



# CITY OF POMONA COUNCIL REPORT

March 12, 2018

To: Honorable Mayor and Members of the City Council

From: Linda Lowry, City Manager

Submitted by: Linda Matthews, Human Resources/Risk Management Director

Subject: **Discussion Regarding a Proposed City Ordinance Establishing Minimum Wage Rate and Frontline Environmental Services Staffing Levels for Acute Care Hospitals Located in the City of Pomona**

## OVERVIEW

**Recommendation** - That the City Council receive a briefing and public input, and give direction regarding a proposed ordinance establishing a minimum wage rate for hospital workers and staffing requirements for Frontline Environmental Services Workers for Acute Care Hospitals Located in the City of Pomona.

**Fiscal Impact** – The fiscal impact to the City is undetermined at this time. Potential costs include administrative costs and litigation costs. There is a provision to adopt a fee to recover the costs of administering the program. To initiate such a fee adoption would require staff time and/or a consultant up front to determine and defend the fee. Because the City is a customer of both Pomona Valley Hospital Medical Center and Casa Colina Hospital, there is a potential that the cost of medical services provided to the City could increase. Finally, some election costs would be avoided if the proposed ballot initiative qualified for placement on the ballot but was ultimately not placed on the ballot because Council had chosen to adopt the ordinance directly. The potential cost of placing the qualified initiative on the ballot ranges from \$8,000 to \$107,000, depending upon the number of other ballot initiatives that qualify for placement.

## EXECUTIVE SUMMARY

A petition to add an ordinance to the November ballot is currently being circulated for signatures by the proponents. If the petition qualifies and is approved by the voters, it would implement an ordinance establishing local minimum wage requirements for Hospital Worker Employees and staffing requirements for Frontline Environmental Services Workers. The City Council directed staff to bring back the ballot measure in the form of an ordinance. The Mayor requested this Study Session to discuss the proposed ordinance and allow for public input prior to the formal introduction of the ordinance for first reading. The ordinance sets a minimum wage of \$18.00 per hour, or \$3.00 per hour above any local, state or federal minimum wage for Hospital Worker

Employees and requires an increase in the hours worked by Frontline Environmental Services Workers if a hospital does not meet nationally-derived hospital-related infection standards, as proposed by the submitted petition.

## **DISCUSSION**

A ballot initiative is being circulated for signatures and ultimately, if qualified, for consideration by the voters related to hospital minimum wages and staffing levels.

On January 8, 2018, City Council directed staff to bring back the ballot measure in the form of an ordinance that could be adopted by City Council for public input and City Council consideration. On March 6, 2018, the Mayor scheduled a special study session in order to learn more about the ordinance prior to it being considered for adoption.

The City Attorney's office has revised the ordinance (Attachment 1) that mirrors the ballot initiative with some minor changes for administrative efficiency, such as modifying the proposed code sections, addressing typographic issues, and eliminating the mandatory funding and reporting requirements called for under the ballot initiative. The recitals in Attachment 1 are taken directly from the version of the ordinance proposed in the petition. The ordinance is referred to here as the Hospital Workforce Regulation.

This staff report provides an overview of the provisions of the proposed Hospital Workforce Regulation. It also provides a brief discussion about the potential impacts of the proposed ordinance on the City as an employer. The affected parties (Pomona Valley Hospital Medical Center, Casa Colina Hospital, and the proponents of the ordinance) will be provided an opportunity at the study session to speak and provide additional information about the impacts of the ordinance from their perspective.

### **Provisions of the Proposed Ordinance - Hospital Workforce Regulation**

Below is a summary of the provisions of the proposed ordinance. The complete proposed ordinance is provided as Attachment 1 for review.

Employers Impacted by the Proposed Ordinance. The proposed ordinance applies to a "Covered Hospital", defined as *"any general acute care hospital as defined in subdivision (a) of Section 1250 of the Health and Safety Code that is in the City, or any Person or other entity that owns, operates, or controls, in whole or in part, any such hospital"*. Staff interpretation of this definition at this time is that it would apply to Pomona Valley Hospital Medical Center and Casa Colina Hospital and Centers for Health Care, as well as any acute care hospital that located in the City of Pomona in the future.

Preamble. The preamble includes a variety of statements provided by the proponents of the Hospital Workforce Regulation regarding what they believe are the benefits of the proposed ordinance. The statements are based on statements from the original petition submitted by the proponents. Attachments 2 and 3 include the information the proponents provided to support these statements.

Hospital Workers Minimum Wage (Division 2 of the Ordinance). A "Hospital Worker Employee" is defined as any individual who works at least five (5) hours of work in any seven

(7) consecutive days at any Covered Hospital; and is entitled to payment of minimum wage pursuant to the California minimum wage law. The ordinance requires that effective January 1, 2019, the Hospital Worker Minimum Wage is the higher of \$18.00 an hour, or \$3.00 an hour more than any other applicable minimum wage, whether provided for by local, state, or federal law.

The ordinance requires the City Manager to publish and make available to Covered Hospitals a bulletin announcing the Hospital Workers' Minimum Wage Rate and informing Hospital Workers' of their rights under this Chapter. It requires the Covered Hospital to post this bulletin in conspicuous locations in clear view of the employees where other employment-related notices are customarily posted. Every Covered Hospital shall post the bulletin in any language spoken by at least 10% of the Hospital Workers at the workplace or job site. The Covered Hospital is required to accurately translate the notice issued by the City.

Currently, both the federal government and the State of California have minimum wage laws. There is no local minimum wage law for the City of Pomona. Currently, the California minimum wage is higher than the federal minimum wage and would drive the minimum wage pursuant to this ordinance.

| <b>Effective Date</b> | <b>California Minimum Wage</b>   | <b>Proposed Hospital Minimum Wage</b> | <b>Percent Above CA Minimum</b> |
|-----------------------|----------------------------------|---------------------------------------|---------------------------------|
| January 1, 2018       | \$11.00                          | n/a                                   | n/a                             |
| January 1, 2019       | \$12.00                          | \$18.00                               | 50%                             |
| January 1, 2020       | \$13.00                          | \$18.00                               | 38%                             |
| January 1, 2021       | \$14.00                          | \$18.00                               | 29%                             |
| January 1, 2022       | \$15.00                          | \$18.00                               | 20%                             |
| January 1, 2023       | Adjusted by the CPI-W up to 3.5% | \$3.00 above minimum wage             |                                 |

Frontline Environmental Service Worker Staffing Levels (Division 3). Division 3 of the proposed ordinance requires a Covered Hospital to increase staffing by 20% for a minimum three (3)-year period if it does not meet the Hospital-Acquired Infection Standard. The ordinance dictates how and when the Total Environmental Services (EVS) hours will be calculated. In Year 1, the minimum staffing requirement shall be: Total EVS Hours of 120% of Reported EVS Hours and 120% of Minimum EVS Hours; and Total EVS hours per Square Foot must be at least 120% of Reported EVS Hours per Square Foot and at least 120% of Minimum EVS Hours per Square Foot. The minimum staffing requirements are the same in Year 2 and 3, but may increase if the Covered Hospital falls below the Hospital-Acquired Infection Standard.

If a Covered Hospital is downsizing, it may request that the City Manager approve a reduction of the Total EVS Hours it is required to maintain, except that it must not reduce the required Total EVS Hours per Square Foot below 120% of the Minimum EVS Hours per Square Foot or 120% of Reported EVS Hours per Square Foot. The Hospital can only request an exception if it contends that maintaining or increasing the number of EVS Hours is unnecessary and would impose an undue burden on the Covered Hospital.

It requires the Covered Hospital to post its Total EVS Hours, Total EVS Hours per Square Foot, methodologies for determining the hours, Reported EVS Hours and EVS Hours for Years 1, 2,

and 3, and information regarding compliance with the Hospital-Acquired Infection Standard for the current reported year and the three preceding years.

By March 1 of each year, each Covered Hospital shall report to the City Manager demonstrating compliance with the Environmental Services Worker Staffing Levels.

Violations and Penalties for Non-Compliance with Environmental Services Worker Staffing Requirements. Any person may report to the City in writing any suspected violation of this Chapter. The City shall encourage reporting suspected violations by keeping confidential, to the maximum extent permitted, the name and other identifying information. The City may disclose the person's name and identifying information as necessary to enforce this Chapter or other labor or consumer safety laws only with the person's authorization.

To further encourage reporting, if the City notifies a Covered Hospital that the City is investigating a complaint, the Covered Hospital shall provide notice of the investigation to Hospital Workers and Hospital patients within 30 days using a form provided by the City. The Covered Hospital can choose to post the notice in a conspicuous place (such as near each public entrance) or by other method approved by the City Manager.

A Covered Hospital shall permit access to work sites and relevant records for authorized City representatives for the purpose of monitoring compliance with this Chapter or investigating employee complaints of noncompliance.

A Covered Hospital shall be subject to civil penalty of double the amount that would have cost to fulfill the Environmental Services Staffing Requirement. The City Manager is responsible for calculating the penalty, based upon the average cost to the Covered Hospital of employing or otherwise providing for Frontline EVS Workers in the year or years in which EVS staffing should have been increased. The civil penalty will be in addition to any other applicable penalties.

In addition, a Willful Violation shall be subject to civil penalties in the amount of \$1,000 per Willful Violation. Each and every day which any portion of a Willful Violation is committed is a separate Willful Violation of this Act.

A court may reduce the civil penalty and staffing requirements under certain conditions. Any relief granted by the Court shall be reviewed annually by the City Manager to determine if it is still required.

Other General Provisions. Other general provisions in the ordinance that apply to both the minimum wage and the Environmental Services staffing provisions are described below.

1. No Retaliation. A Covered Hospital cannot discharge, reduce in compensation, or otherwise discriminate against a Hospital Worker or other Person for opposing any practice proscribed by this Chapter, for participating in proceedings related to this Chapter, for seeking to enforce his or her rights under this Chapter by any lawful means, or for otherwise asserting rights under this Chapter.
2. No Waiver. A Hospital Worker cannot waive his/her rights under this Chapter.
3. Recordkeeping. The Covered Hospital shall maintain records for four (4) years showing compliance with the requirements and shall provide a Hospital Worker a copy of his or her records within ten calendar days of a reasonable request.

4. Audit and Inspections. The City Manager shall have the authority to arrange for and conduct an audit of any Covered Hospital for compliance with the Chapter.
5. Penalties. Civil penalties for violation of the City Code would be applicable. A Covered Hospital committing a “Willful Violation” as defined in the ordinance is subject to civil penalties in the amount of \$1,000 per Willful Violation. Each and every day which any portion of a Willful Violation is committed is a separate Willful Violation of this Act. This is in addition to any other applicable penalties.
6. The City Manager is authorized to coordinate implementation and enforcement of this Act and may promulgate appropriate guidelines or rules. Any guidelines or rules promulgated shall have the force and effect of law. A requirement that the City Council “appropriate sufficient funds” for enforcement has been eliminated from this version of the ordinance.
7. The City Manager, City Attorney, any Person aggrieved by a violation of this Chapter, or other aggrieved parties may bring a civil action in a court of competent jurisdiction against any Covered Hospital violating this Chapter.
8. The City Manager may file a complaint with the State Attorney General’s Office and the Los Angeles County District Attorney for any Willful Violation of this Act, a potential violation of the California’s Unfair Business Practices Act, Business and Professional Codes Section 17200, and, if applicable, the hospital’s charitable trust obligations. A requirement that the City Manager “shall” take such enforcement action has been eliminated from this version of the ordinance.
9. An aggrieved Person shall be entitled to legal and equitable relief including, without limitation, the payment of unpaid wages and penalties, interest, reinstatement or other injunctive relief, and reasonable attorneys’ fees and expenses.
10. Any Person or entity enforcing this Chapter only on behalf of the public shall also be entitled to recover equitable, injunctive or restitutionary relief and reasonable attorney’s fees and expenses, while recovered unpaid wages and penalties shall be paid to the affected Hospital Workers.
11. The City is authorized to award the same relief in its proceedings as a court may award.
12. Any Covered Hospital found in violation of any provision of this Chapter shall be required to reimburse the full costs incurred by the City or the law enforcement agency in investigating and prosecuting the violation.
13. Interest on penalties and all other monetary relief shall accrue at the rate of 10% per annum.
14. The City Council may impose by resolution a fee on any Covered Hospital to recover the costs of administering this Chapter.

#### **Potential Benefits and Issues of Proposed Ordinance On Hospital Operations.**

Acute Care Hospitals are currently subject to regulations of multiple regulatory agencies, including the County of Los Angeles Department of Public Health, the State of California Department of Health, the Federal Center for Medicare and Medicaid (CMS) and the Joint Commission. In addition, minimum wages are currently set by the State of California. The proposed ordinance adds local regulations related to minimum wages and environmental services staffing requirements.

The proponents of this ordinance state its purpose is to ensure the availability of high-quality, safe and clean hospital environments. The Preamble of the Ordinance (see Attachment 1) describes several benefits the proponents assert will result from the implementation of this

ordinance. In response to a request from the City Attorney's Office to the proponents to support the statements in the preamble, attorneys from Feinberg Jackson Worthman & Wasow LLP provided the following documents: 1) citations for the relevant statements and 2) a publication entitled "Epidemic of Medical Errors and Hospital Acquired Infections: Systemic and Social Causes" by William Charney in 2012. These materials are provided in Attachment 2 and 3 respectively.

The Covered Hospitals (Pomona Valley Hospital Medical Center and Casa Colina Hospital) expressed concerns about the initial ballot initiative. In response to the initial ballot petition that the proposed ordinance is based upon, Pomona Valley Hospital Medical Center, through the law firm of Jones Day, had submitted a letter at the time of the submission of the petition outlining their concerns regarding that version of the ordinance. This letter has been included as Attachment 4.

A full analysis of the impact (positive or negative) of this ordinance on hospital health, safety, costs, and operations, and the impact on the community, is beyond the scope of this staff report. City staff has limited staff and expertise in this area to evaluate this issue, which would involve a review of medical research. A more complete analysis will require additional time and significant staff resources. In addition, should Council desire a comprehensive independent analysis, the City may need to hire an independent consultant with expertise in hospital staffing, infection control and business practices to conduct the evaluation

As part of the special study session each of the entities directly impacted by the proposed ordinance will be provided time to present information about the ordinance. The directly impacted entities include the proponents of the ordinance, and Pomona Valley Hospital Medical Center and Casa Colina Hospital and Centers for Health Care as the organizations required to comply with the ordinance. Other members of the public will be able to provide input during the Public Comment portion of the Study Session.

### **Potential Impacts on the City of Pomona as an Employer**

The Hospital Workforce Regulation also has some potential operational impacts on the City as an employer. Some of the general impacts are described below.

First, the ordinance assigns additional administrative responsibilities to the City Manager (or designees). These additional administrative responsibilities include:

1. Determine the hospital minimum wage annually and publish a bulletin for posting.
2. If a reduction of the required Total EVS Hours is requested by a Covered Hospital, determine whether the reduction is permissible pursuant to the criteria in the ordinance (the Hospital is downsizing, contends that EVS hours are unnecessary, imposes an undue burden, and does not fall below the minimum standards).
3. Receive a report annually from the Covered Hospitals regarding compliance with the Environmental Services Staffing.
4. Receive and investigate complaints from any Person regarding alleged violations of the ordinance. The City must maintain confidentiality of the complainant, to the maximum extent possible, and only release confidentiality of complainant only with their permission. The City must notify the Covered Hospital of the Investigation, provide a public notice for posting, and may need to determine the method the Covered Hospital

uses to post the notice.

5. Calculate civil penalties owed, including evaluating a formula of minimum staffing requirements based upon EVS Hours Worked and EVS Hours Worked per Square Feet (and other factors), as well as a daily civil penalty of a \$1,000 per violation.
6. Evaluate annually any court order that reduces the requirements of this Ordinance.
7. Prepare guidelines and rules to implement this ordinance, which will have the same force as law.
8. Monitor and audit compliance with all terms of the ordinance.
9. Determine whether to grant equitable, injunctive or restitutionary relief, reasonable attorney's fees and expenses, unpaid wages and penalties pursuant to this ordinance.
10. Determine what fees should be charged to the Covered Hospitals to recover the costs of administering this ordinance.

All of the duties above represent additional responsibilities for the City. Some of the duties, especially the calculation and monitoring of EVS staffing requirements, are significantly different from any functions performed currently by the City. The City would need to hire, contract out, or develop internal expertise to effectively administer the responsibilities of the proposed ordinance.

The ordinance allows the City to charge a fee to the Covered Hospitals to recover the costs of administering the ordinance. Adopting a fee requires justification of the fee. This means the City would need to conduct a study to determine the costs. More information would also need to be known as to the scope of the action being regulated. Once an appropriate fee amount was established, legal notice would be made, and a public hearing would be held by the Council to impose the fees. Then the City could bill the Covered Hospitals to recover costs. These efforts would require staff time, most likely consultant time, and undetermined costs before a fee could be implemented.

There is a risk of legal action against the City. This is a complex ordinance that impacts management, employees, and patients. There is a significant risk of being sued by at least one, if not multiple, entities affected by the ordinance. Even if the City prevails, it would still involve staff time and legal defense costs.

Another potential impact to the City is the cost of contractual medical services. The City uses the medical services of Pomona Valley Medical Center and Casa Colina for workers' compensation and medical care for persons in the custody of the Police Department. Approval of this ordinance may increase the cost of those services. There is also a potential but unknown impact on City wages, labor negotiations, and relationships with the City labor groups.

Finally, a one-time impact is the cost of the election. The County of Los Angeles charges the City a fee for each initiative on the ballot. The amount of the fee varies widely depending upon whether or not there are other citywide initiatives on the ballot. If this is the only petition that qualifies for placement on the ballot in November 2018, the estimated additional cost is \$107,000. If two petitions qualify for placement on the ballot, the estimated additional cost increases to \$115,000 for both petitions together. If the City chooses to directly adopt the ordinance, thus eliminating the need for this petition to be placed on the ballot, the City may avoid paying somewhere between \$8,000 and \$107,000. There are currently three (3) other petitions besides the Hospital Wage Ordinance currently submitted for possible placement on the November ballot. It is not known at this time whether any of the petitions will qualify for

placement on the ballot.

## **CONCLUSION**

The Study Session will provide the City Council more information regarding the proposed Hospital Workforce Regulation ordinance. The City Council may then direct staff regarding next steps based upon the information provided.

### Attachments:

1. Proposed Hospital Workforce Regulation Ordinance
2. Preamble Statement Supporting Materials from Proponents of “High Quality Hospital Workforce Act” Petition.
3. Study provided by Proponents of “High Quality Hospital Workforce” Petition: “Epidemic of Medical Errors and Hospital-Acquired Infections: Systemic and Social Causes”, W. Charney (2012).
4. Letter from F. Curt Kirschner, Dec. 29, 2017, regarding “High Quality Hospital Workforce Act” petition.