer for overtime, holiday, or other premium pay.  
5 Base Wage shall not include any Employer-Initiated Hazard Pay.

6           “City” means the City and County of San Francisco.

7           “Covered Employer” means any person, as defined in Section 18 of the California  
8 Labor Code, including corporate officers or executives, who directly or indirectly or through an  
9 agent or any other person, including through the services of a temporary services or staffing  
10 agency or similar entity, employs, suffers or permits to work, or exercises control over the  
11 wages, hours, or working conditions of 500 or more persons worldwide, including at least 20  
12 Employees of any General Grocery, Specialty Grocery, or Pharmacy retail store, as those  
13 terms are defined in Planning Code Section 102, within the geographic boundaries of the City.  
14 Further, “Covered Employer” also means any Property Services Contractor.

15           “Employee” means any person providing labor or services for remuneration for a  
16 Covered Employer who is an employee under California Labor Code Section 2775, as may be  
17 amended from time to time, including a part-time or temporary employee.

18           “Employer-Initiated Hazard Pay” means a premium pay rate to compensate Employees  
19 for the hardships and risks associated with working during the COVID-19 pandemic, that the  
20 Covered Employer provided to its Employees on or after February 1, 2020, including  
21 collectively bargained Employer-Initiated Hazard Pay. “Employer-Initiated Hazard Pay”  
22 additionally includes a premium pay rate provided under a collective bargaining agreement  
23 predating February 1, 2020, that clearly and unambiguously requires the Covered Employer to  
24 pay increased compensation to Employees working under hazardous conditions including  
25 conditions that could expose Employees to contagious disease. If a Covered Employer pays

1 such Employer-Initiated Hazard Pay on any basis other than an hourly rate, such as a flat rate  
2 per week, the premium hourly rate shall be determined by dividing the Employer-Initiated  
3 Hazard Pay for the applicable pay period by the number of Hours Worked during such pay  
4 period.

5 “Hazard Pay” means a \$5 per hour wage bonus in addition to an Employee’s Base  
6 Wage, including any premium pay applicable at the time, for each hour worked; except that for  
7 Employees whose Base Wage is between \$30 per hour and \$34.99 per hour, “Hazard Pay”  
8 means a wage bonus for each hour worked in an amount calculated to increase the  
9 Employee’s hourly wage to \$35 per hour.

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

13 “Property Services Contractor” means a contractor or subcontractor that provides on-  
14 site janitorial or security services at any General Grocery, Specialty Grocery, or Pharmacy  
15 retail store, as those terms are defined in Planning Code Section 102, within the geographic  
16 boundaries of the City, who directly or indirectly or through an agent or any other person,  
17 including through the services of a temporary services or staffing agency or similar entity,  
18 employs, suffers or permits to work, or exercises control over the wages, hours, or working  
19 conditions of 500 or more persons worldwide, including at least 20 Employees within the  
20 geographic boundaries of the City.

21

#### 22 Section 4. Hazard Pay Requirement.

23 (a) Hazard Pay. Beginning on the effective date of this emergency ordinance, every  
24 Covered Employer shall pay Hazard Pay to all Employees whose Base Wage is less than \$35  
25 per hour.

1 (b) Credit for Employer-Initiated Hazard Pay. If a Covered Employer provides  
2 Employer-Initiated Hazard Pay to an Employee, the Covered Employer may reduce the  
3 amount of Hazard Pay required under subsection 4(a) by the amount of Employer-Initiated  
4 Hazard Pay for the Hours Worked.

5 (1) Illustrative Examples. By way of example and not limitation, if a Covered  
6 Employer provides Employer-Initiated Hazard Pay of \$4 per hour to an Employee with a Base  
7 Wage of \$20 per hour, such that the Employee's total wage is \$24 per hour, then the Covered  
8 Employer must provide an additional \$1 Hazard Pay under subsection (a) to bring the  
9 Employee's total wage to \$25 per hour. As another illustrative example, if a Covered  
10 Employer provides Employer-Initiated Hazard Pay of \$4 per hour to an Employee with a Base  
11 Wage of \$32 per hour, such that the Employee's total wage is \$36 per hour, then the Covered  
12 Employer has no obligation to provide additional Hazard Pay under subsection (a).

13 (2) Past Payments and Payments for Past Work. A Covered Employer may  
14 not reduce the amount of Hazard Pay under this subsection (b) to account for Employer-  
15 Initiated Hazard Pay that the Covered Employer owed or previously paid to a Covered  
16 Employee for work previously performed.

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18 Section 5. Notice to Employees.

19 (a) The Agency shall, within seven days of the effective date of this emergency  
20 ordinance, publish and make available on its website a notice suitable for Covered Employers  
21 to inform Employees of their rights under this emergency ordinance. The Agency shall  
22 publish such notice in English, Spanish, Chinese, and Filipino. The Agency shall make best  
23 efforts to provide such notice to each Covered Employer through electronic communication on  
24 the same date that it is published.

1 (b) A Covered Employer shall within three days after the Agency has published and  
2 made available the notice described in subsection (a), provide the notice to Employees in a  
3 manner calculated to reach all Employees: by posting in a conspicuous place at the  
4 workplace, via electronic communication, and/or by posting in a conspicuous place in a  
5 Covered Employer's web-based or app-based Employee platform. Every Covered Employer  
6 shall provide the notice in English, Spanish, Chinese, Filipino, and any language spoken by at  
7 least 5% of the Employees at the workplace or job site.

8 (c) To the extent feasible, on the same written notice that a Covered Employer is  
9 required to provide under Section 226(a) of the California Labor Code, a Covered Employer  
10 shall set forth the amount of Hazard Pay paid to the Employee under this emergency  
11 ordinance.

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13 Section 6. Exercise of Rights Protected; Retaliation Prohibited.

14 (a) It shall be unlawful for a Covered Employer or any other person to interfere with,  
15 restrain, or deny the exercise of, or the attempt to exercise, any right protected under this  
16 emergency ordinance.

17 (b) It shall be unlawful for a Covered Employer or any other person to discharge,  
18 threaten to discharge, demote, suspend, reduce other Employee benefits, or in any manner  
19 discriminate or take adverse action against any person in retaliation for exercising rights  
20 protected under this emergency ordinance. Such rights include but are not limited to the right  
21 to receive Hazard Pay pursuant to this emergency ordinance; the right to file a complaint or  
22 inform any person about any Covered Employer's alleged violation of this emergency  
23 ordinance; the right to cooperate with the Agency in its investigations of alleged violations of  
24 this emergency ordinance; and the right to inform any person of that person's potential rights  
25 under this emergency ordinance.



1 (c) Protections of this emergency ordinance shall apply to any person who  
2 mistakenly but in good faith alleges violations of this emergency ordinance.

3 (d) Taking adverse action against a person within 90 days of the person's filing a  
4 complaint with the Agency or a court alleging a violation of any provision of this emergency  
5 ordinance; informing any person about a Covered Employer's alleged violation of this  
6 emergency ordinance; cooperating with the Agency or other persons in the investigation or  
7 prosecution of any alleged violation of this emergency ordinance; opposing any policy,  
8 practice, or act that is unlawful under this emergency ordinance; or informing any person of  
9 that person's rights under this emergency ordinance, shall raise a rebuttable presumption that  
10 such adverse action was taken in retaliation for the exercise of one or more of the  
11 aforementioned rights.

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13 Section 7. Records, Implementation, and Enforcement.

14 (a) Covered Employers shall retain records related to Hazard Pay in the same  
15 manner and to the same extent as records that must be retained under Administrative Code  
16 Section 12R.5(c) and Agency rules and guidelines governing retention of such records.

17 (b) Additionally, Covered Employers shall retain and disclose to the Agency upon  
18 request any records related to Employer-Initiated Hazard Pay, including but not limited to (1)  
19 copies of the Covered Employer's Employer-Initiated Hazard Pay policy; (2) copies of written  
20 notifications to Employees regarding the policy; and (3) for any Employee as to whom a  
21 Covered Employer seeks credit under section 4(b) of this emergency ordinance,  
22 documentation reflecting that Employer-Initiated Hazard Pay payments were made for each  
23 hour claimed.

24 (c) The Agency is authorized to implement and enforce this emergency ordinance  
25 and may promulgate rules and guidelines for such purposes. Except as otherwise provided by

1 Agency rules or guidelines, the administrative and civil enforcement provisions of  
2 Administrative Code Section 12R.7 apply to this emergency ordinance. Until such time as the  
3 Agency promulgates any additional rules or guidelines, the rules and guidelines adopted by  
4 the Agency interpreting Administrative Code Section 12R.7 shall apply to this emergency  
5 ordinance.

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7 Section 8. Waiver Through Collective Bargaining.

8 (a) All or any portion of the applicable requirements of this emergency ordinance  
9 shall not apply to Employees covered by a bona fide collective bargaining agreement to the  
10 extent that such requirements are expressly waived in a collective bargaining agreement in  
11 clear and unambiguous terms.

12 (b) The requirements of this emergency ordinance may not be waived by  
13 agreement between an individual Employee and a Covered Employer.

14

15 Section 9. Preemption.

16 Nothing in this emergency ordinance shall be interpreted or applied so as to create any  
17 power or duty in conflict with federal or state law. The term "conflict," as used in this Section 9  
18 means a conflict that is preemptive under federal or state law.

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20 Section 10. City Undertaking Limited to Promotion of the General Welfare.

21 In undertaking the adoption and enforcement of this emergency ordinance, the City is  
22 undertaking only to promote the general welfare. The City is not assuming, nor is it imposing  
23 on its officers and employees, an obligation for breach of which it is liable in money damages  
24 to any person who claims that such breach proximately caused injury. This emergency  
25

1 ordinance does not create a legally enforceable right by any member of the public against the  
2 City.

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4 Section 11. Severability.

5 If any section, subsection, sentence, clause, phrase, or word of this emergency  
6 ordinance, or any application thereof to any person or circumstance, is held to be invalid or  
7 unconstitutional by a decision of a court of competent jurisdiction, such decision shall not  
8 affect the validity of the remaining portions or applications of this emergency ordinance. The  
9 Board of Supervisors hereby declares that it would have passed this ordinance and every  
10 section, subsection, sentence, clause, phrase, and word not declared invalid and  
11 unconstitutional without regard to whether any other portion of this emergency ordinance or  
12 application thereof would be subsequently declared invalid or unconstitutional.

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14 Section 12. Effective Date; Expiration.

15 Consistent with Charter Section 2.107, this emergency ordinance shall become  
16 effective immediately upon enactment, and shall expire on the 61st day following enactment  
17 unless reenacted as provided by Section 2.107. Enactment occurs when the Mayor signs the  
18 ordinance, the Mayor returns the ordinance unsigned or does not sign the ordinance within  
19 ten days of receiving it, or the Board of Supervisors overrides the Mayor's veto of the  
20 ordinance.

21

22 Section 13. Suspension of Charter Section 14.101.

23 To address the emergency conditions described above, and to the extent this  
24 emergency ordinance temporarily modifies the City's Minimum Wage Ordinance, the Board of  
25 Supervisors finds that it is necessary to temporarily modify the Minimum Wage Ordinance,

