

CITY OF ALAMEDA ORDINANCE No. _____

New Series

AMENDING THE ALAMEDA MUNICIPAL CODE BY ADDING
CHAPTER VI, ARTICLE XIII, SECTION 6-56 TO IMPOSE
REQUIREMENTS RELATING TO THE RETENTION OF GROCERY
WORKERS IN CERTAIN CIRCUMSTANCES INVOLVING THE
TRANSFER OF OWNERSHIP OF LARGE GROCERY
ESTABLISHMENTS

WHEREAS, on February 3, 2015, the City Council passed a motion, based on a referral, directing staff to draft and return to the City Council an ordinance, modeled after the City of Los Angeles's Ordinance, to require a transitional workforce retention period when there is a change of ownership, control, or operation of a large grocery store; and

WHEREAS, Los Angeles's Ordinance has been upheld by the California State Supreme Court and since the passage of Los Angeles Ordinance, a number of other local jurisdictions have passed similar measures; and

WHEREAS, supermarkets and other grocery retailers play a vital public health and economic role in the community as they are the primary sources of fresh food, canned and cartoned goods, and similar items; and

WHEREAS, supermarkets are anchors to Alameda's regional and neighborhood shopping centers (such as Alameda Landing, South Shore Center, Marina Village Shopping Center, Bridgeside Shopping Center, and Harbor Bay Landing Shopping Center), providing the customer base and foot traffic to support adjacent stores and in addition, supermarkets are also major employers in Alameda; and

WHEREAS, the general welfare of Alameda residents will be protected by keeping in place experienced grocery workers with knowledge of proper sanitation procedures and health regulations.

BE IT ORDAINED by the City Council of the City of Alameda:

Section 1. CHAPTER VI, ARTICLE XIII, SECTION 6-56 is hereby added to the Alameda Municipal Code as follows:

Article XIII. - GROCERY WORKER RETENTION

6-56.1 – Purpose

6-56.2 – Definitions

6-56.3 – Grocery Employers' Responsibilities

6-56.4 – Transition Employment Period

6-56.5 – Notice to Public

6-56.6 – Enforcement

6-56.7 – Exemption for Collective Bargaining Agreement

6-56.8 – Coexistence with Other Available Relief for Specific Deprivations of Protected Rights

6-56.9 – Severability

6-56.1 – Purpose.

Full-service grocery stores are the main points of distribution for food for the residents of Alameda. The City has an interest in ensuring the welfare of its residents through the maintenance of health and safety standards in full-service grocery stores. Experienced grocery workers with knowledge of proper sanitation procedures, health regulations, and understanding of the clientele they serve are instrumental in furthering this interest. A transitional retention period upon change of ownership, control, or operation of full-service grocery stores ensures stabilization of this vital workforce, which results in preservation of health and safety standards. Through this ordinance, the City seeks to maintain the stability of the full-service grocery workforce in Alameda.

6-56.2 – Definitions.

As used in this article:

City shall mean the City of Alameda.

Change in Control shall mean any sale, assignment, transfer, contribution, or other disposition of all or substantially all of the assets or a controlling interest (including by consolidation, merger, or reorganization) of the incumbent grocery employer or any person who controls such incumbent grocery employer ("IGE Parent") or any full-service grocery store(s) under the operation or control of either such incumbent grocery employer or IGE parent to the successor grocery employer. Change in control does not include an incumbent grocery store, IGE parent, or grocery store that goes out of business.

Eligible Grocery Worker shall mean any individual whose primary place of employment is at the full-service grocery store subject to a change in control, and who has worked for the incumbent grocery employer for at least six months prior to the execution of the transfer document. Eligible grocery worker does not include a managerial, supervisory, or confidential employee.

Employment Commencement Date shall mean the date on which an eligible grocery worker retained by the successor grocery employer pursuant to this chapter commences work for the successor grocery employer in exchange for benefits and compensation under the terms and conditions established by the successor grocery employer and as required by law.

Full-Service Grocery Store shall mean a facility in the City of Alameda that is over 15,000 square feet in size and that sells to the general public primarily groceries, vegetables, fruits, meats, poultry, fish, canned and cartoned goods, milk, juices, soft

drinks and similar items, and other food stuff for preparation and consumption off of the premises, and toiletries and other items for personal or home use. For the purposes of this ordinance, the term “primarily” shall refer to a full-service grocery store in which at least fifty-one percent (51%) of the floor space is devoted to grocery sales.

Incumbent Grocery Employer shall mean the person that owns, controls, and/or operates the full-service grocery store prior to the change in control.

Person shall mean an 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.

Retaliatory Action shall mean the failure to hire, or the discharge, suspension, demotion, penalization, or discrimination or any other adverse action against an eligible grocery employee with respect to the terms and conditions of the eligible grocery worker's employment.

Successor Grocery Employer shall mean the person that owns, controls, and/or operates the full-service grocery store after the change in control.

Transfer Document shall mean the purchase agreement or other document(s) effecting the change in control.

6-56.3 – Grocery Employers’ Responsibilities.

- a. The incumbent grocery employer shall, within fifteen days after the execution of the transfer document, provide to the successor grocery employer the name, address, date of hire, and employment occupation classification of each eligible grocery worker.
- b. The successor grocery employer shall maintain a preferential hiring list of eligible grocery workers identified by the incumbent grocery employer as set forth in subsection a. of this section and shall be required to hire from that list for a period beginning upon the execution of the transfer document and continuing for ninety days after the full-service grocery store is fully operational and open to the public under the successor grocery employer.
- c. If the successor grocery employer extends an offer of employment to an eligible grocery worker, the successor grocery employer shall retain written verification of that offer for no fewer than three years from the date the offer was made. The verification shall include the name, address, date of hire, and employment occupation classification of each eligible grocery worker.

6-56.4 – Transition Employment Period.

- a. A successor grocery employer shall retain each eligible grocery worker hired pursuant to this article for no fewer than ninety days following the eligible grocery worker's employment commencement date. During this ninety-day transition

employment period, eligible grocery workers shall be employed under the terms and conditions established by the successor grocery employer, as required by law and pursuant to the terms of a relevant collective bargaining agreement, if any.

- b. If within the period established in section 6-56.3(b) the successor grocery employer determines that it requires fewer eligible grocery workers than were required by the incumbent grocery employer, the successor grocery employer shall retain eligible grocery workers by seniority within each job classification to the extent that comparable job classifications exist or pursuant to the terms of a relevant collective bargaining agreement, if any. Non-classified eligible grocery workers shall be retained by seniority and according to experience or pursuant to the terms of a relevant collective bargaining agreement, if any.
- c. During the ninety-day transition employment period, the successor grocery employer shall not discharge, without cause, an eligible grocery worker retained pursuant to this chapter.
- d. At the end of the ninety-day transition employment period, the successor grocery employer shall perform a written performance evaluation for each eligible grocery worker retained pursuant to this chapter. If the eligible grocery worker's performance during the ninety-day transition employment period is satisfactory, the successor grocery employer shall consider offering the eligible grocery worker continued employment under the terms and conditions established by the successor grocery employer and as required by law. The successor grocery employer shall retain a record of the written performance evaluation for a period of no fewer than three years.

6-56.5 – Notice to Public.

- a. The incumbent grocery employer shall post public notice of the change in control at the location of the affected full-service grocery store within five business days following the execution of the transfer document. Notice shall remain posted during any closure of the full-service grocery store and until the full-service grocery store is fully operational and open to the public under the successor grocery employer.
- b. Notice shall include, but not be limited to, the name of the incumbent grocery employer and its contact information, the name of the successor grocery employer and its contact information, and the effective date of the change in control.
- c. Notice shall be posted in a conspicuous place at the full-service grocery store so as to be readily viewed by eligible grocery workers and other employees, customers, and members of the public.

6-56.6 – Enforcement.

- a. Eligible grocery workers may bring an action in the Superior Court of the State of California, as appropriate, against the incumbent grocery employer or the successor grocery employer for violations of this chapter and may be awarded:
 1. Hiring and reinstatement rights pursuant to this chapter, whereupon the ninety-day transition employment period shall not commence until the eligible grocery worker's employment commencement date with the successor grocery employer.
 2. Front pay or back pay for each day during which the violation continues, which shall be calculated at a rate of compensation not less than the higher of:
 - i. The average regular rate of pay received by the eligible grocery worker during the last three years of the eligible grocery worker's employment in the same occupation classification; or
 - ii. The most recent regular rate received by the eligible grocery worker while employed by either the incumbent grocery employer or the successor grocery employer.
 3. Value of the benefits the eligible grocery worker would have received under the successor grocery employer's benefit plan.
- b. If the eligible grocery worker is the prevailing party in any legal action taken pursuant to this section, the court shall award reasonable attorney's fees and costs as part of the costs recoverable.

6-56.7 – Exemption for Collective Bargaining Agreement.

Parties subject to this article may, by collective bargaining agreement, provide that the agreement supersedes the requirements of this article.

6-56.8 – Coexistence with Other Available Relief for Specific Deprivations of Protected Rights.

This article shall not be construed to limit an eligible grocery worker's right to bring legal action for wrongful termination.

6-56.9 – Severability.

If any provision of this article is found or held to be invalid by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect.

Section 2. This Ordinance shall be in full force and effect from and after the expiration of thirty (30) days from the date of its final passage.

Section 3. Severability Clause: It is the declared intent of the City Council that if any section, subsection, sentence, clause, phrase, or provision of this Ordinance is held invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not be so construed as to render invalid or unconstitutional the remaining provisions of this Ordinance.

Presiding Officer of the Council

Attest:

Lara Weisiger, City Clerk

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I, the undersigned, hereby certify that the foregoing Ordinance was duly and regularly adopted and passed by Council of the City of Alameda in regular meeting assembled on the _____ day of _____, 2015, by the following vote to wit:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

IN WITNESS, WHEREOF, I have hereunto set my hand and affixed the official seal of said City this _____ day of _____, 2015.

Lara Weisiger, City Clerk
City of Alameda

APPROVED AS TO FORM:

Janet C. Kern
City Attorney