

ORDINANCE NO. _____

An ordinance adding Article 3-72MM to Chapter XX of the Los Angeles Municipal Code to provide workers of grocery, drug retail, and food delivery platforms with added protections during the COVID-19 Pandemic.

**THE PEOPLE OF THE CITY OF LOS ANGELES
DO ORDAIN AS FOLLOWS:**

Section 1. A new Article 3-72MM is added to Chapter XX of the Los Angeles Municipal Code to read as follows:

ARTICLE 3-72MM

GROCERY, DRUG RETAIL AND FOOD DELIVERY WORKER PROTECTION

SEC. 200.10. PURPOSE.

As a result of the outbreak of the COVID-19 virus, on March 4, 2020, Governor Gavin Newsom declared a State of Emergency in California and Mayor Eric Garcetti declared a State of Emergency in the City of Los Angeles. On March 11, 2020, the World Health Organization officially declared the health crisis a pandemic. The COVID-19 pandemic (Pandemic) has rapidly forced the closure of schools and many businesses, including, but not limit to, movie theaters, bars, restaurants and venues holding group events. On March 19, 2020, Mayor Garcetti issued a "Safer at Home" emergency order, ordering all residents to stay inside their homes and immediately limit all movement outside their homes beyond what is necessary to take care of essential needs. On March 19, 2020, Governor Gavin Newsom also ordered all individuals living in the State of California to stay home or at the place of residence with certain exceptions.

The pandemic has resulted in the closure of many businesses throughout the City. Supermarkets, grocery stores, warehouse food stores, and drug retail stores have remained opened during this health crisis, giving many residents the only means to purchase necessary and essential food and household items. The pandemic has resulted in long customer lines and often large numbers of customers inside the stores.

Many people rely on food delivery platforms such as Instacart, Amazon Fresh, Postmates, Uber Eats, Grub Hub, and Doordash to purchase their groceries and restaurant foods. Delivery drivers and the consumers they service are doing their best to practice social distancing to reduce the risk of spreading the virus.

Workers at grocery and drug retail stores and food delivery platforms have joined the front-line responders to the public health emergency, ensuring the public continues to have access to essential needs. These workers are taking precautions to minimize the risk of exposure to themselves and the public they serve, including employing social distancing, while they also face the same hardships most Angelenos now face

regarding child care needs during school closures and caring for sick and/or elderly family members. Through this ordinance, the City seeks to enhance the protection of the public health and safety of workers and residents.

SEC. 200.11 DEFINITIONS.

The following definitions shall apply to this article:

A. **“City”** means the City of Los Angeles.

B. **“Employee”** means any worker of a grocery retail, drug retail store or Food Delivery Platform that either physically works at a retail location that is open to the public, or shops or picks-up groceries and other food orders from a grocery retail store, restaurant, or other retail food facility for the purpose of delivering the items to a consumer. For purposes of this article, a worker is presumed to be an Employee of an Employer, and an Employer has the burden to demonstrate that a worker is a bona fide independent contractor and not an Employee.

C. **“Employer”** means any of the following:

1. A grocery retail store in the City of Los Angeles that sells primarily food or household goods, including the sale of fresh produce, meats, poultry, fish, deli products, dairy products, canned foods, dry foods, beverages, baked foods, and/or prepared foods;

2. A drug retail store in the City of Los Angeles that sells a variety of prescription and nonprescription 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, prepared foods, and other merchandise; or

3. A Food Delivery Platform.

D. **“Food Delivery Platform”** means an online business that acts as an intermediary between a consumer and a grocery store, restaurant, or other food facility, and arranges for the delivery of the order from the grocery store, restaurant, or other food facility to a consumer in the City of Los Angeles.

SEC. 200.12. RIGHT TO SCHEDULE CHANGES.

A. An Employer shall approve an Employee's request to change a work schedule under any of the following circumstances:

1. To provide daycare for the Employee's own child;

2. To care for a sick member of the Employee's immediate family or member of its household; or

3. If the Employee feels ill, exhibits a symptom of COVID-19 as identified by the Center for Disease Control, or suspects having been exposed to COVID-19.

SEC. 200.13. ADDITIONAL WORK HOURS OFFERED TO CURRENT EMPLOYEES BEFORE HIRING NEW WORKERS.

Before hiring a new Employee or using a contract, temporary service or staffing agency to perform work, an Employer shall first offer the work to current Employees if:

A. The current Employee is qualified to do the work as reasonably determined by the Employer; and

B. The additional work hours would not result in the payment of a premium rate under California Labor Code Section 510.

SEC. 200.14. ADDITIONAL REQUIREMENT FOR FOOD DELIVERIES.

A Food Delivery Platform shall offer its Employee the option of a "no-contact" delivery method. A Food Delivery Platform shall provide its Employee with written guidance and detailed instructions on how safely to make a "no-contact" delivery.

SEC. 200.15. RETALIATORY ACTION PROHIBITED.

No Employer shall discharge, reduce in compensation, reduce work hours, or otherwise discriminate against any Employee for opposing any practice proscribed by this article, for participating in proceedings related to this article, for seeking to enforce their rights under this article by any lawful means, or for otherwise asserting rights under this article.

SEC. 200.16. ENFORCEMENT.

A. An Employee claiming a violation of this article may bring an action in the Superior Court of the State of California against an Employer and may be awarded:

1. Reinstatement to the position from which the Employee was discharged in violation of this article.

2. Back pay for each day during which the violation continues, which shall be calculated at the Employee's average rate of pay.

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

B. If an Employee is the prevailing party in any legal action taken pursuant to this article, the court shall award reasonable attorneys' fees and costs.

SEC. 200.17. NO WAIVER OF RIGHTS.

Any waiver by an Employee of any provision in this article shall be deemed contrary to public policy and shall be void and unenforceable.

SEC. 200.18. COEXISTENCE WITH OTHER AVAILABLE RELIEF.

The provisions of this article shall not be construed as limiting an Employee's right to obtain relief to which they may be entitled at law or in equity.

SEC. 200.19. CONFLICTS.

Nothing in this article shall be interpreted or applied so as to create any power or duty in conflict with any federal or state law.

SEC. 200.20. SUNSET.

This section shall sunset upon the later of either the Governor of the State of California lifting his emergency order declared on March 4, 2020, or the Mayor of the City of Los Angeles lifting the State of Emergency declared on March 4, 2020.

SEC. 200.21. SEVERABILITY.

If any subsection, sentence, clause or phrase of this article 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 article. The City Council hereby declares that it would have adopted this section, and each and every subsection, sentence, clause and phrase thereof not declared invalid or unconstitutional, without regard to whether any portion of the article would be subsequently declared invalid or unconstitutional.

Sec. 2. Urgency Clause. The City Council finds and declares that this ordinance is required for the immediate protection of the public peace, health, and safety for the following reasons: The COVID-19 pandemic has led to the current State of Emergency in California. Mayor Garcetti's "Safer at Home" emergency order issued on March 19, 2020, mandating all residents to stay inside their residences and immediately limit all movement outside their homes beyond what is necessary to take care of essential needs, has effectively shut down many businesses in the City in an effort to control the spread of the COVID-19. Grocery and drug retail outlets and the services of Food Delivery Platforms remain some of the few options available for residents to obtain their daily essential needs. Workers of these businesses serve a critical need during this pandemic, aiding as front-line responders to the daily needs of the City's residents. In order for the City of Los Angeles to protect the health of safety of workers and its residents, Employees must be permitted to change their work

schedule to care for their children during school closures or to care for sick and/or elderly family members without fear of retaliation. Because of the immediate health and safety concerns of these workers and the community, the ordinance must become effective as soon as possible. For all these reasons, the ordinance shall become effective upon publication pursuant to Los Angeles Charter Section 253.

Sec. 3. The City Clerk shall certify to the passage of this ordinance and have it published in accordance with Council policy, either in a daily newspaper circulated in the City of Los Angeles or by posting for ten days in three public places in the City of Los Angeles: one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall; one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall East; and one copy on the bulletin board located at the Temple Street entrance to the Los Angeles County Hall of Records.

Approved as to Form and Legality

MICHAEL N. FEUER, City Attorney

By



DAVID MICHAELSON
Chief Assistant City Attorney

Date

3/24/20

File No. _____

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The Clerk of the City of Los Angeles hereby certifies that the foregoing ordinance was passed by the Council of the City of Los Angeles, **by a vote of not less than three-fourths** of all its members.

CITY CLERK

MAYOR

Ordinance Passed _____

Approved _____