

ORDINANCE NO. 21-912

AN ORDINANCE of the City of Federal Way, Washington, relating to hazard pay for grocery workers in response to the emergency situation created by COVID-19.

WHEREAS, in response to COVID-19, on February, 29, 2020, Governor Inslee declared a state of emergency; on March 9, 2020, the Federal Way Mayor declared a State of Emergency; and on March 11, 2020, the World Health Organization declared that COVID-19 was a global pandemic; on March 13, 2020 the President of the United States declared a national emergency due to the COVID-19 pandemic; and

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

WHEREAS, one of the principle methods of reducing spread of COVID-19 has been to limit public gatherings and where possible require workers to perform their duties at home; and

WHEREAS, during this pandemic, many workers who provide services deemed essential to the continued functioning of society cannot do their jobs remotely from home and have continued to work jobs that require contact with the public outside of their homes resulting in increased personal risk of exposure to COVID-19 for themselves and their families; 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 risk of exposure to COVID-19 in their workplace; 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 City Council finds that it serves to protect the public health of the people of the City of Federal Way to require employers of grocery store workers to provide an increased wage to their frontline workers during this pandemic, helping workers to afford to take sick leave, to encourage grocery workers to continue working to provide the public with food, to incentivize grocery workers to protect their health and the public's health, and to protect the public and other workers from illness.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF FEDERAL WAY, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. The City Council finds and declares that:

- A. In the exercise of the City of Federal Way's police powers, the City is granted authority to pass regulations designed to protect and promote public health, safety, welfare.
- B. This ordinance protects and promotes public health, safety, and welfare during the COVID-19 emergency by requiring grocery businesses to provide hazard pay for frontline grocery employees, 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.

C. On January 30, 2020, the World Health Organization (WHO) declared that COVID-19 constituted a public health emergency of international concern.

D. On February 29, 2020, Washington Governor Jay Inslee issued proclamation 20-05, proclaiming a state of emergency for all counties throughout the state of Washington in response to new cases of COVID-19, and directing state agencies to use all resources necessary to prepare for and respond to the outbreak.

E. On March 9, 2020, Mayor Jim Ferrell proclaimed a state of emergency in response to new cases of COVID-19, authorizing the Mayor to exercise the emergency powers necessary to take extraordinary measures to prevent death or injury of persons and to protect the public peace, safety and welfare, and alleviate damage, loss, hardship or suffering.

F. On March 23, 2020, Washington Governor Jay Inslee issued Proclamation 20-25, a “Stay Home – Stay Healthy” order closing all non-essential workplaces, requiring people to stay home except to participate in essential activities or to provide essential business services, and banning all gatherings for social, spiritual, and recreational purposes. This order was extended through May 31, 2020. The “Stay Home – Stay Healthy” proclamation identified grocery employees as “Essential Critical Infrastructure Workers” performing work to protect communities and ensure continuity of functions critical to public health and safety, as well as economic and national security.

G. On May 4, 2020, Washington Governor Jay Inslee announced a “Safe Start” plan to start on June 1, 2020 to reopen Washington’s economy in phases with adequate social distancing measures and health standards in place.

H. In October 2020, The British Medical Journal, Occupational & Environmental Medicine, reported that grocery employees face a serious risk of COVID-19 infection and associated psychological distress. A study of 104 grocery employees at a grocery store in Boston, Massachusetts found that 20 percent tested positive for COVID-19 despite 91 percent of employees reporting wearing a face mask at work and 77 percent of employees reporting wearing masks outside of work. The positive rate of infection among grocery employees was five times as likely for those who interacted with customers than for those who did not. Additionally, the study found that 76 percent of employees had no symptoms, suggesting that these employees could be an important reservoir of asymptomatic infection. Further, 24 of the 99 employees who filled out a related medical health questionnaire also reported experiencing anxiety, and eight employees were deemed depressed from their questionnaire answers.

I. In November 2020, the Brookings Metropolitan Policy Program reported that the profits of top retail companies, including grocery businesses, soared during the pandemic while their employees earned low wages and, with few exceptions, failed to receive consistent or meaningful additional compensation for performing life threatening work. The report found that the top retail companies in their analysis earned on average an extra \$16.7 billion in profit compared to the previous year – a 40 percent increase. Frontline retail employees experienced little of this windfall, averaging a 10 percent pay increase on top of wages that were often too low to meet a family’s basic needs.

J. Throughout the entirety of the COVID-19 emergency, grocery businesses have been operating in Federal Way and relying upon the work of grocery employees who are highly vulnerable to health and safety risks.

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

L. Grocery businesses are profiting during the pandemic from the labor of employees who are working under dangerous conditions.

M. Ensuring that grocery employees are compensated for the substantial risks of working during the COVID-19 emergency promotes retention of these vital workers. Retention of grocery employees is fundamental to protecting the health of the community as these employees directly support public purchase of groceries and facilitate community access to food. Hazard pay will improve the financial ability of grocery employees to access resources they need to stay safe and healthy, and ultimately supports the greater community that depends on grocery employees for consistent, safe and reliable access to food.

N. This ordinance is necessary in response to the COVID-19 emergency.

Section 2. As the substantive effects of this ordinance are not permanent, this ordinance is not intended to be codified. Section numbers are for ease of reference within this ordinance, and section and subsection references refer to numbers in this ordinance unless stated otherwise.

Section 3. Definitions.

For purposes of this ordinance:

“City” means the City of Federal Way.

“Compensation” means the payment owed to an employee by reason of employment.

“Employee” means one employed by another for wages in a non-salaried position below the executive level and excluding delivery drivers who are principally employed in the transportation of merchandise, including full-time employees, part-time employees, and temporary workers. An alleged employer bears the burden of proof that the individual is, as a matter of economic reality, in business for oneself (i.e., an independent contractor) rather than dependent upon the alleged employer.

“Small Grocery Business” means a business that operates a retail store in Federal Way that is larger than 2,500 square feet and less than 10,000 square feet in size and that is primarily engaged in retailing groceries for offsite consumption. Other household supplies or other products shall be secondary to the primary purpose of groceries sales. “Small Grocery Business” does not include seasonal farmer’s markets.

“Large Grocery Business” means a business that operates a retail store in Federal Way that is over 10,000 square feet in size and with 25 percent or more of its sales floor area dedicated to sale of groceries, 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.

“Large Grocery Business” does not include seasonal farmer’s markets.

“Groceries” means any of the following or any similar products: fresh produce, meats, poultry, fish, deli products, dairy products, canned and frozen foods, dry foods, beverages, baked foods, and/or prepared foods.

“Grocery employee” means an employee covered by this ordinance.

“Hazard pay” means additional compensation owed to an employee on top of the employee’s other compensation, including but not limited to wages, tips, service charge distributions, overtime, commissions, piece rate, bonuses, rest breaks, promised or legislatively required pay or paid leave, and reimbursement for employer expenses.

Section 4. Hazard Pay Requirements.

A. Small Grocery Businesses shall provide each employee with hazard pay at a minimum rate of \$3.00 per hour for each hour worked in Federal Way. Small Grocery Businesses may apply for a City of Federal Way Small Grocery Hazard Pay Grant, once that grant program is established, to defray the cost of paying hazard pay required by this ordinance.

B. Large Grocery Businesses shall provide each employee with hazard pay at a minimum rate of \$3.00 per hour for each hour worked in Federal Way.

C. Grocery businesses providing hazard pay on the effective date of this ordinance may use the hourly rate of that hazard pay to offset the amount due under this section.

D. Grocery businesses bear the burden of proof to show that the additional compensation is hazard pay for the purposes of working during the COVID-19 emergency.

E. Grocery businesses shall retain records that document compliance with this ordinance for each employee for a period of three years.

Section 5. Private Right of Action. Any person or class of persons that suffers financial injury as a result of a violation of this ordinance may bring action in a court of competent jurisdiction against the employer or other person violating this 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 punitive damages in an additional amount of up to twice the unpaid compensation. Interest shall accrue from the date the unpaid compensation was first due at 12 percent per annum, or the maximum rate permitted under RCW 19.52.020.

Section 6. Waiver. Any waiver by an individual of any provisions of this ordinance shall be deemed contrary to public policy and shall be void and unenforceable.

Section 7. Businesses that are subject to this ordinance shall ensure that during this pandemic there is adequate staff at all times, that stores be thoroughly cleaned before opening or after closing, that employers make all reasonable efforts to enforce mask requirements, that the employers shall disclose reported COVID-19 infections to employees promptly, and that limited store access is always enforced.

Section 8. Review and Sunsetting. Hazard pay will be effective for a minimum of 90 days. The City Council will review the continued necessity of providing hazard pay to grocery employees at its Regular Council Meeting to be held on July 6 , 2021 at which time it will decide to either extend hazard pay beyond 90 days or repeal this ordinance at the Regular Council Meeting to be held on August 10, 2021.

Section 9. Severability. Should any section, subsection, paragraph, sentence, clause, or phrase of this ordinance, or its application to any person or situation, be declared unconstitutional

or invalid for any reason, such decision shall not affect the validity of the remaining portions of this ordinance or its application to any other person or situation. The City Council of the City of Federal Way hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clauses, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions be declared invalid or unconstitutional.

Section 10. Corrections. The City Clerk is authorized to make necessary corrections to this ordinance including, but not limited to, the correction of scrivener/clerical errors, references, ordinance numbering, section/subsection numbers and any references thereto.

Section 11. Ratification. Any act consistent with the authority and prior to the effective date of this ordinance is hereby ratified and affirmed.

Section 12. Effective Date. This ordinance is necessary to respond to an ongoing emergency and shall take effect and be in force on May 15, 2021.

PASSED by the City Council of the City of Federal Way this 4th day of May, 2021.

[signatures to follow]

CITY OF FEDERAL WAY:


JIM FERRELL, MAYOR

ATTEST:


STEPHANIE COURTNEY, CMC, CITY CLERK

APPROVED AS TO FORM:


J. RYAN CALL, CITY ATTORNEY

FILED WITH THE CITY CLERK:	<u>04/28/2021</u>
PASSED BY THE CITY COUNCIL:	<u>05/04/2021</u>
PUBLISHED:	<u>05/07/2021</u>
EFFECTIVE DATE:	<u>05/15/2021</u>
ORDINANCE NO.:	<u>21-912</u>

ORDINANCE NO. 21-913

AN ORDINANCE of the City of Federal Way, Washington, amending the definition of “Small Grocery Business” as related to hazard pay for grocery workers in response to the emergency situation created by COVID-19. (Amending Ordinance No. 21-912)

WHEREAS, in response to COVID-19, on February, 29, 2020, Governor Inslee declared a state of emergency; on March 9, 2020, the Federal Way Mayor declared a State of Emergency; and on March 11, 2020, the World Health Organization declared that COVID-19 was a global pandemic; on March 13, 2020 the President of the United States declared a national emergency due to the COVID-19 pandemic; and

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

WHEREAS, one of the principle methods of reducing spread of COVID-19 has been to limit public gatherings and where possible require workers to perform their duties at home; and

WHEREAS, during this pandemic, many workers who provide services deemed essential to the continued functioning of society cannot do their jobs remotely from home and have continued to work jobs that require contact with the public outside of their homes resulting in increased personal risk of exposure to COVID-19 for themselves and their families; and

WHEREAS, on May 4, 2021, the City Council found that it serves to protect the public health of the people of the City of Federal Way to pass Ordinance 21-912, requiring employers of grocery store workers to provide an increased wage to their frontline workers during this pandemic, helping workers to afford to take sick leave, to encourage grocery workers to continue working to provide the public with food, to incentivize grocery workers to protect their health and the public’s

health, and to protect the public and other workers from illness; and

WHEREAS, Ord No. 21-912 defined “small grocery business” as a grocery business with more than 2,000 square feet and less than 10,000 square feet in size; and

WHEREAS, the City Council believes it appropriate to change the definition of “small grocery business” to increase the maximum size of such a business to a range of between 3,500 and 25,000 square feet.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF FEDERAL WAY, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. “Section 3. Definitions” of Ord. No. 21-912 is amended as follows:

“Small Grocery Business” means a business that operates a retail store in Federal Way that is larger than ~~2,500~~ 3,500 square feet and less than ~~10,000~~ 25,000 square feet in size and that is primarily engaged in retailing groceries for offsite consumption. Other household supplies or other products shall be secondary to the primary purpose of groceries sales. “Small Grocery Business” does not include seasonal farmer’s markets.

Section 2. Severability. Should any section, subsection, paragraph, sentence, clause, or phrase of this ordinance, or its application to any person or situation, be declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of this ordinance or its application to any other person or situation. The City Council of the City of Federal Way hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clauses, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions be declared invalid or unconstitutional.

Section 3. Corrections. The City Clerk is authorized to make necessary corrections to this ordinance including, but not limited to, the correction of scrivener/clerical errors, references, ordinance numbering, section/subsection numbers and any references thereto.

Section 4. Ratification. Any act consistent with the authority and prior to the effective date of this ordinance is hereby ratified and affirmed.

Section 5. Effective Date. This ordinance is necessary to respond to an ongoing emergency and shall take effect immediately.

PASSED by the City Council of the City of Federal Way this day of June 1, 2021.

CITY OF FEDERAL WAY:



JIM FERRELL, MAYOR

ATTEST:



STEPHANIE COURTNEY, CMC, CITY CLERK

APPROVED AS TO FORM:



J. RYAN CALL, CITY ATTORNEY

FILED WITH THE CITY CLERK:	<u>05/26/2021</u>
PASSED BY THE CITY COUNCIL:	<u>06/01/2021</u>
PUBLISHED:	<u>06/04/2021</u>
EFFECTIVE DATE:	<u>06/01/2021</u>
ORDINANCE NO.:	<u>21-913</u>