



File #: 2021-504, Version: 1

Report to Mayor and City Council

Tuesday, July 06, 2021

Discussion

SUBJECT:

CONSIDER RECOMMENDATION FROM THE HERO PAY AD HOC COMMITTEE TO ADOPT RESOLUTION NO. 21-088 ESTABLISHING HERO PAY FOR ESSENTIAL WORKERS IN THE CITY OF CARSON (CITY COUNCIL)

I. SUMMARY

At the beginning of the pandemic, many retail companies provided extra COVID-19 related compensation to their workers. This bonus, commonly known as “Hero Pay,” was often implemented as a temporary hourly wage increase or a one-off bonus for essential workers. Several cities have passed “Hero Pay” ordinances. Most of these ordinances apply to large grocery or retail stores that employ more than 300 people nationally and have more than 10 employees in the city. Although all of the ordinances apply to grocery store workers, some are broader and apply to pharmacies, agricultural laborers, and other retail workers. The temporary Hero Pay mostly provided for pay during the surge in COVID-19 cases, as most ordinances were applicable from February to July 2021.

The Hero Pay Ad Hoc Committee, consisting of Councilmember Hilton and Councilmember Hicks, recommends the City Council consider adopting the proposed Resolution, included as Exhibit 1, which would establish a Hero Pay program in the City of Carson whereby large grocery stores and other establishments selling groceries and retail pharmacies with more than 300 employees nationally and 10 or more employees at a site in Carson could voluntarily provide for Hero Pay for their essential workers. The Hero Pay would consist of \$4 per hour in addition to an employee’s base pay and be applicable retroactively during the surge of COVID-19 cases in the City of Carson, which occurred between December 1, 2020 and March 1, 2021.

II. RECOMMENDATION

WAIVE further reading and ADOPT Resolution No. 21-088 “A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARSON, CALIFORNIA ESTABLISHING HERO PAY FOR ESSENTIAL WORKERS IN THE CITY OF CARSON”

III. ALTERNATIVES

TAKE another action deemed appropriate by the City Council and consistent with applicable laws.

IV. BACKGROUND

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. The City of Carson also declared a local state of emergency related to the COVID-19 pandemic on March 17, 2020.

On March 19, 2020, California Governor Gavin Newsom issued a “Stay Home - Stay Healthy” proclamation 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. In addition to healthcare, public health and emergency services, the “Stay Home - Stay Healthy” proclamation identified grocery stores as essential business sectors critical to protecting the health and well-being of all Californians and designated their workers as essential critical infrastructure workers.

Essential workers working during the COVID-19 emergency merit additional compensation because they perform hazardous duties due to the significant risk of exposure to the COVID-19 virus. Essential workers have been working under these hazardous conditions for months, particularly during the surge in COVID-19 cases at the end of 2020 and beginning of 2021. The availability of grocery stores and drug stores is fundamental to the health of the community and is made possible during the COVID-19 emergency because grocery and drug store workers are on the frontlines of this devastating pandemic supporting public health, safety, and welfare by working in hazardous situations.

Approximately 20 cities in California have adopted hero pay ordinances requiring certain large retail establishments to provide hero pay to their non-management essential employees. Such hero pay has ranged between \$3 to \$5 per hour in addition to an employee's base pay and has been applicable for a limited time ranging from February through July 2021.

Accordingly, as provided in the resolution, the City is considering the establishment of the Hero Pay Program that allows large retail establishments, such as grocery stores, retail stores that devote at least 10% of their floor area to groceries, and retail pharmacies, to

voluntarily provide Hero Pay to their non-management essential workers. Large retail establishments include those employers who employ more 300 or more employees nationally and who have 10 or more employees at a site in the City of Carson. The Hero Pay Program would provide for an additional \$4 per hour of pay, in addition to the employee's base pay, for those essential workers that worked during the surge in the City of Carson, which occurred during the period between December 1, 2020 and March 1, 2021.

V. FISCAL IMPACT

None.

VI. EXHIBITS

1. Resolution No. 21-088 (Pgs. 4-9)

Prepared by: Pam Lee, Deputy City Attorney

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
CARSON, CALIFORNIA, ESTABLISHING HERO PAY FOR
ESSENTIAL WORKERS IN THE CITY OF CARSON**

WHEREAS, the coronavirus (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 World Health Organization 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, the City of Carson declared a local state of emergency related to the COVID-19 pandemic on March 17, 2020; and

WHEREAS, on March 19, 2020, California Governor Gavin Newsom issued a “Stay Home – Stay Healthy” proclamation 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. In addition to healthcare, public health and emergency services, the “Stay Home – Stay Healthy” proclamation identified grocery stores as essential business sectors critical to protecting the health and well-being of all Californians and designated their workers as essential critical infrastructure workers; and

WHEREAS, for purposes of this resolution, “essential workers” are defined as non-management employees that work in grocery stores, drug stores, and other retailers selling necessary products including but not limited to groceries and pharmaceutical drugs, which are recognized as essential businesses operating in Carson during the COVID-19 emergency, making essential workers highly vulnerable to economic insecurity and health or safety risks; and

WHEREAS, essential workers may voluntarily be provided additional pay by their employers on a retroactive basis, with such additional pay consisting of an increase of \$4 per hour to those who performed essential work between the months of December 1, 2020 to March 1, 2021, which represents the time period of the greatest surge in COVID-19 cases in the City of Carson, for all hours worked by essential workers between such timeframe (aka “Hero Pay”); and

WHEREAS, such Hero Pay requirement may voluntarily be provided by employers with at least 300 employees nationwide and at least 10 employees that are employed per site in the City of Carson; and

WHEREAS, such compensation for Hero Pay is retroactively applicable on all employers who performed such work during the months of December 1, 2020 to March 1, 2021; and

WHEREAS, Hero 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; and

WHEREAS, essential workers 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. Essential workers have been working under these hazardous conditions for months and continue to face safety risks as the virus presents an ongoing threat for an uncertain period, potentially resulting in subsequent waves of infection; and

WHEREAS, the availability of grocery stores and drug stores is fundamental to the health of the community and is made possible during the COVID-19 emergency because grocery and drug store workers are on the frontlines of this devastating pandemic supporting public health, safety, and welfare by working in hazardous situations; and

WHEREAS, the City Council has carefully reviewed and considered all of the evidence, including the staff report and public comments presented; and

WHEREAS, this Resolution 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 because it is merely the formation of an organization. (14 Cal. Code Regs. § 15378(a).) Further, this Resolution is exempt from CEQA because there is no possibility that this Resolution or its implementation would have a significant negative effect on the environment. (14 Cal. Code Regs. § 15061(b)(3).) The City Clerk shall not cause a Notice of Exemption to be filed as authorized by CEQA and the State CEQA Guidelines.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CARSON DOES HEREBY RESOLVE, DETERMINE, AND FIND AS FOLLOWS:

SECTION 1. FINDINGS. The findings and determinations reflected in the Recitals above are true and correct, and are incorporated herein by this reference.

SECTION 2. ADOPTION OF HERO PAY FOR ESSENTIAL WORKERS IN THE CITY OF CARSON.

A. DEFINITIONS.

For purposes of this Resolution, the following definitions apply.

"Adverse action" means reducing compensation, garnishing gratuities, temporarily or permanently denying or limiting access to work, incentives, or bonuses, offering less desirable work, demoting, terminating, deactivating, placing on hold status, failing to rehire after a seasonal interruption of work, threatening, penalizing, retaliating, or otherwise discriminating against an essential worker. "Adverse action" may involve any aspect of employment, including pay, work hours, responsibilities, or other material change in the terms and condition of employment.

"Aggrieved party" means an essential worker or other person who suffers a tangible or intangible harm due to a covered employer or other person's violation of this Resolution.

"Base wage rate" means the regular hourly wage rate paid to an essential worker.

"City" means the City of Carson.

"Essential worker" means an individual who performs at least two (2) hours of work in a calendar week for a covered employer within the City of Carson, but does not include managerial, supervisory or confidential employees of a covered employer.

"Covered employer" means any retail establishment, as defined herein, that is located in the City of Carson and employs at least 10 employees at the retail establishment, and whose owner, parent company, franchisor or network of franchises employs three hundred (300) or more employees nationally. For purposes of this definition, all employees who worked for compensation shall be counted, including but not limited to (a) employees who are not covered by this Resolution, and (b) employees who worked in full-time employment, part time employment, joint employment, temporary employment, or through the services of a temporary services or staffing agency.

"Hero Pay" means an additional \$4.00 per hour wage premium for each hour worked that is in addition to an essential worker's base pay rate and any commissions, gratuities, bonuses or any other form of regular or premium pay that is owed to the essential worker, including but not limited to any holiday, overtime, or vacation pay.

"Hero Pay Program" means the program established by this Resolution whereby covered employers may voluntarily participate to provide Hero Pay for their essential workers for hours worked during the time period December 1, 2020 to March 1, 2021.

"Hour worked" means the time during which an essential worker is subject to the control of a covered employer, including any time that the employee is suffered or permitted to work or on-call.

"Person" means any individual, corporation, partnership, limited partnership, limited liability partnership limited liability company, business trust, estate, trust, association, joint venture, agency, instrumentality, or any other legal or commercial entity, whether domestic or foreign.

"Retail establishment" means a retail establishment located in the City of Carson that:

- a. (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. Is more than 85,000 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; or
- c. Is a 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 byproducts, canned foods, or prepared foods.
- d. Notwithstanding anything in this section to the contrary, this Resolution shall not apply to any store otherwise covered by subsection (a), above, which is less than 15,000 square feet.

B. HERO PAY PROGRAM.

As part of the Hero Pay Program, each covered employer may voluntarily pay each essential worker Hero Pay consisting of an additional four dollars (\$4.00) per hour for hours worked between December 1, 2020 to March 1, 2021.

C. ESSENTIAL WORKER PROTECTIONS.

In participating in the Hero Pay Program, it shall be unlawful for a covered employer to fund the Hero Pay required under this Resolution by reducing the base wage rate, overtime, holiday or other Hero Pay rate, hours of work, vacation, pension contributions, or other non-wage benefits of any essential worker, or by increasing charges to any essential worker for parking, uniforms, meals, or other work-related materials or equipment.

D. RECORD KEEPING.

Covered employers who participate in the Hero Pay Program shall retain records that document compliance with this Resolution, including payroll records listing the Hero Pay as a separate item, for a period of two years.

E. RETALIATION PROHIBITED.

No covered employer shall discharge, reduce in compensation, or take any other adverse action against an essential worker for opposing any practice proscribed by this Resolution, for participating in proceedings related to this Resolution, for seeking to exercise their rights under this Resolution, or for otherwise asserting rights under this Resolution.

F. ENCOURAGEMENT OF MORE GENEROUS POLICIES.

1. Nothing in this Resolution shall be construed to discourage or prohibit a covered employer from the adoption or retention of Hero Pay policies more generous than the Hero Pay Program described herein.
2. Nothing in this Resolution shall be construed as diminishing the obligation of a covered employer to comply with any contract or other agreement providing more generous protections to an essential worker than those required by this Resolution.

SECTION 3. MINIMUM REQUIREMENTS. This Resolution provides for voluntary Hero Pay while working for a covered employer 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 Hero Pay, or that extends other protections to essential workers. Nothing in this Resolution shall be interpreted or applied so as to create any power or duty in conflict with federal or state law. Nothing in this Resolution shall be construed as restricting an essential worker's right to pursue any other remedies at law or equity for violation of their rights.

SECTION 4. SEVERABILITY. If any section, subsection, sentence, clause, phrase or portion of this Resolution is held for any reason 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 Resolution. The City Council hereby declares that it would have adopted this Resolution and each section, subsection, clause, 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 5. . The City Clerk shall certify to the passage of this Resolution which shall take effect immediately upon passage.

PASSED, APPROVED, and ADOPTED this 6th day of July, 2021.

Mayor Lula Davis-Holmes

ATTEST:

City Clerk,

APPROVED AS TO FORM:

City Attorney Sunny K. Soltani