



MICHAEL N. FEUER
CITY ATTORNEY

REPORT NO. R21-0042
02/02/21

**ADDITIONAL THREAT OF LITIGATION
PURSUANT TO GOVERNMENT CODE SECTIONS 54956.9(d)(2)**

REPORT RE:

**MOTION REQUESTING GROCERY AND DRUG RETAIL PREMIUM HAZARD PAY
ORDINANCE**

The Honorable City Council
of the City of Los Angeles
Room 395, City Hall
200 N. Spring Street
Los Angeles, California 90012

Council File No. 20-1609

Honorable Members:

This Office submitted a Request for Closed Session in Report No. R21-0038 on January 29, 2021, recommending that discussion and advice from legal counsel with regard to the threat of litigation to the grocery and drug retail premium hazard pay ordinance, be scheduled and held in closed session pursuant to California Government Code Section 54956.9(d)(2) due to its significant exposure to litigation. Attached is the Los Angeles Times February 1, 2021 article regarding the closure of two Kroger Long Beach stores due to the City of Long Beach's mandate for "Hero Pay" for grocery workers, in which Ronald Fong, President of the California Grocers' Assn, stated the association would pursue legal action against the City of Los Angeles and other local governments, should they enact similar rules.

Sincerely,

MICHAEL N. FEUER, City Attorney

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for

By

DAVID MICHAELSON
Chief Assistant City Attorney

DM:cl
Attachment

Los Angeles Times

BUSINESS

Kroger says it must close two Long Beach stores due to hazard pay ordinance



Kroger blamed the pending closure of two Long Beach locations — a Ralphs on Los Coyotes Diagonal and a Food 4 Less store on South Street — on rules requiring extra pay for grocery workers during the coronavirus crisis. (Kroger)

By [SUHAUNA HUSSAIN](#) | STAFF WRITER

FEB. 1, 2021 6:16 PM PT



As cities across the state look to require hazard pay for grocery workers, California's grocery industry is pushing back.

Kroger, which owns several supermarket chains, said Monday it would close two stores in Long Beach in response to city rules mandating an extra \$4 an hour in "hero pay" for grocery workers during the COVID-19 pandemic. The stores slated for closure are a Ralphs on Los Coyotes Diagonal and a Food 4 Less store on South Street, affecting 200 workers.

"This misguided action by the Long Beach City Council oversteps the traditional bargaining process and applies to some, but not all, grocery workers in the city," Kroger said in a statement. "The irreparable harm that will come to employees and local citizens as a direct result of the City of Long Beach's attempt to pick winners and losers, is deeply unfortunate. We are truly saddened that our associates and customers will ultimately be the real victims of the city council's actions."

The announcement comes just as the Los Angeles City Council plans to vote Tuesday on whether to pursue a similar ordinance requiring a \$5 an hour boost for workers at grocery stores.

Long Beach has served as a sort of test case for hazard pay, as several cities in California, including [San Jose and Oakland](#), consider boosts for front-line workers as well. Santa Monica's City Council voted last month to require "hero pay" for grocery workers, and the Los Angeles County Board of Supervisors has moved forward with a similar proposal.

Kroger spokeswoman Vanessa Rosales said in an email the approval of hazard pay mandates for grocery workers in other cities could lead to more store closures. Rosales said she couldn't share specifics about how additional pay affected profit margins at the two stores but said both were already "underperforming" even before the Long Beach ordinance went into effect Jan. 19.

The Ohio chain said it has spent \$1.3 billion to reward workers and to implement safety measures throughout the pandemic.

"Kroger's decision is unfortunate for workers, shoppers and the company," Long Beach spokesman Kevin Lee said in a statement. Lee acknowledged that the two stores were "long-struggling" and said the city's workforce arm would assist affected employees in accessing unemployment insurance benefits, emergency healthcare coverage, funding for retraining, skill development and job placement.

The California Grocers Assn., which represents about 6,000 grocery stores across the state, has opposed Long Beach's efforts to boost wages, filing a lawsuit against the city in federal court last month. Last week, U.S. District Judge Dolly M. Gee denied the trade group's request for a temporary restraining order to stop enforcement of the ordinance before a court could hear the case, and set a hearing for Feb. 19 on the association's request for a preliminary injunction to halt the law while the case is pending.

[The ordinance](#), which will last at least 120 days, applies to chain stores with 300 or more workers nationally and with 15 employees per store within the city, that devote 70% or more of its business to retailing food products.

Ronald Fong, president of the California Grocers Assn., has argued the measure is selective, singling out grocery workers for a pay increase even as others — including nurses, EMTs, restaurant workers and public safety officers — work on the front lines. Fong also said the ordinance failed to mandate that the largest grocery retailers, including Target and Walmart, pay the extra \$4. Target confirmed that based on its grocery sales, the Long Beach proposal does not include its three stores in the area.

“You are mandating a 30% raise essentially, putting grocers in a position to make some difficult decisions,” Fong said. “Every single company is worried about this.”

Fong said the association would pursue legal action against the city of Los Angeles and other local governments, should they enact similar rules.

Long Beach Councilwoman Mary Zendejas, who sponsored the Long Beach hazard pay ordinance, said in a statement Monday that she was “incredibly disappointed” to learn Kroger planned to close two Long Beach stores, particularly given that the Food 4 Less store serves low-income residents.

“It is unconscionable that, instead of doing the right thing, Ralphs and Food 4 Less would respond with litigation and retaliation against Long Beach heroes,” she said in the statement.

It’s “especially jarring,” Zendejas said, that Kroger is insisting it cannot afford Long Beach’s temporary hazard pay ordinance considering the company’s third quarter revenue jumped nearly \$2 billion from 2019 to 2020.

Zendejas said she had been encouraged at the onset of the pandemic when grocery stores provided hero pay to employees. Many have since ended these programs, even as the health crisis has gotten worse, she said.

“Grocery workers are going in every single day and risking their life being exposed to the virus,” Zendejas said in an interview last week. “Grocery businesses are experiencing a boom in their industry, they are making profits, record profits, on the shoulders of their employees, and they are not willing to share the profits with them.”

Neil Saunders, an analyst at GlobalData Retail, said that locations performing well should be able to absorb an extra \$4 in pay for its workers, but for weak stores, a company like Kroger could easily point to hazard pay as the “final nail in the coffin.” Because the grocery industry operates on thin margins, a significant pay increase is “certainly something that’s going to erode profitability,” he said.

“Businesses resent being told what they have to pay, and that can easily lead to conflict between politicians who make these rules and the companies who have to pay,” Saunders said.



Suhauna Hussain

[✉ Email](#)

Suhauna Hussain is a reporter at the Los Angeles Times. Before joining The Times in 2018, she wrote for the Tampa Bay Times, the Center for Public Integrity, the East Bay Express, the Chronicle of Higher Education, and independent student-run newspaper, the Daily Californian. Hussain was raised in L.A. and graduated from UC Berkeley with a degree in political economy.