

## **The High-Quality Hospital Workforce Act (Pomona)**

Ordinance No. 2017 – XX

In accordance with the provisions of section 904 of the Pomona City Code, this initiative measure is submitted to the People of the City of Pomona to add Chapter 36 to the Pomona City Code, as follows:

### Sec. 36-1      *Name.*

This Chapter shall be known as the High-Quality Hospital Workforce Act (the “Act” or “Chapter”).

### Sec. 36-2      *Findings and Purpose.*

This Act, adopted by the People of the City of Pomona, makes the following Findings and has the following Purpose:

- (a) By requiring investment in the frontline hospital workforce, this Act is intended to improve local hospitals’ provision of high-quality, safe healthcare. The frontline hospital workforce includes nursing assistants; laboratory assistants; dietary workers; environmental services workers; radiology, respiratory and laboratory technicians; and many others who perform essential direct and indirect patient care services around the clock at hospitals in the City.
- (b) One way to promote high-quality, safe healthcare is to provide a decent minimum wage for all frontline hospital workers. Studies show that minimum wage increases reduce worker turnover. Hospitals that pay higher wages and ensure safe staffing levels retain their employees longer, leading to a more experienced, better qualified, and better trained workforce, and thus to a higher-quality, safer, and cleaner patient care environment.
- (c) Raising the City minimum wage for frontline hospital workers to eighteen dollars (\$18) an hour will help ensure that the People of the City have access to high-quality healthcare in our community. At the current minimum wage levels, hospital workers earn below the federal poverty level for a family of four. Raising the minimum wage will improve recruitment and retention of qualified personnel.
- (d) Another way to promote high-quality, safe healthcare at hospitals in the City is to ensure minimum staffing levels for environmental services (“EVS”) workers. EVS workers bear important public health responsibilities for keeping hospitals clean and sanitary. Their work is crucial in preventing the spread of serious, potentially deadly, bacterial infections such as *Clostridium difficile* (C. Diff.), Methicillin-resistant *Staphylococcus aureus* (MRSA), and others. These infections cause significant unnecessary medical costs (over \$1 billion in extra healthcare costs annually), more hospitalizations and longer hospital stays, and more than ten thousand deaths nationwide.

- (e) C. Diff, MRSA, and other bacterial infections are more likely to thrive in unclean hospitals, through contamination of patient rooms, bed linens, bed rails, bathroom and other fixtures, furniture, medical equipment, floors, walls, and the like. Hospitals can ensure proper and thorough attention to cleaning and disinfection by hiring sufficient EVS staff and reducing turnover, which in turn will reduce the likelihood of infection outbreaks.
- (f) Healthcare-associated infections such as C. Diff. and MRSA not only pose a grave risk to the health of hospital patients, hospital employees are also at risk. Controlling the spread of infections will thus help maintain stability in hospital staffing, contributing to a healthy, safe environment for patients and workers alike.
- (g) Studies have shown that providing sufficient EVS staff reduces the risk of outbreaks of healthcare-associated infections, and that adding EVS staff can control and prevent the spread of such infections. Understaffing causes higher workloads, meaning EVS workers have less time to perform critical cleaning and disinfection tasks, which in turn leads to more stress on the job and higher turnover. Requiring hospitals in the City to increase EVS staff by twenty percent (20%) when hospitals fail to meet national infection control benchmarks will contribute to creating a healthy, clean, and sanitary environment for hospital patients and workers.
- (h) In sum, investing in the frontline hospital workforce by raising the minimum wage and increasing EVS staffing to control and prevent outbreaks of healthcare associated infections will help ensure the availability of high-quality, safe, and clean hospital environments, for the benefit of all City residents.

Sec. 36-3      *Definitions and Coverage.*

- (a) “City” means the City of Pomona.
- (b) “City Manager” means the City Manager and his/her designees, delegates and representatives.
- (c) “Covered Hospital” means 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.
- (d) “Employer” means any person, as defined in Section 18 of the California Labor Code, including any Person, who directly or indirectly or through an agent or any other person, including through the services of a temporary service or staffing agency or similar entity, employs or exercises control over the wages, hours, or working conditions of any Hospital Worker Employee.
- (e) “Frontline Environmental Services Worker” or “Frontline EVS Worker” means a Hospital Worker Employee who is not a Supervisor, and whose primary job responsibilities are cleaning, disinfecting, or sanitizing such locations and items as

patient and non-patient rooms, surgery and procedure rooms, delivery rooms, work areas, restrooms, public areas, storage areas, common areas, nurses' stations, halls, entrances, laundries, kitchens, pharmacies, offices, nurseries, medical equipment, carts, furniture, fixtures, commodes, floors, carpets, window coverings, walls, ceilings, and exhaust grills.

- (f) "Hospital-Acquired Infection Standard" means:
- (i) A classification of "No Different than the National Benchmark" or "Better than the National Benchmark" for C. Diff. infection rates and MRSA by the CDC, as of the most recent data collection period reported in the Hospital Compare data published by the Centers for Medicare & Medicaid Services (CMS);
  - (ii) Should the CDC and CMS cease to track and provide comparisons of Covered Hospitals' C. Diff. infection or MRSA rates to national benchmarks, an appropriate alternative standard to be defined by the City Manager with input from public health authorities; and
  - (iii) Should the CDC and CMS track and compare other healthcare-associated diseases and organisms instead or in addition to C. Diff and MRSA, including but not limited to, other multidrug resistant bacteria, then the definition of "Hospital-Acquired Infection Standard" shall be expanded to include a classification of "No Different than the National Benchmark" or "Better than the National Benchmark" for those additional diseases and organisms, also as of the most recent data collection period reported in the Hospital Compare data published by CMS.
- (g) "Hospital Worker Employee" means any individual who:
- (i) Performs at least five (5) hours of work in any seven (7) consecutive days at any Covered Hospital; and
  - (ii) Is entitled to payment of at least a minimum wage from any Person under the California minimum wage law, as provided under California Labor Code section 1197 and under the California Industrial Welfare Commission wage orders.
- (h) "Hospital Workers' Minimum Wage" means an hourly minimum rate to be paid to Hospital Worker Employees, as defined in Section 36-4 of this Chapter.
- (i) "Person" means 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 foreign or domestic.
- (j) "Supervisor" means any individual having authority, in the interest of the Employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline Hospital Worker Employees, or responsibly to direct them, or effectively to recommend

such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

- (k) “Total EVS Hours” means the total number of hours worked in a calendar year by Frontline EVS Workers at a Covered Hospital, to be determined through a reasonable methodology that is applied consistently by the Covered Hospital.
- (l) “Total EVS Hours per Square Foot” means the total number of hours worked in a calendar year by Frontline EVS Workers at a Covered Hospital, divided by the total square feet cleaned by Frontline EVS Workers at a Covered Hospital in that calendar year, to be determined through a reasonable methodology that is applied consistently by the Covered Hospital.
- (m) “Willful Violation” means an intentional failure or refusal to perform anything required by this Act by any Covered Hospital, and shall include, but not be limited to, a continued failure or refusal to perform anything required by this Act that continues after notification of non-compliance. Such failure or refusal need not be based on a deliberate malicious purpose or intent to defraud.

Sec. 36-4 *Minimum Wage for Frontline Hospital Workers.*

- (a) Employers shall pay Hospital Worker Employees no less than the Hospital Workers’ Minimum Wage for all work performed at a Covered Hospital in the City.
- (b) A Covered Hospital shall ensure that all Hospital Worker Employees earn no less than the Hospital Workers’ Minimum Wage for all work performed at a Covered Hospital in the City.
- (c) Effective January 1, 2019, the Hospital Workers Minimum Wage is the higher of eighteen dollars (\$18.00) an hour, or three dollars (\$3.00) an hour more than any other applicable minimum wage, whether provided for by local, state, or federal law.
- (d) In the event any increase is required, the Hospital Workers’ Minimum Wage shall increase with and on the effective day of any State of California minimum wage increase under California Labor Code section 1182.12, or on the date of any otherwise applicable minimum wage increase for Hospital Workers under any local, state, or federal law.

Sec. 36-5 *Reduction of Hospital-Acquired Infections and Safe Staffing.*

A Covered Hospital that does not meet the Hospital-Acquired Infection Standard must increase staffing of Frontline Environmental Services Workers by twenty percent (20%) for a minimum 3-year period, as follows:

- (a) In January of each calendar year beginning in January 2019, each Covered Hospital shall calculate the Total EVS Hours and the Total EVS Hours per Square Foot for the preceding calendar year.

- (i) As of January 2019, the Total EVS Hours and Total EVS Hours per Square Foot amounts determined based on 2018 staffing shall become the “Minimum EVS Hours” and “Minimum EVS Hours per Square Foot,” in effect for at least the subsequent three-year period.
  - (ii) Thereafter, these Minimums may be recalculated at the end of every three-year period in which the Covered Hospital is continuously compliant with the Hospital-Acquired Infection Standard.
- (b) In January of each calendar year beginning in January 2019, each Covered Hospital shall assess whether it has met the Hospital-Acquired Infection Standard in every quarter of the preceding year.
  - (i) If a Covered Hospital falls below the Hospital-Acquired Infection Standard in one or more quarters of the preceding calendar year, the calendar year in which the standard was not met is the “Reported Year.”
  - (ii) The Covered Hospital shall calculate the Total EVS Hours and the Total EVS Hours per Square Foot for the Reported Year. These totals shall be the “Reported EVS Hours” and “Reported EVS Hours per Square Foot.”
- (c) The calendar years following the Reported Year shall be Years 1, 2, and 3, respectively, for purposes of the staffing increases required by this measure. In Year 1, the Covered Hospital shall meet the following minimum staffing requirements:
  - (i) Total EVS Hours must be at least one-hundred twenty percent (120%) of Reported EVS Hours, and at least one-hundred twenty percent (120%) of Minimum EVS Hours; and
  - (ii) Total EVS Hours per Square Foot must be at least one-hundred twenty percent (120%) of Reported EVS Hours per Square Foot, and at least one-hundred twenty percent (120%) of Minimum EVS Hours per Square Foot.
- (d) In Years 2 and 3, the same minimum staffing requirements shall apply so long as the Covered Hospital meets the Hospital-Acquired Infection Standard in every quarter of the preceding year (i.e., Year 1 compliance for Year 2 staffing requirements and Year 2 compliance for Year 3 staffing requirements).
- (e) If in any quarter of Year 1 or Year 2 the Covered Hospital falls below the Hospital-Acquired Infection Standard, the year in which the standard is not met shall become the “New Reported Year.” The three-year requirement for staffing increases shall restart, so that the year following the New Reported Year shall become Year 1 and the Covered Hospital shall recalculate Reported EVS Hours and Reported EVS Hours per Square Foot based on the New Reported Year.

- (f) Reported Years shall continue to reset, and required staffing increases shall continue to accrue, until the Covered Hospital has met the Hospital-Acquired Infection Standards for three continuous years. At that time, as described above in section 5(a), a Covered Hospital may adjust the Minimum EVS Hours and Minimum EVS Hours per Square Foot.
- (g) If, in any Year 1, 2, or 3, a Covered Hospital is downsizing, and it contends that maintaining or increasing the number of EVS Hours is unnecessary, and would impose an undue burden on the Covered Hospital, it may request that the City Manager approve a reduction of the Total EVS Hours it is required to maintain; provided, however, that the Covered Hospital must not reduce the required Total EVS Hours per Square Foot below one-hundred twenty percent (120%) of Minimum EVS Hours per Square Foot or one-hundred twenty percent (120%) of Reported EVS Hours per Square Foot.

Sec. 36-6 *No Retaliation or Waiver.*

- (a) No Covered Hospital shall 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.
- (b) Any waiver by an individual Hospital Worker of any of the provisions of this Chapter shall be deemed contrary to public policy and shall be void and unenforceable, and any request to an individual Hospital Worker by an employer to waive his or her rights under this section shall constitute a violation of this Chapter.

Sec. 36-7 *Posting, Reporting, and Disclosure.*

- (a) *Posting.*
  - (i) By December 1 of each calendar year, the City Manager shall publish and make available to Covered Hospitals a bulletin announcing the Hospital Workers' Minimum Wage Rate for the upcoming year and informing Hospital Workers' of their rights under this Chapter.
    - a. Every Covered Hospital shall post this bulletin in conspicuous locations in clear view of the employees, where other employment-related notices are customarily posted.
    - b. Every Covered Hospital shall post the bulletin in any language spoken by at least ten percent (10%) of the Hospital Workers at the workplace or job site. The Covered Hospital shall be responsible for accurately translating the notice.

(ii) Every Covered Hospital shall post its Total EVS Hours, Total EVS Hours per Square Foot, methodologies for determining its Total EVS Hours and Total EVS Hours per Square Foot, and, if any, Reported EVS Hours and EVS Hours for Years 1, 2, and 3, as well as information regarding its compliance or non-compliance with the Hospital-Acquired Infection Standard for the current reported year and the three (3) preceding years. Such information shall be posted in conspicuous, clearly visible locations near each public entrance of the establishment or in other conspicuous locations in clear view of the public and employees where similar notices are customarily posted.

(b) *Reporting.*

(i) By no later than March 1 of each calendar year, each Covered Hospital shall report to the City Manager regarding its compliance with section 5 of this Chapter during the preceding calendar year.

(ii) This compliance report shall include, in addition to a description of the methodologies the Covered Hospital used to calculate Total EVS Hours and Total EVS Hours per Square Foot, all data sufficient to allow the City Manager to confirm that the Covered Hospital has met the Hospital-Acquired Infection Standard for the relevant period and to ascertain whether the Covered Hospital has implemented any staffing increases required by section 5.

(c) *Record-Keeping.*

(i) Every Covered Hospital shall maintain records for at least four (4) years showing compliance with the requirements of this Chapter. Such information shall include all records provided to the City as required by this Chapter and a record for each Hospital Worker, which shall include the Hospital Worker's name, job title, hours worked, and rate(s) of pay. Upon a Hospital Worker's reasonable request, the Covered Hospital shall provide that Hospital Worker with a copy of his or her records within ten (10) calendar days.

(ii) Any Person may report to the City in writing any suspected violation of this Chapter. The City shall encourage reporting pursuant to this subsection by keeping confidential, to the maximum extent permitted, the name and other identifying information of the Person reporting the violation, provided, however, that with the Person's authorization, the City may disclose the Person's name and identifying information as necessary to enforce this Chapter or other labor or consumer safety laws.

(iii) To further encourage reporting, if the City notifies a Covered Hospital that the City is investigating a complaint, within 30 days after the notification the City shall require the Covered Hospital to provide notice of the investigation to Hospital Workers at the Covered Hospital and to the Covered Hospital's patients, using a form provided by the City. The Covered Hospital may choose to provide

notice in a conspicuous place near each public entrance of the establishment or in another conspicuous location where similar notices are customarily posted, or by other method approved by the City Manager.

(d) *Audits & Inspections.*

- (i) A Covered Hospital shall permit access to work sites and relevant records for authorized City representatives, with appropriate notice and during normal business hours or at a mutually agreeable time, for the purpose of monitoring compliance with this Chapter and investigating employee complaints of noncompliance, including inspection and copying of its employment records and the relevant data reported to and findings of the CDC, CMS, and any other authority that may become involved in setting the Hospital-Acquired Infection Standard. Such monitoring and inspection shall be done without allowing social security numbers or personal medical information to become a matter of public record.
- (ii) The City Manager shall have the authority to arrange for and conduct an audit of any Covered Hospital for compliance with this Chapter. The City shall notify the Covered Hospital to be audited in writing at least seven (7) days prior to the date of the audit. The Covered Hospital to be audited shall make available for inspection and copying at all reasonable times its own books and records, as well as those of any affiliate or related entity as shall be relevant. It shall be unlawful to refuse to allow or to permit such audit to be conducted after a lawful demand by the City Manager.

Sec. 36-8. *Enforcement and Remedies.*

(a) Every Covered Hospital shall ensure compliance with the requirements of this Chapter.

(b) *Civil Penalties*

- (i) Any Covered Hospital violating this Act shall be subject to civil penalties in the amount of \$100 for an initial violation, \$200 for a second violation, and \$500 for a third violation, in addition to a fine equal to the total amount of appropriate remedies. Each and every day during which any portion of any violation is committed, continued, or permitted is a separate violation of this Act.
- (ii) In addition to any other applicable penalties, any Covered Hospital failing to increase staffing as required by Section 5 shall be subject to a civil penalty of double the amount that it would have cost to fulfill Section 5's requirements, in an amount to be calculated by the City Manager. The City Manager shall base this calculation on 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.

- (iii) Any Covered Hospital committing a Willful Violation shall be subject to civil penalties, in addition to all other applicable penalties, in the amount of \$1,000 per Willful Violation. Each and every day during which any portion of a Willful Violation is committed, continued or permitted is a separate Willful Violation of this Act.
  - (iv) If a Covered Hospital obtains a final court judgment determining that the civil penalty amounts violate the United States or California Constitution, as applied, due to their being confiscatory or causing undue financial hardship, the court shall have authority to reduce the civil penalties, or to temporarily freeze or reduce a Covered Hospital's requirements to increase staffing under section 5 of this Chapter; provided, however, that no court shall reduce the Covered Hospital's required staffing increases unless the Covered Hospital shows that it is taking adequate alternative measures likely to decrease the incidence of C. Diff., MRSA, and other hospital-acquired infections. Any relief granted pursuant to this subsection shall be reviewed annually by the City Manager to determine if it is still required.
- (c) *Actions by the City Manager.*
- (i) The City Manager shall be authorized to coordinate implementation and enforcement of this Act and may promulgate appropriate guidelines or rules for such purposes consistent with this Act. Any guidelines or rules promulgated shall have the force and effect of law. The City shall appropriate sufficient funds to enable the City Manager to implement and enforce this Act.
  - (ii) The City Manager shall file a complaint with the State Attorney General's office and the Los Angeles County District Attorney against any Covered Hospital for any Willful Violation of this Act, for referral as a potential violation of California's Unfair Business Practices Act, Bus. & Prof. Code § 17200, and, in the case of a nonprofit Covered Hospital, the hospital's charitable trust obligations.
- (d) *Enforcement.*
- (i) The City Manager, the City Attorney, any Person aggrieved by a violation of this Chapter, any entity a member of which is aggrieved by a violation of this Chapter, and any other Person or entity acting on behalf of the public as provided for under applicable state law. may bring a civil action in a court of competent jurisdiction against any Covered Hospital violating this Chapter.
  - (ii) A prevailing aggrieved Person shall be entitled to such legal or equitable relief as may be appropriate including, without limitation, the payment of unpaid wages and penalties, interest due up to the maximum amount allowable by law, and reinstatement or other appropriate injunctive relief, and shall be awarded reasonable attorneys' fees and expenses.

- (iii) Any Person or entity enforcing this Chapter only on behalf of the public as provided for under applicable state law shall, upon prevailing, be entitled to recover equitable, injunctive or restitutionary relief, and reasonable attorneys' fees and expenses, while recovered unpaid wages and penalties shall be paid to the affected Hospital Workers.
  - (iv) Nothing in this Chapter shall be interpreted as restricting, precluding, or otherwise limiting a separate or concurrent legal action of any other kind. Jeopardy shall not attach as a result of any administrative or civil enforcement action taken pursuant to this Chapter.
  - (v) The City is authorized to award the same relief in its proceedings as a court may award. No Person is required to pursue administrative remedies as a prerequisite for pursuing a civil action under this Chapter.
  - (vi) Any and all remedies that are rightly the property of affected Hospital Workers shall be distributed promptly to the affected Hospital Workers.
- (e) *Interest and Costs.*
- (i) 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.
  - (ii) Interest on penalties and all other monetary relief shall accrue at the rate of 10% per annum as penalties become due and payable.

Sec. 36-9 *Fees.*

The City Council may impose fees on any Covered Hospital to recover the costs of administering this Chapter.

Sec. 36-10 *Co-existence with Other Available Relief.*

All rights and remedies provided by this Chapter shall be in addition to and apply notwithstanding any other provision of local, state, or federal law.

Sec. 36-11 *Conflicts.*

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

Sec. 36-12 *Severability.*

It is the intent of the People that the provisions of this Act are severable and that if any provision of this Act, or the application thereof to any person or circumstance, is held invalid,

such invalidity shall not affect any other provision or application of this Act that can be given effect without the invalid provision or application.