



City of Pomona

505 S. Garey Ave
Pomona, CA 91766

Meeting Minutes

City Council / Housing Authority / Successor Agency to the Redevelopment Agency

*Mayor Tim Sandoval
Council Member Rubio R. Gonzalez
Council Member Adriana M. Robledo
Council Member Cristina Carrizosa
Council Member Elizabeth Ontiveros-Cole
Council Member Ginna E. Escobar
Vice Mayor Robert S. Torres*

VISION STATEMENT

*Pomona will be recognized as a vibrant, safe, beautiful
community that is a fun and exciting destination and the home of
arts and artists, students and scholars, business and industry.*

Monday, March 12, 2018

7:00 PM

Council Chambers

STUDY SESSION

6:00 P.M.

CALL TO ORDER

The meeting was called to order at 6:00 p.m.

ROLL CALL

Present: Mayor Tim Sandoval
Council Member Rubio Gonzalez
Council Member Adriana Robledo
Council Member Cristina Carrizosa
Council Member Elizabeth Ontiveros-Cole
Council Member Ginna E. Escobar
Council Member Robert Torres

STAFF PRESENT:

Linda Lowry, City Manager
Andrew Jared, Assistant City Attorney
Eva M. Buice, City Clerk

PLEDGE OF ALLEGIANCE

Mayor Sandoval led the Pledge of Allegiance to the Flag.

STUDY SESSION

1. 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

A. Staff Presentation

Human Resources Director Matthews provided a presentation regarding the proposed ordinance.

City Manager Lowry read the following statement: Staff has outlined the ordinance content, which mostly mirrors the proposed ballot language, and would regulate certain acute care hospital minimum wages and front-line environmental services staffing levels. The Council is now more informed, at least to the extent that a layman would be reading the proposed ballot measure ordinance. An investigative analysis has not been performed of the ordinance and its legislative intent. The overall consequences, intended or unintended, are not abundantly clear to City staff. City staff is not prepared nor indeed qualified to either estimate the economic impacts of the wage fees or to evaluate the scientific validity of the ordinances proffered relationship between front-line environmental service staffing levels and hospital acquired infections. The ordinance would place a regulatory function on the City, and with it attendant risks not only over the legality of the ordinance, but over the City's ability to perform the required regulatory functions. At this time, the City has no expertise to assume these responsibilities. Rather than trying to answer this acute care hospital question, I substitute a different question to my bosses. From a higher policy level and with the City's urgent priorities in view, like financial sustainability, increasing normal City service deficits, does entering into this new regulatory area distract the City from focus on its real City issues which are threatening the City's capacity to perform its own regular and historical duties and responsibilities.

B. Presentation from Proponents of the Ordinance

Genevieve Casey, attorney with Feinberg, Jackson, Worthman, and Wasow, stated that they were not the proponents of the ordinance; however, they had worked on the ballot initiative that was circulating, and had worked with City Attorney on draft language that the City Council expressed interest in developing. She advised that the goals of the ordinance were to set an elevated minimum wage in order for the hospitals to attract and maintain the best possible quality workers that they can, and to provide the best possible care to members of the community. She noted that the second goal was to address the urgent threat of hospital acquired infections such as C-Diff. and MRSA.

She said that when hospitals meet the national benchmarks for infectious diseases, there is no staffing trigger that would need to be met, it only happened when those benchmarks were not being met. She stated that by having the standards in the ordinance in place, it would motivate the hospital personnel to keep the rate of infections under control.

She stated that the ordinance authorized the City Council to administer fees, which would allow the City to recoup the costs of administration, and did not foresee an undue burden on the City. She did not believe there would be a need for a full time staff member, and that existing reporting structures would be sufficient to meet the standards in the ordinance. She noted that the City had the option of doing audits and more active enforcements, if they chose to do so.

Ann Le, SCIU UHW employees union, provided statistics on the number of C-Diff and MRSA infections at PVHMC every year, and the correlation of the need for basic sanitary precautions to help prevent infections. She noted the information had been provided to the City Council.

C. Presentation from Affected Hospitals

Richard Yokum, Chief Executive Officer, Pomona Valley Hospital Medical Center (PVHMC), stated that PVHMC and Casa Colina Hospital (CCH) were united and solemnly opposed to the ordinance. He noted that the process that had gone into the development of the ordinance was done without input from the hospitals, and without regard for the harm that it would cause them. He advised that two letters had been submitted to the City, one detailing the serious legal flaws in the initiative, and the other demonstrating that the hospitals did not have issues with safety, wages, or staffing levels. He said that the input was ignored, the facts were not acknowledged in the draft ordinance, and that the increased compliance would cost millions of dollars per year. He advised that the ordinance was unnecessary and illegal, and was not in the best interest of the community, the hospital or hospital employees. He stated that PVHMC had never received a deficiency notice for infection rates by any of the regulatory agencies, and that they were rated in the top ten hospitals nationwide for patient safety. He expressed concern that the ordinance would harm local health care, and stated that they were opposed to the ordinance.

Daniel Glickstein, Medical Director of Infectious Disease at PVHMC and CCH, provided an overview of the scientific evidence regarding the hospitals responses to reducing and preventing hospital acquired infections. He outlined the numerous policies, practices, and procedures that had been implemented to control infections, including continuous training, and investment in technology.

Darlene Scafidi, Vice President of Nursing and Patient Care Services at PVHMC, noted that several independent reviews had been conducted by various regulatory agencies, and that the allegations by the SCIU UHW had been investigated with no deficiencies having been found. She advised that PVHMC had never received a deficiency notice regarding

infectious diseases from any regulatory agency, and exceeded standards for environmental services staffing by 21 percent.

Ray Inge, Human Resources Vice President, PVHMC, noted that the turnover rate for full-time Environmental Services employees was two percent, with over 66 percent having been employed for over ten years, and that 60 percent of all employees had been employed for ten years or more. He advised that the hospital works to recruit, retain, and reward talented individuals.

Felice Loverso, President and Chief Executive Officer of CCH, stated that CCH rated below all regional and national hospitals regarding infectious disease rates, and that the turnover rate for environmental services employees was less than five percent. He noted that the most recently constructed building on their campus was designed to help control the spread of infectious diseases. He advised that the initiative was unprecedented in the entire State of California, and possibly the nation, and, if passed, would cause expensive legal battles. He noted that hospitals were already extensively regulated by State and Federal agencies. He believed that the proponents of the ordinance were being motivated by outside forces. He implored the City Council not to reject the ordinance and not to embroil the City and the hospitals in expensive litigation.

Ann McLeod, Senior Vice President for Health Policy and Innovation for the California Hospital Association (CHA), spoke regarding the various regulatory agencies that monitor health care, and provided statistics regarding the cost of meeting the various regulations. She submitted letters from Dr. David Perrot, Chief Medical Officer for the California Hospital Association (CHA) and board member of the largest medical accrediting authority in the United States, and from Julie Ann Morath, President and Chief Executive Officer of the Hospital Quality Institute, expressing opposition to the ordinance. Ms. McLeod questioned the City's ability to understand the various regulations governing hospital oversight, respond to the ever increasing technological landscape, stretching of the limited resources for health care, ability to accept claims from various parties that may be harmed by the additional oversight, and the ability to allow forward movement in coordinated and innovative care.

Curt Kirschner, Jones Day law firm, representative for PVHMC and CCH, stated that the ordinance was complex, had numerous empirical issues, and several legal flaws. He noted that the ordinance would add additional regulatory conditions on the hospitals, which were already extensively regulated. He advised that the ordinance was illegal under California and Federal laws, violated the Equal Protection Clause of the United States and California constitutions, preempted the extensive Federal and State overlays that already existed regarding hospital acquired infections, and violated the National Labor Relations Act. He said that if the ordinance was passed, it would put the hospital leadership in the impossible position of having to choose which regulatory agency to follow. He emphasized that passage of the ordinance would bring about expensive litigation, and urged the City Council to not adopt the ordinance.

Rebuttal by Genevieve Casey: She noted that they were not disputing the quality of care that the hospitals provided or the work done by individual employees. She stated that CCH was not subject to regulations regarding staffing levels when hospital acquired Infections fell below the national benchmarks; however, PVHMC did, and that they had a problem with hospital acquired Infections and data was available on the CMS website. She stated that the ordinance did not impose new regulations, referred to the existing hospital compare data, and that it put the burden on the hospitals to comply with and be accountable at a local level. She advised that they did not believe that the ordinance preempted any State or Federal laws, and that the fees were not excise or property taxes, but were only to cover the City's cost of administration. She noted that higher wages promoted higher well-being levels for employees, and increased the ability of employers to attract good workers.

Rebuttal by Curt Kirschner: He noted that half of the ordinance applied to minimum wage requirements, that the \$18 per hour was 50 percent higher than the California minimum wage, and would apply to every employee of the hospital, not just environmental service employees, whether or not there was an infectious disease issue or not. He advised that there were additional regulations in the ordinance requiring calculation of total environmental service hours per square footage of the hospital, which was problematic to calculate considering that the hospitals comprised several buildings, which were used in multiple ways. He questioned the City's ability to oversee, manage, and determine accuracy of the calculations. He also noted that any person in the City who had a grievance with the hospital could bring litigation against the hospital for alleged violations of the ordinance.

Rebuttal by Randy Blackman, Chairman of the Board of Casa Colina Hospital: He noted that many medical professionals had provided input on the issue, and did not believe the City Council was adequately prepared to address the details of the ordinance. He expressed concern that the City Council was being influenced by the SCIU UHW, and that PVHMC, CCH, and the City of Pomona would all lose should the ordinance be adopted, and urged the City Council to reject the ordinance.

Rebuttal by Genevieve Casey: She stated that the SCIU UHW and the City Council shared the same goals to promote the well-being of the workers and patients in the community, and that was the intent of the initiative and the ordinance. She said that the hospitals attorney had not provided any constructive suggestions or solutions to address the issues. She provided a list of various individuals who were supportive of the ordinance.

D. Public Comment

The following individuals' submitted speaker cards in support of the ordinance; however, they did not wish to speak:

Mark Ramos
Maria Heredia

Jose Calderon
Frank Torres

Denise Ellis
Senator Connie Leyva

The following individuals submitted speaker cards in opposition of the ordinance; however, they did not wish to speak:

Mary Pendergass	Nicole Martin	Susan Fleming
M. Rodriguez	Kenneth Nakamoto	Bonnie Scadi
Nancy Dorn	Mike Nelson	Rob Bogee
Christy Ewing	Barbara Holland	David Maroney
Kevin Johnson	Shayla Wright	William Hall
Elizabeth Booker	Kristen Stevens	Stacey Anderson
Fatima Hakai	Mamta Disai	Noriann Reddy
Leah Yorba	Jill Haggelstan	Stephanie Bradhurst
Amber B.	Janet Garcia	Leah Cornell
Candice Le Tran	Patricia	Mario Rivas
Eric Olson	Roland Yoshida	Kent Hoyas
Cynthia Lopez	Paul Reish	Ross Lessons
Mark Warren	Ayyamplayam Moheim	Justin Phillips
Jessica Benevides	Gus Corales	Zayir Shaw
James Kim	Karth Bhumen	

The following individuals spoke in support of the ordinance:

Jeanette Castillo	Ronald Lawrence on behalf	Daniel Inge on behalf of
David Estrada	of Assemblymember Freddy	Congresswoman Norma
Janice Williams	Rodriguez	Torres

They expressed concern with PVHMC being able to control hospital acquired diseases, and with the hospital administration not doing enough to protect workers and patients. They noted that they had worked in good faith to resolve the issue, and that the workers had voted fairly to unionize.

The following individuals spoke in opposition to the ordinance:

Erica Frausto	Lester Holsteen	Lydia Merene
Jaime Garcia	Darlene Johnson	Cecelia Morea
Ron Vandermolen	Rama Thumati	Maria Mendoza
Vijayam	David Patterson	Tammy Raush
Michael Jimenez	Carla Thomey	Pete Valenzuela
Heather Davis	James Kim	Jessica
Johnson Lightfoot	Elmer Pineda	Sandra Benevides
Eunice Russell	Ronald Vera	Dennis Nicholson
M. Joyce Bakersmith	John Mendoza	Juana Portada
Sadana	Flora Escobar	Jeanette Royston
B. Dasai	Jessica Benevides	

They expressed concern that the ordinance mandates would have far reaching consequences for other industries in the City, was not equitable for other health care facilities in the City, the effects on the ability to attract and retain businesses, and that it was a bad precedent to set minimum wage for a specific industry. They urged the City Council to work with the hospitals to come to a solution, and to let the initiative process play out. They noted that the two hospitals were the crown jewels of the City, there was no evidence of an issue with infections rates or that the mandates of the ordinance would improve safety, that both hospitals already met all mandated requirements, and that they already provided superior cleanliness and exceptional care. They noted the many pressing needs in the City, and did not believe the City should get involved in a labor dispute. They stated that the medical professionals that worked at the hospital trusted their own care, and the care of their families, to the hospital, and that the hospital employees were well cared for, and offered training, education, and opportunities for advancement. They strongly urged the City Council to reject the ordinance.

Following Public Comment, City Council discussion ensued regarding the ballot initiative process, and the City's legal responsibilities should the voters approve the measure,

Vice Mayor Torres inquired and Mr. Kirschner informed that the action would be legally challenged either way, if the City Council adopted the ordinance, or if the measure was approved by voters, as the mandates were a violation of the National Labor Relations Act.

Councilmember Gonzales asked and City Manager Lowry advised that should the same wage and staffing standards be imposed on the City, it would have to be calculated by reviewing wage categories, how the increased wages would affect the City's ability to provide services, and that the City Council would have to make a decision on how to balance the priorities and the budget. City Manager Lowry noted that the wage increase would amount to a 50 percent increase, significantly impacting the wage structures, and would have to go through the labor negotiation process.

Mayor Sandoval inquired and Assistant City Attorney Jared advised that they had met with Ms. Casey, Katha Worthman, Sean Fleming, and a representative from SCIU UHW, prior to being given direction by the City Council to draft the ordinance. City Manager Lowry stated that the meeting had been a fact finding conversation to understand the purpose of the ordinance.

Mayor Sandoval asked and Ms. Casey informed that the \$18 an hour rate had been calculated by looking at the lowest paid categories at the two hospitals, current rates, the cost of living in the community, and had used the "Living Wage Calculator," which was regionally specific, for a calculation of the rate. Mayor Sandoval requested that a copy of that calculation be provided to the City Council.

Councilmember Ontiveros-Cole noted that the average Licensed Vocational Nurses (LVN) made \$18 an hour after going to school and receiving their license. She inquired and Ms. Casey informed that the ordinance would apply to all employees, not just the environmental service employees.

Mayor Sandoval inquired and Assistant City Attorney Jared advised that setting the minimum wage for environmental service employees did not set precedence, and further advised that there had not been time to analyze the economic impacts to the City and businesses within the City.

City Manager Lowry noted that it would take a great deal of time and effort to evaluate the economic impacts, as the data was not easily accessible, and would have to be voluntarily provided by private sector employers.

Councilmember Carrizosa stated that the reason this had come this far was that there was a lack of recognition of the efforts of the environmental services employees to unionize. She did not believe that the City Council should be involved, and that the hospitals should listen to their employees. She stated that the City did not have the resources to monitor the mandates of the ordinance.

Mayor Sandoval expressed the need to have a decision rendered by the National Labor Relations Board (NLRB), and believed the City Council was being asked to insert itself into an employee/employer relationship. He stated that the City was being put in a position to be sued. He stated that the issue was causing division in the City at a time when there was a need to heal, and to stand together.

Mayor Sandoval asked Assistant City Attorney Jared to find out if there was any reason that would preclude the two parties from coming to an agreement prior to a decision being made by the NRLB.

Vice Mayor Torres inquired and Assistant City Attorney Jared advised that there were a number of court cases involving initiative measures being passed by the voters, and then being struck down by the courts because they were unconstitutional.

ADJOURNMENT

The City Council meeting was adjourned.

The next Regular Meeting will be held on Monday, March 19, 2018, Closed Session will begin at 5:30 p.m. and the open session shall commence at 7:00 p.m. in the City Council Chambers.

Respectfully submitted,

ATTEST:

EVA M. BUICE, MMC
City Clerk/Secretary of the Pomona
Housing Authority/Successor Agency to the
the Redevelopment Agency

TIM SANDOVAL
Mayor/Chair of the Pomona
Housing Authority/Successor Agency to
Redevelopment Agency