

**ORDINANCE NO. O2M21-4784**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ALHAMBRA  
ADDING CHAPTER 5.85 COVID-19 HERO PAY TO THE ALHAMBRA  
MUNICIPAL CODE, RELATING TO TEMPORARY HAZARD PAY  
REQUIREMENTS FOR EMPLOYEES WORKING FRONTLINE POSITIONS IN  
GROCERY RETAIL AND DRUG RETAIL ESTABLISHMENTS IN THE CITY OF  
ALHAMBRA DURING THE COVID-19 PANDEMIC**

The City Council of the City of Alhambra does ordain as follows:

**SECTION 1.** Chapter 5.85 is hereby added to the Alhambra Municipal Code to read as follows:

**“CHAPTER 5.85 COVID-19 Hero Pay.**

**5.85.010 Findings and Purpose.**

**5.85.020 Definitions.**

**5.85.030 Exemptions.**

**5.85.040 Hero Pay Requirement.**

**5.85.050 Employer Credit for Voluntary Hazard Pay.**

**5.85.060 Employer Notification Requirements.**

**5.85.070 Employer Record Keeping and Access Requirements.**

**5.85.080 Retaliatory Action Prohibited.**

**5.85.090 Employee Remedies.**

**5.85.100 Violation.**

**5.85.110 No Waiver of Rights.**

**5.85.120 Severability.**

**5.85.130 Authority.**

**5.85.010 Findings and Purpose.**

To protect the public health and welfare during the COVID-19 pandemic, California Governor Gavin Newsom and the County of Los Angeles have issued "Safer at Home" declarations that have affected every sector of the economy. While many sectors were able to transition their workforce to working from home, millions of workers in face-to-face service industries were deemed essential to ensure that our communities continue to operate, and basic

needs continue to be fulfilled.

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

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

The City has an interest in protecting the employment environment for frontline grocery retail and drug retail workers and in maintaining the supply and distribution-chain of food. Through this ordinance, the City seeks to sustain the stability of the food supply chain by supporting the essential workers who continue to work during the pandemic, and thereby safeguard the health, safety, and welfare of the public.

The City Council has reviewed the ordinances of the cities of Long Beach and the County of Los Angeles providing for temporary COVID-19 hazard pay to frontline positions in grocery and drug retail establishments, and adopts by reference the justifications and needs for hazard pay set forth in those ordinances. Further, the City Council has taken note of the arguments put forth in support of the need for such pay in the opposition, supplemental briefing and ruling in response to the application for preliminary injunction in the federal litigation challenging the City of Long Beach's ordinance and hereby further adopts the justifications and rationales set forth therein in support of Alhambra's adoption of temporary hazard pay requirements.

**5.85.020 Definitions.**

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

B. "Employee" means any person who:

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

2. Qualifies as an employee entitled to payment of a minimum wage from any employer under the California minimum wage law, as provided under section 1197 of the California Labor Code and wage orders published by the California Industrial Welfare Commission.

3. Presumption of Employee. For purposes of this Chapter, a person

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

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

1. Directly or indirectly or through an agent or any other person, including through the services of a temporary service or staffing agency or similar entity, employs or exercises control over the wages, hours or working conditions of any Employee;
2. Operates at least one Store;
3. Either is (a) a corporate entity the stock of which is traded on a public stock exchange, or (b) employs 300 or more workers for compensation nationwide in the pay period preceding the effective date of this Chapter; and
4. Employs more than 10 Employees per Store in the pay period preceding the effective date of this Chapter.

D. "Hero Pay" means the additional wage Employers are required to pay Employees for work performed at Stores due to the risks associated with COVID-19 pursuant to Section 5.85.040.A, in addition to an Employee's Base Wage or Holiday Premium Pay, whichever is applicable at the time of hours worked. The Hero Pay rate shall not include compensation already owed to Employees, Holiday Premium rates, gratuities, service charge distributions, or other bonuses.

E. "Holiday Premium Pay" means the hourly wage paid to Employees for performing work during a holiday or holiday season.

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

G. "Store" means any of the following located within the City of Alhambra:

1. A retail grocery store that sells primarily food or household goods, including fresh produce, meats, poultry, fish, deli products, dairy products, canned foods, dry foods, beverages, baked goods, and/or prepared foods; or
2. A retail drug store that sells a variety of prescription and non-prescription medicines and miscellaneous items, including but not limited to drugs, pharmaceuticals, sundries, fresh produce, meats, poultry, fish, deli products, dairy products, canned foods, dry foods, beverages, and prepared foods; or
3. A retail store that is over 85,000 square feet and:

i. Dedicates 10 percent or more of its sales floor to groceries, including, but not limited to, produce, meats, poultry, fish deli products, dairy products, canned foods, dry foods, beverages, baked foods, and/or prepared foods; or

ii. Dedicates 10 percent or more of its sales floor to drug retail, including, but not limited to, drugs, pharmaceuticals, sundries, produce, meats, poultry, fish, deli products, dairy products, canned foods, dry foods, beverages, prepared foods, and other merchandise.

H. "Voluntary Hazard Pay" means additional premium pay for COVID-19 related purposes above and beyond an Employee's Base Wage.

**5.85.030 Exemptions.**

This Chapter does not apply to public entities, such as federal, State, County, and city entities, including school districts.

**5.85.040 Hero Pay Requirement.**

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

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

C. Election to Receive Hero Pay as Paid Leave. If offered by the Employer, an Employee may elect to receive paid leave in lieu of Hero Pay.

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

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

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

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

D. The requirement to pay Hero Pay as set forth in this Chapter shall be in effect beginning on and including May 22, 2021 to and through September 19, 2021.

**5.85.050 Employer Credit for Voluntary Hazard Pay.**

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

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

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

2. A concise statement explaining Employees' hourly base wages, hourly Holiday Premiums, hourly Voluntary Hazard Pay, and any other wage bonuses received during the prior 12 months.

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

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

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

**5.85.060 Employer Notification Requirements.**

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

B. Pay Period Statement. For each pay period, Employers shall provide each Employee with the amount of Hero Pay, Paid Leave in lieu of Hero Pay, or Voluntary Hazard Pay earned by the Employee in the pay period and the number of hours of work performed that entitled the Employee to Hero Pay or Voluntary Hazard Pay in the pay period.

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

**5.85.070 Employer Record Keeping and Access Requirements.**

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

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

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

**5.85.080 Retaliatory Action Prohibited.**

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

B. Rebuttable Presumption of Retaliation. Taking adverse action against an Employee, including lowering Employees' Base Wage or Holiday Premium Pay or reduction of hours, within 90 days of the Employee's exercise of rights protected under this Chapter, shall raise a rebuttable presumption of the Employer having done so in retaliation for the exercise of such rights. If an employer closes a store within 90 days of the effective date of this ordinance, this shall raise a rebuttable presumption of having done so in retaliation of the worker's assertion of rights under this ordinance and will trigger a public hearing conducted by the City Council or such committee as it may designate as to the circumstances of such closure.

**5.85.090 Employee Remedies.**

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

1. Reinstatement to the position from which the Employee was discharged in violation of this Chapter.
2. Back pay unlawfully withheld.
3. All penalties and/or fines imposed pursuant to other provisions of this Chapter or State law, as determined by the court.

4. For retaliatory action by an Employer, the Employee shall be entitled to a trebling of lost wages and penalties and/or fines imposed, in addition to reinstatement, as determined by the court.

5. Interest on all due and unpaid wages at the rate of interest specified in subdivision (b) of Section 3289 of the California Civil Code, which shall accrue from the date that the wages were due and payable as provided in Part 1 (commencing with Section 200) of Division 2 of the California Labor Code, to the date the wages are paid in full.

6. Other legal or equitable relief the court may deem appropriate.

7. If an Employee is the prevailing party in any legal action taken pursuant to this Chapter, the court may award reasonable attorneys' fees and costs as part of the costs recoverable.

**5.85.100 Violation.**

The failure of any respondent to comply with any requirement imposed on the respondent under this Chapter is a violation.

**5.85.110 No Waiver of Rights.**

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

**5.85.120 Severability.**

If any subsection, sentence, clause, or phrase of this Chapter is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Chapter. The City Council hereby declares that it would have adopted this Chapter and each and every subsection, sentence, clause, and phrase not declared invalid or unconstitutional, without regard to whether any portion of the Chapter would be subsequently declared invalid or unconstitutional.

**5.85.130 Authority.**

This Chapter is necessary for the protection of life, property, health, safety, and welfare of the public and is adopted pursuant to the powers vested in the City of Alhambra under the laws and the Constitution of the State of California, including the police powers vested in the City pursuant to Article XI, section 7 of the California Constitution, and section 1205(b) of the California Labor Code.”

**SECTION 2.** Environmental Findings. The City Council exercises its independent judgment and finds that this ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to the State CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, sections: 15061(b)(3), because the activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment; and 15321, because the ordinance addresses law enforcement activities. Because there is no possibility that this ordinance may have a significant adverse effect on the environment, the

adoption of this ordinance is exempt from CEQA.

**SECTION 3.** Effective Date. This ordinance takes effect 40 days from the date of its adoption.

**SECTION 4.** Publication. The City Clerk is directed to certify this ordinance and cause it to be published in the manner required by law.

PASSED, APPROVED, AND ADOPTED THIS 12<sup>th</sup> DAY OF APRIL, 2021.

/s/ Sasha Renée Pérez  
Sasha Renée Pérez, Mayor

ATTEST:

/s/ Lauren Myles  
Lauren Myles, City Clerk

APPROVED AS TO FORM

/s/ Joseph M. Montes  
Joseph M. Montes, City Attorney

I, Lauren Myles, City Clerk of the City of Alhambra, certify Ordinance No. O2M21-4784 was adopted by the City Council at a regular meeting held on the 12<sup>th</sup> day of April, 2021, by the following vote:

AYES: MAZA, MALONEY, ANDRADE-STADLER, PÉREZ  
NOES: NONE  
ABSENT: NONE  
ABSTAIN: LEE

/s/ Lauren Myles  
Lauren Myles, City Clerk