



# URGENT ITEM AGENDA MATERIAL

Government Code Section 54954.2(b)  
Rules of Procedure Chapter III.C.5

**THIS ITEM IS NOT YET AGENDIZED AND MAY OR MAY NOT BE ACCEPTED FOR THE AGENDA AS A LATE ITEM, SUBJECT TO THE CITY COUNCIL'S DISCRETION ACCORDING TO BROWN ACT RULES**

**Meeting Date: March 16, 2021**

**Item Description: Amendments to Hazard Pay for Grocery Workers Ordinance (B.M.C. Chapter 13.112)**

This item is submitted pursuant to the provision checked below:

- Emergency Situation (54954.2(b)(1) - majority vote required)  
*Determination by a majority vote of the legislative body that an emergency situation exists, as defined in Section 54956.5.*
- Immediate Action Required (54954.2(b)(2) - two-thirds vote required)  
*There is a need to take immediate action and the need for action came to the attention of the local agency subsequent to the agenda for this meeting being posted.*

Once the item is added to the agenda (Consent or Action) it must be passed by the standard required vote threshold (majority, two-thirds, or 7/9).

**Facts supporting the addition of the item to the agenda under Section 54954.2(b) and Chapter III.C.5 of the Rules of Procedure:**

Recent and upcoming changes to the state reopening framework combined with a drafting issue that fails to closely track the "Yellow Tier" criteria require immediate action to clarify the duration of the Hazard Pay requirement set forth in Chapter 13.112.



Office of the City Attorney

[CONSENT OR ACTION]  
CALENDAR  
March 16, 2021

To: Honorable Mayor and Members of the City Council  
From: Farimah Faiz Brown, City Attorney  
Submitted by: Brendan Darrow, Deputy City Attorney  
Subject: Amendments to Hazard Pay for Grocery Workers Ordinance (B.M.C. Chapter 13.112)

RECOMMENDATION

Adopt an Urgency Ordinance to amend Chapter 13.112 to avoid an unintentional lapse in applicability due to statewide re-opening metrics. The amended ordinance would remain in effect for 120 days from the date it was originally enacted on February 23, 2021, unless extended by the Council.

FISCAL IMPACTS OF RECOMMENDATION

None

CURRENT SITUATION AND ITS EFFECTS

Alameda County is currently a “Red Tier” County under the state's Blueprint for a Safer Economy; the Hazard Pay for Grocery Workers Ordinance was intended to remain in effect until such time as the County enters the “Yellow Tier”; however an unintentional drafting error combined with changes to the statewide reopening framework may result in misinterpretation of the Ordinance and lead the public to believe that the Hazard Pay requirement should terminate earlier than intended.

BACKGROUND

The Hazard Pay for Grocery Workers Ordinance was adopted as an urgency ordinance on February 23, 2021. As originally proposed, the Ordinance would remain in effect until Alameda County entered the “Yellow Tier” under the state’s Blueprint for a Safer Economy, or for no longer than 120 days. In addition to comments from the dais to that effect, the text of the Ordinance includes the statement “WHEREAS, due to a record-breaking surge in regional cases recently resulted in a stay at home order in our region and ICU capacity below 15 percent, we are a long way from minimal risk where there would be 1 daily new case per 100,000 or less than 2 percent COVID-19 case positivity rate,” (Ord. No. 7,755-N.S., page 2).

Throughout the pandemic, the state has repeatedly amended the criteria for what types of businesses can operate, and under what conditions, often with little or no warning.

Most relevant here, the Governor announced on Sunday, January 24, 2021, that the Regional Order that applied statewide would be lifted effective immediately, contrary to prior statements that the Regional Order would not be lifted until certain criteria were met on a regional basis. More recently, on March 4, 2021, the Governor announced that the state would alter the criteria for advancing through the tier system by incorporating vaccination levels as an additional metric that can accelerate the reopening process even where other safety metrics have not yet been met.

In an effort to avoid unintended consequences from these unpredictable changes to state guidance, the City Council sought to incorporate the underlying technical basis for entering the “Yellow Tier” into the Hazard Pay for Grocery Workers Ordinance. However, due to a drafting error, the language adopted by Council was incomplete and therefore inconsistent with the intent to track the state’s “Yellow Tier” threshold.

The Ordinance incorporates only the 7-Day average COVID-19 positivity rate and omits the “adjusted case rate”. This omission was not intentional and should be attributed to the accelerated process of drafting and enacting the urgency ordinance. It is significant because the reason the County remains in the elevated risk “Red Tier” is due to the “adjusted case rate”, which is not a function of the number of tests administered that week, and therefore reflects the ongoing prevalence of COVID-19 within the community in a way that differs from the positivity rate.

On March 9, 2021, Alameda County announced that it now qualified as a “Red Tier” county due to a reduction in the adjusted case rate to 4.8 cases per 100,000 residents. (See Attachment 2). As a result, grocery stores are now allowed to operate at full capacity, whereas under the “Purple Tier” they were only allowed to operate at 25% capacity. This easing of restrictions may *increase* the risk of COVID-19 infection faced by grocery workers as they are likely to be exposed to even more potentially infectious customers, in addition to the ongoing risk of infection from other grocery workers.

On March 10, 2021, the Governor announced further upcoming changes to the state’s reopening framework. At this time the City is unable to predict whether the rate at which the state reopens the economy will be consistent with the purpose of the Ordinance: to compensate grocery workers for the elevated risk they face due to COVID-19.

#### ENVIRONMENTAL SUSTAINABILITY

No environmental sustainability effects have been identified.

#### RATIONALE FOR RECOMMENDATION

The Hazard Pay for Grocery Workers Ordinance can be amended to eliminate the reference to the state reopening framework and to clarify Council’s intent to avoid any lapse in the Hazard Pay requirement. An Urgency Ordinance enacting the proposed amendments is attached as Attachment 1.

Rather than rely upon statewide guidance to determine the level of risk to local grocery workers, these amendments would leave the Hazard Pay requirement in place through June 23, 2021, and would permit the Council to re-evaluate the need for Hazard Pay at a later date, when the Council will be better able to assess the ongoing level of risk.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Brendan Darrow, Deputy City Attorney, 510-981-6950

Attachments:

- 1: Ordinance
- 2: March 9, 2021 Press Release from Neetu Balram

ORDINANCE NO. -N.S.

URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BERKELEY AMENDING CHAPTER 13.112 OF THE BERKELEY MUNICIPAL CODE, RELATING TO HAZARD PAY FOR GROCERY WORKERS IN BERKELEY; DECLARING THE URGENCY THEREOF; AND DECLARING THAT THIS ORDINANCE SHALL TAKE EFFECT IMMEDIATELY

WHEREAS, the City Council intends to avoid any temporary lapse in the local Hazard Pay requirement due to fluctuations in the number of tests administered or changes in statewide reopening criteria, and

WHEREAS, the City Council intends the Hazard Pay requirement to apply retroactively to the original effective date of Ordinance 7,755-N.S.

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. Urgency Findings

The City Council finds that the original intent of Ordinance 7,755-N.S. was to track the movement of the County through the state reopening framework (the Blueprint for a Safer Economy, or “Blueprint”), on the assumption that the County would enter the “Yellow Tier” when the threat of COVID-19 has largely been abated. However, the language used to track the “Yellow Tier” was incomplete and open to misinterpretation.

The City Council further finds that the state is in the process of implementing substantial revisions to the Blueprint, and that amendments are necessary to avoid unintended consequences.

The purpose of these amendments is to prevent and retroactively remedy any lapse that may occur in the Hazard Pay requirement until 120 days have elapsed since the original enactment of Ordinance 7,755-N.S.

Section 2. That Berkeley Municipal Code 13.113.040 is amended to read as follows:

**13.112.040 Applicability.**

A. For purposes of this Chapter, Covered Employers are limited to those who employ three hundred (300) or more Grocery Workers in the state of California.

B. For purposes of this Chapter, the number of Grocery Workers employed by an employer is the total number of Grocery Workers who worked for compensation during the two week period immediately preceding the effective date of this Chapter.

C. ~~Subject to the time limitation in subsection 13.112.040.D., Covered Employers shall provide the Hazard Pay required by this Chapter to any Covered Employee in the City of Berkeley until such time as the 7-Day Average COVID-19 positivity rate for Alameda County falls below 2.0%.~~

~~D.~~ Unless extended by the City Council, the Hazard Pay requirement set forth in this Chapter shall only remain in effect for a limited period of 120 days from the effective date of this Chapter, ~~unless terminated earlier as provided in subsection 13.112.040.C (February 23, 2021).~~

Section 3. Vote Required, Immediately Effective

Based on the findings and evidence in Section 1 of this Urgency Ordinance, the Council determines that this Ordinance is necessary for the immediate preservation of the public health, peace and safety in accordance with Article XIV Section 93 of the Charter of the City of Berkeley and must therefore go into effect immediately. This Ordinance shall go into effect immediately upon a seven-ninths vote of the City Council, in satisfaction of the Charter of the City of Berkeley.



# ALAMEDA COUNTY COVID-19 HEALTH EMERGENCY

COUNTY OF ALAMEDA ★ CALIFORNIA

Office of Emergency Services  
4985 Broder Blvd, Dublin, CA 94568

Alameda County Health Care Services Agency

FOR IMMEDIATE RELEASE  
March 9, 2021

**Neetu Balram**  
Public Information Manager  
Alameda County Public Health Department  
eoc-pio@acgov.org

## Alameda County Is a Red Tier County

*Permitted activities and restrictions are aligned with the State’s Blueprint for a Safer Economy*

**ALAMEDA COUNTY, CA** – Today the State announced that Alameda County has met the metrics for the Red Tier for two weeks, and effective tomorrow, March 10, activities and businesses permitted in the Red Tier per the State’s Blueprint for a Safer Economy may resume operation.

With an adjusted daily new case rate per 100,000 residents of 4.8, a testing positivity rate of 1.8 percent, and a health equity quartile positivity rate of 2.6 percent, the state of the pandemic has improved greatly in Alameda County since the peak of the winter surge in early January.

“Alameda County’s case rate is on the decline and vaccinations of vulnerable residents and our frontline workers are progressing but the COVID-19 pandemic is not over,” said Dr. Nicholas Moss, Alameda County Health Officer. “As more activities and businesses open indoors and more people from different households mix, the risk of becoming infected increases. The majority of Alameda County residents have not been vaccinated, so we must continue to take precautions to keep each other safe.”

**Businesses and activities permitted to open under the State’s Red Tier must continue to comply with the State’s Industry Guidance:** <https://covid19.ca.gov/industry-guidance/>. Additional workplace resources can be found here <https://covid-19.acgov.org/recovery> and resources for Alameda County workers are available here <https://covid-19.acgov.org/worker-resources>.

### **Businesses and activities permitted to open indoors, with capacity restrictions and modifications:**

- Restaurants: 25 percent maximum capacity or 100 people, whichever is fewer
- Retail: 50 percent maximum capacity and food courts permitted with indoor dining restrictions
- Grocery stores: full capacity while following retail industry guidance
- Movie Theaters: 25 percent maximum capacity or 100 people, whichever is fewer
- Museums, Zoos and Aquariums: 25 percent maximum capacity
- Gyms, fitness centers and studios (including at hotels): 10 percent maximum capacity and climbing walls are permitted

**Schools:** Under the State’s updated school guidance, TK-12 schools that intend to open and all schools that are already open must complete and publicly post their COVID-19 Safety Plan (CSP). The CSP consists of two components: 1) the Cal/OSHA COVID-19 Prevention Plan (CPP) and 2) the COVID-19 School Guidance Checklist. If a school or district is ready, grades TK-12 are permitted to reopen in the Red Tier and may do

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so once their CSP has been posted publicly on the school or school district’s website for at least 5 days prior to providing in person instruction.

**Gatherings:** Small and time-limited private gatherings among no more than three household are now permitted indoors under State guidance, but **outdoors is still strongly encouraged**. Masks and physical distancing are still required for these gatherings, and anyone who is experiencing symptoms must not attend. Per state guidance, singing, shouting, chanting, cheering, or exercising are strongly discouraged and not permitted indoors. Those at high risk of severe illness are strongly encouraged not to attend. **Large gatherings are still prohibited.**

### Activities eligible to start on April 1:

- **Outdoor sports and live performances with fans/attendees:** In the Red Tier, capacity will be limited to 20 percent and advanced reservations only. Concession sales will be primarily in-seat (no concourse sales). Attendance will be limited to in-state visitors.
- **Amusement parks:** In the Red Tier, capacity will be limited to 15 percent and online ticket purchases only. Small groups with a maximum of 10 people or 3 household groups may attend together, but with no intergroup mixing. Indoor dining will not be permitted. Attendance will be limited to in-state visitors.

### **The tier thresholds in the Blueprint for a Safer Economy will be adjusted as vaccinations among California’s hardest-hit communities increase per a new equity metric.**

On March 4, 2021, the State updated their Blueprint for a Safer Economy to include a California Vaccine Equity Metric to reflect statewide vaccination efforts and to recognize that the COVID-19 pandemic has not affected all communities equally. Forty percent of COVID-19 cases and deaths occur in the State’s lowest Healthy Places Index quartile (Vaccine Equity Quartile).

The initial goal of the Vaccine Equity Metric is to deliver a minimum of 2 million doses to the hardest-hit quarter of the state as measured by the Healthy Places Index. The state has currently delivered 1.6 million doses to this quarter of the state.

Once the 2 million doses goal is reached, the State will update the Blueprint for a Safer Economy to allow for a slightly higher case rates in each tier, with the overall effect of allowing counties to move through the color tiers at a faster but still measured and safe pace. The Blueprint will be updated again when 4 million doses have been administered in the Vaccine Equity Quartile.

To achieve this goal, the State is targeting 40 percent of vaccine doses for the hardest-hit communities in the Vaccine Equity Quartile, which includes three zip codes in Oakland: 94601, 94603 and 94621. While only three of our priority zip codes fall into the statewide Vaccine Equity Quartile, our local efforts will

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continue to focus on the larger number of zip codes identified in West Oakland, East Oakland, Fruitvale, Ashland/Cherryland, and South Hayward.

“Alameda County supports every effort to ensure our communities that have been disproportionately impacted by COVID-19, where we observe higher case and mortality rates, are first in line for vaccine,” said Dr. Kathleen Clanon, Alameda County Health Care Services Agency Medical Director and Clinical Lead for Vaccination Planning. “The State’s strategy aligns with local work to open community vaccination Points of Dispensing (PODs) that serve people who live or work in parts of the County that historically have had poor health outcomes due to non-health related factors, like poverty.”

Doses administered in the Vaccine Equity Quartile (statewide)	Tier 1 Widespread (Purple)	Tier 2 Substantial (Red)	Tier 3 Moderate (Orange)	Tier 4 Minimal (Yellow)
<b>Current: Less than 2 million doses administered</b>	Case Rate >7	Case Rate 4 - 7	Case Rate 1 - 3.9	Case Rate < 1
<b>Goal #1: 2 Million administered</b>	Case Rate > 10	Case Rate 4 - 10	Case Rate 1 - 3.9	Case Rate < 1
<b>Goal #2: 4 Million doses administered</b>	Case Rate > 10	Case Rate 6 - 10	Case Rate 2 - 5.9	Case Rate <2

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