

# County of Santa Clara

Office of the County Executive

County Government Center, East Wing  
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70 West Hedding Street  
San Jose, California 95110



DATE: April 20, 2021

TO: Honorable Members of the Board of Supervisors  
Jeffrey V. Smith, M.D., J.D., County Executive

FROM: Betty Duong, Manager, Division of Equity and Social Justice  
Jessie Yu, Manager, Officer of Labor Standards Enforcement

SUBJECT: **Under Advisement from January 26, 2021 (Agenda Item 21): Off-Agenda status report from the Office of Labor Standards Enforcement relating to Protecting Essential Workers in the Fast-Food Industry/Limited-Service**

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On January 26, 2021 (Item No. 21), the Board of Supervisors (Board) received a report relating to Protecting Essential Workers in the Fast-Food Industry/Limited-Service Response. At the request of Supervisor Chavez, the Board directed Administration to provide an off-agenda report in response to the recommendations provided via public comment by Fight for \$15 during discussion of this item. See Attachment A.

This off-agenda report provides information relating to the ongoing collaboration with Fight for \$15, workers' rights advocates, and retail food workers to advance protections and labor standards in the food retail industry.

I. In a letter to the County, Fight for \$15 proposed four modifications to the activities and priorities of Business Compliance Food Retail Task Force (Food Retail Task Force) described by Administration. Fight for \$15's recommendations are highlighted in the excerpts below.

A. "CHBET [Community Health and Business Engagement Team] community outreach will prioritize and target activity at food retail businesses, which includes the fast-food industry and limited services restaurants, *in consultation and collaboration with fast-food workers and their representatives.*"

**Status:** Community Health and Business Engagement Team (CHBET) leadership meet regularly with Fight for \$15, worker advocates, and representatives of fast-food workers to receive feedback and information relating to health and safety concerns in the retail food industry. These conversations, in turn, inform CHBET engagement strategies including the type of resources to be shared, issue areas of focus, and where additional engagement with businesses and workers may be of added value.

- B. “This Task Force ***will seek input from nonmanagerial employees and their representatives*** and will focus proactive enforcement efforts and responsive enforcement efforts in the food retail industry, which includes the fast-food industry and limited-service restaurants.”

**Status:** The Food Retail Task Force emphasizes enforcement against repeat offenders and egregious violations of the Public Health Orders in the food retail industry. The Food Retail Task Force is empowered to suspend DEH operating permits where it is appropriate and necessary to compel compliance and prevent further harm.

These are enforcement actions of last resort or implemented in response to exigent need with significant consequences to the willfully noncompliant business. Within this framework, engagement with fast food workers unrelated to the underlying offense, and their representatives, to discuss broader enforcement policies may not be feasible or beneficial to the enforcement action. To achieve the mutual goals of the Food Retail Task Force and Fight for \$15, regular engagement between the Office of Labor Standards Enforcement (OLSE) and the CHBET provides situational awareness of industry issues to inform the BCU and efforts of the Food Retail Task Force.

- C. “In certain cases of egregious violations of the Public Health Orders, ***including failure to promptly cooperate with the authorities and promptly mitigate conditions that pose imminent risk of harm***, the Food Retail Task Force may immediately suspend the operating permit which requires the business to close until authorized to reopen.”

**Status:** This enforcement feature is currently in practice. Violations referred to the Food Retail Task Force are reviewed on a case-by-case basis. Any number of factors, based on the specifics of the case, are weighed to determine the necessary enforcement actions to prevent further harm or imminent risk of harm. In discussions with Fight for \$15, worker advocates, fast food workers, and their representatives, there is agreement to continue submitting concerns of potential health order violations to the COVID-19 concerns portal ([scccovidconcerns.org](https://scccovidconcerns.org)) and denoting in the online form where there is cause to believe that current conditions pose imminent risk of harm. The intake team reviewing all submitted concerns will refer matters as appropriate and necessary to the Food Retail Task Force.

- D. “In addition, the Food Retail Task Force may pursue additional legal action in coordination with County Counsel and/or the District Attorney’s Office, ***and will refer matters involving complaints of employer retaliation to County Counsel and/or the District Attorney’s Office, for potential enforcement action.***”

**Status:** This enforcement feature is currently in practice. In meetings with Fight for \$15, staff confirmed that matters involving complaints of employer retaliation, potential violations of employment law, or possible criminal activity, are elevated to both Office of the County Counsel and the Office of the District Attorney for further review.

## II. Food Retail Advisory Council

The Food Retail Advisory Council is an additional and separate initiative led by OLSE to advance labor standards and workplace safety in the food retail industry. This serves as an additional opportunity to support the goals of the Food Retail Task Force and extend engagement with the food retail industry beyond the COVID-19 response.

Implementation of the Food Retail Advisory Council creates a formal avenue for feedback and awareness of potential bad actors and emerging issues of non-compliance in the food retail industry. This engagement is both helpful to enforcement strategies relating to current Public Health Orders as well as implementation of the County's Food Permit Enforcement Program that will recommence once all food retail vendors are generally able to resume regular operations.

Members of Food Retail Advisory Council will include workers, industry representatives, workers' rights advocates, small business owners, and other stakeholders to be identified. The Council will help OLSE advance labor standards in the food retail sector through review and recommendation of industry related policies and procedures.

The Council's immediate priorities are to inform advancement of labor standards and compliance with the County's COVID-19 Public Health Orders while the industry continues to grapple with the effects of the pandemic. Beyond the COVID-19 response, the Council will serve as an advisory body to OLSE's Food Permit Enforcement Program which conditions the issuance of a food permit on compliance with the Health Code and all employment labor laws. Due to the pandemic, many businesses were forced to limit service or close its doors for an extended period of time. In response, OLSE suspended the activities of the Food Permit Enforcement Program after only four months of operation. During that limited time of engagement, the Program recouped approximately \$95,000 of unpaid wages plus interest to workers. OLSE will resume the Food Permit Enforcement Program with advisement from the Council to ensure a resumption plan that reflects a post COVID-19 food retail landscape.

The Council will formally launch in June 2021, although preliminary planning meetings and discussions have taken place and will continue with Fight for \$15 and members of the Fair Workplace Collaborative as additional stakeholders are identified and invited for collaboration and participation.

cc: Miguel Marquez, Chief Operating Officer  
James R. Williams, County Counsel  
Megan Doyle, Clerk of the Board  
Ky Le, Deputy County Executive  
Chief Board Aides  
Erica Kelly, Principal Budget & Policy Analyst



January 25, 2021

Santa Clara County Board of Supervisors  
70 West Hedding Street  
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San Jose, CA 95110  
Submitted via [BoardOperations@cob.sccgov.org](mailto:BoardOperations@cob.sccgov.org)

Re: Comment on Item #21, January 26, 2021 Board Meeting (Receive report from the Office of the County Executive relating to recommendations for protecting essential workers in the Fast Food Industry/Limited Service Restaurants)

Dear Supervisors,

Fight for \$15, Bay Area works to protect the rights and improve the working conditions of essential fast food workers in Santa Clara County and throughout the Bay Area, and we know firsthand the myriad and significant health and safety threats posed to fast food workers. Substandard working conditions have unfortunately long been prevalent throughout the industry, but the risks to workers have been exacerbated and made more prominent by the exigencies of the COVID-19 pandemic. A summary of issues identified in 19 detailed health complaints filed by fast-food workers in Santa Clara County in recent months is enclosed below. We applaud the Board's decisive and proactive efforts to enhance protections for these vulnerable frontline workers, including through approval of Board Referral #103644 at the Board's November 17, 2020 meeting (Item No. 17). We also appreciate the very thorough and helpful report provided by the Office of the County Executive in response to the Board's referral ("OCE Report"), as well as the OCE's Supplemental Memo recommending specific, concrete actions to protect essential workers in the fast-food industry and limited service restaurants ("Supplemental Memo").

We write to respectfully recommend a few minor modifications to the action items described in OCE's Supplemental Memo that we think will have important impacts in strengthening protections for fast food and limited-service restaurant workers.

*First*, we recommend that Item 1 specifically authorize and direct the Community Health and Business Engagement Team (CHBET) to engage in the described efforts in collaboration with fast food workers and their advocates. This can be accomplished by adding the following underlined text to the second-to-last sentence of Item 1: "CHBET community outreach will prioritize and target activity at food retail businesses, which includes the fast-food industry and limited services restaurants, in consultation and collaboration with fast-food workers and their representatives."

*Second*, we recommend that Item 2 specify that the proposed Food Retail Task Force should seek input from non-managerial employees of fast food restaurants and/or representatives of such employees. This can be accomplished by adding the following underlined text to the last sentence of the item: “This Task Force will seek input from non-managerial employees and their representatives, and will focus proactive enforcement efforts and responsive enforcement efforts in the food retail industry, which includes the fast-food industry and limited-service restaurants.”

*Third*, we recommend that Item 3 specifically direct the Food Retail Task Force and Department of Environmental Health (DEH) to take appropriate enforcement action to ensure prompt compliance by businesses with all existing DEH procedures and any additional rules that the Food Retail Task Force may adopt. It is our understanding that businesses are often dilatory in responding to DEH in permit revocation investigations and proceedings, which significantly undermines the efficacy of this important program. This can be accomplished by adding the following underlined text to Item 3: “In certain cases of egregious violations of the Public Health Orders, including failure to promptly cooperate with the authorities and promptly mitigate conditions that pose imminent risk of harm, the Food Retail Task Force may immediately suspend the operating permit which requires the business to close until authorized to reopen.”

*Finally*, we recommend that the second paragraph of Item 3 clarify that the Food Retail Task Force is authorized and directed to refer matters, including but not limited to matters arising from complaints of employer retaliation related to violations of COVID-19 safety requirements, to the County Counsel and/or the District Attorney’s Office for possible enforcement action. Such enforcement may include, but is not limited to, civil actions for public nuisance, reckless endangerment, negligence, and violations of the Unfair Competition Law, or criminal prosecution, as appropriate. This can be accomplished by adding the following underlined text to the first sentence of second paragraph of Item 3: “In addition, the Food Retail Task Force may pursue additional legal action in coordination with County Counsel and/or the District Attorney’s Office, and will refer matters involving complaints of employer retaliation to County Counsel and/or the District Attorney’s Office, for potential enforcement action.”

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Action is urgently needed to protect the health of fast food workers and the customers they serve, not only to address the exigencies of the current pandemic, but also to ensure these vulnerable workers are adequately protected in the long-term. We appreciate the proactive enforcement measures the County has committed to undertake, and we urge the Board to continue its leadership in protecting the rights of essential fast food workers going forward.

In solidarity,

Allynn Umel  
National Organizing Director  
Fight for \$15 and a Union

## **Enclosure: Recap of Concerns Raised by Fast Food Whistleblowers in Santa Clara County**

Dating back to the beginning of the pandemic, fast food workers in California have sounded the alarm about unsafe conditions in their workplaces and the industry-wide failure of large fast food employers like McDonald's to implement critical health and safety measures to prevent the spread of COVID-19. By forcing workers to work while sick with COVID-19 symptoms, failing to notify and quarantine close contacts of workers with COVID-19, and failing to take basic preventive measures such as ensuring mask-wearing and physical distancing, fast food workplaces drive the spread of the pandemic. Fast food workers move between crowded workspaces with lax safety measures to crowded households, often working part-time at two or more stores, and often living in households with other fast food workers, allowing outbreaks to spread quickly through households and from store to store. Furthermore, many fast food employers fail to inform workers about sick pay and quarantine pay policies, and workers often cannot access these benefits without fear of retaliation, forcing them to make impossible choices between their health and their livelihoods.

To date, fast food workers across the state have filed nearly 150 complaints with state and local regulatory agencies in California, including with Cal/OSHA, the Labor Commissioner, and local public health departments and labor standards enforcement offices, documenting flagrant violations of basic COVID-19 safety measures and labor laws. In Santa Clara county, at least 19 complaints have been filed by workers at nine fast food locations; several restaurants had multiple COVID-19 complaints showing the failure of store management to take action even when workers brought problems to light multiple times.

On April 6, 2020, workers at two San Jose McDonald's locations (2040 N. 1st St. and 2680 Story Rd) were among the first in the state to call attention to fast food COVID-19 safety violations, filing complaints with the Santa Clara County Department of Public Health and Cal/OSHA citing violations of public health regulations including their employer's failure to create and enforce effective social distancing plans for workers and customers, and the frequent lack of gloves, soap and hand sanitizer.

On June 9, 2020 a worker at another San Jose McDonald's location from the same franchise group (1299 E. Santa Clara) filed a complaint with the Health Department, reporting that two workers at that restaurant had tested positive for COVID-19 and management failed to take measures to prevent the spread of COVID-19. The complaint detailed problems including management's failure to properly notify workers about COVID-19 cases and potential exposure, failure to provide workers with training and information regarding staying home when sick, recognizing COVID-19 symptoms, quarantining and quarantine pay, and lack of adequate PPE.

On June 15, July 21 and August 27, 2020, workers at the McDonald's store located at 6990 Automall Parkway in Gilroy filed complaints with the County Health Department and Cal/OSHA documenting store management's ongoing failure to take action to stop the spread of COVID-19 in light of multiple COVID-19 cases at the store, including management's failure to properly notify and quarantine close contacts, failure to enforce mask-wearing and social

distancing, lack of temperature-taking, lack of regular hand-washing, and failure to ensure the regular cleaning and sanitizing of high-touch surfaces.

The July 21st complaint by a worker who tested positive for COVID-19 stated: “When I tested positive, [management] told me not to tell my coworkers that I had COVID-19.” The July 21st complaint also indicates that the problems outlined in the June 15th complaint had persisted, including an ongoing lack of social distancing and failure to enforce mask-wearing, as well as continued failure to notify and quarantine close contacts of workers who had tested positive for COVID-19. Despite multiple positive cases among workers at the location, store management failed to communicate to workers that those with suspected COVID-19 symptoms should stay home, and failed to provide accurate information about quarantine pay.

By August, an additional confirmed case and several more suspected cases of COVID-19 were reported at the Gilroy store. The August 27th complaint showed many of the same health and safety violations outlined in the two prior complaints were ongoing, and that working conditions at the store had worsened due to a broken air-conditioning system for eight days during the hottest part of the summer, making it difficult for workers to work without pulling their masks down in order to breathe.

A similar problem was reported with the air-conditioning system at the McDonald’s located at 1150 S De Anza in San Jose, where workers reported in a complaint on August 29th that the store’s air-conditioner was broken during a four-day period when the temperature in San Jose rose over 100 degrees, creating excessive heat and making it difficult for workers to breathe with masks on. Other serious problems at that location included a lack of warm water for effective hand-washing, as well as management’s failure to enforce social distancing and appropriate mask-wearing, and a lack of frequent cleaning and sanitizing of high touch surfaces, among several other issues. Workers at this store also described retaliation from management after speaking up about safety issues, creating an unsafe environment in which workers are afraid to raise health and safety concerns.

On October 30th, a complaint filed by a worker at the McDonalds at 1033 E Capitol Expressway in San Jose reported that at least four workers at the location were forced to work while sick with visible COVID-19 symptoms such as fever, cough, body aches and sore throat. According to the complaint, even after the first worker had to stop working because they were too sick, management continued to force others to work with COVID-19 symptoms. Each symptomatic worker had close contact with 6-8 people during each shift they worked. Both before and during the pandemic, the management at this store exhibited a pattern of retaliating against workers for staying home sick. Management also failed to properly inform all workers about quarantine pay, failed to enforce proper mask wearing for workers or customers, failed to enforce social distancing and failed to perform deep cleaning when there were COVID-19 cases.

A worker from the Jack In The Box restaurant at 1740 S Main Street in Milpitas filed complaints with the Santa Clara County Health Department and Cal/OSHA on November 10th, after being fired by Jack In The Box for following a doctor’s quarantine order and not coming

back to work while still sick. Jack In The Box did not provide this worker with quarantine pay or sick pay, even though the worker requested it. When another worker at the location tested positive for COVID-19, management hid the case and did not notify or quarantine any coworkers. Jack In The Box also failed to provide masks to workers, failed to enforce mask wearing by customers, failed to train or enforce social distancing, failed to conduct frequent cleaning and sanitizing of high-touch surfaces, and did not conduct routine COVID-19 screenings.

On December 4th, a worker at the McDonalds at 1249 Great Mall in Milpitas filed complaints with the Health Department and Cal/OSHA after at least two cases of COVID-19 were confirmed at the location and management failed to inform or quarantine close contacts and did not close the store for cleaning. In the complaint, the worker expressed concern that the virus could spread due to the store's lax approach to COVID-19 safety, including not enforcing mask wearing, lack of social distancing and lack of frequent cleaning of high-touch surfaces.

In complaints filed with the Health Department and Cal/OSHA on December 24th, workers at the McDonalds located at 1398 W San Carlos Street in San Jose reported that there were at least three known COVID-19 cases at that location in November and December, and that management was not taking appropriate action to prevent the spread of the virus. Echoing the problems reported at numerous other McDonald's locations in Santa Clara County, management at this store failed to identify, inform and quarantine close contacts of known COVID-19 cases, failed to plan, train and enforce physical distancing, failed to provide adequate PPE to workers, did not inform workers about quarantine pay, and failed to pay quarantine pay appropriately. Similar to conditions reported at other McDonald's stores earlier in the year, workers at this location also reported a broken air-conditioning system, exposing workers to excessive heat and causing them to have to pull their masks down in order to breathe.

Most recently, on January 14th, 2021, a worker at another Jack In The Box location (3367 El Camino real in Santa Clara) filed complaints with the Health Department and Cal/OSHA, detailing management's failure to control and prevent the spread of COVID-19. Problems at this location follow a similar pattern to those previously identified at the Jack In The Box store in Milpitas, and those repeatedly identified at McDonald's locations across the county, including failure to follow laws and guidelines pertaining to social distancing and masks, failure to conduct frequent cleaning and sanitization of high touch surfaces, neglecting to screen of workers for COVID-19 symptoms and exposure, and failing to provide accurate information to all workers on COVID-19 policies and benefits, including quarantine pay.

As demonstrated by the growing number of complaints filed by workers at fast food locations across the county over the past nine months, fast food employers have consistently failed to adhere to the laws and guidelines put in place by state and local regulators to protect workers and the public from COVID-19. By disregarding critical measures such as social-distancing, providing adequate PPE, and screening workers for COVID-19 symptoms, fast food employers have persistently acted in flagrant violation of the law, posing serious threats to



workers' health and safety. Furthermore, these employers' failure to ensure that workers who are sick with COVID-19 are able to stay home, and failure to properly quarantine workers with COVID-19 and their close contacts, has contributed to the spread of the virus among fast food workers, their families, and the broader community. Despite ongoing and repeated efforts by workers to shed light on these problems by raising them in the workplace and notifying the appropriate regulatory agencies, fast food workplaces continue to drive the spread of the pandemic and its disparate impact on communities of color.