



City of Culver City

Mike Balkman
Council Chambers
9770 Culver Blvd.
Culver City, CA 90232
(310) 253-5851

Staff Report

File #: 21-1012, **Version:** 1

Item #: A-1

CC - Introduction of an Ordinance Establishing Premium Hazard Pay for On-Site Hospital Workers at Covered Hospitals.

Meeting Date: May 24, 2021

Contact Person/Dept: Shelly Wolfberg/City Manager's Office
Phone Number: (310) 253-6000

Fiscal Impact: Yes ☐ No ☒

General Fund: Yes ☐ No ☒

Public Hearing: ☐

Action Item: ☒

Attachments: ☒

Commission Action Required: Yes ☐ No ☒ **Date:**

Public Notification: (E-Mail) Michael Klepin, Southern California Hospital; Maky Peters, SEIU - United Healthcare Workers West; and Meetings and Agendas - City Council (05/20/2021).

Department Approval: John M. Nachbar (05/20/2021)

RECOMMENDATION

Staff recommends the City Council consider introduction of an Ordinance establishing premium hazard pay for on-site hospital workers at covered hospitals (Attachment 1).

BACKGROUND

On March 4, 2020, the State of California declared a State of Emergency due to the worldwide novel coronavirus pandemic (COVID-19) affecting residents of California, and the County of Los Angeles Department of Public Health (LAC DPH) declared a public health emergency on that same date. Subsequently, the City of Culver City issued a Proclamation of Local Emergency on March 14, 2020. Shortly after the emergency was declared, the State and County began issuing public health orders requiring the closure or modified operations of numerous business sectors, in an attempt to mitigate the spread of COVID-19.

Hospital operations were determined to be part of the essential infrastructure, and hospital workers were identified as essential workers. Thus, hospitals remained open and hospital employees continued to report to work, treating an increasing number of patients extremely ill from COVID-19 complications. Additionally, as more and more persons became ill with COVID-19 and were

admitted to hospitals, it was reported that many hospitals initially experienced a shortage of personal protective equipment such as gowns, gloves, and face masks.

Throughout the pandemic, many hospital workers have worked long hours; and thousands of hospital workers were infected with COVID-19. As of May 6, 2021, as reported by the LAC DPH, over 10,000 Los Angeles County hospital workers have tested positive with COVID-19. Hospitals continue to report the highest proportion of overall employee infection among all healthcare worker and first responder settings, and nurses continue to face the highest risk of infection among all healthcare workers and first responders, totally approximately five times as many reported cases as the next occupation with the highest number of reported cases (law enforcement). Due to the nature of the virus, it is not always possible to determine where an individual contracted the virus; however, the LAC DPH states the majority of known exposures to COVID-19 among positive healthcare workers and first responders occurred in a healthcare setting.

According to the U.S. Occupational Safety and Health Administration (OSHA), worker classifications which have a “Very High Exposure Risk” to COVID-19 includes jobs with a very high potential for exposure to known or suspected sources of COVID-19 during specific medical, postmortem, or laboratory procedures. Examples of workers in the Very High Exposure Risk category include healthcare workers such as nurses and emergency medical technicians performing aerosol-generating procedures (e.g., intubation, cough induction procedures, bronchoscopies, or invasive specimen collection) on known or suspected COVID-19 patients; and healthcare or laboratory personnel collecting or handling specimens from known or suspected COVID-19 patients (e.g., manipulating cultures from known or suspected COVID-19 patients).

OSHA further identifies “High Exposure Risk” worker classifications as those with jobs with a high potential for exposure to known or suspected sources of COVID-19; this classification includes healthcare delivery and support staff (hospital staff who must enter patients’ rooms) exposed to known or suspected COVID-19 patients, and those persons who have frequent or sustained contact with coworkers, including under close working conditions indoors or in poorly ventilated spaces.

On May 14, 2021, the LAC DPH issued an amended Public Order with modified restrictions as the County moves through the “Yellow Tier” of the state’s tiered system. DPH stated, among other things, that there is evidence of continued community transmission of COVID-19 in the County, that asymptomatic transmission has been documented, and that a significant portion of the County population continues to be at risk for infection with serious health complications, due to pre-existing conditions.

Further, only 43% of Los Angeles County residents 16 and older are fully vaccinated while the majority of residents remain susceptible to infection. Despite the availability of vaccines, factors including vaccine hesitancy, vaccine refusal and age and health conditions that prevent vaccination mean that hospital workers will still be required to interface with and treat individuals in the coming months who have not been vaccinated. According to the LAC DPH, there remains a strong likelihood that increased interactions among members of the public who are not fully vaccinated against COVID-19 may result in an increased number of cases of community transmission. Making community transmission even more problematic, some individuals who contract the virus causing COVID-19 have no symptoms or only mild symptoms, and are unaware they carry the virus and are transmitting it to others.

Additionally, the Centers for Disease Control and Prevention (CDC) has recognized that some

individuals with COVID-19 experience symptoms and require healthcare services for an extended period, a phenomenon termed “Long Haul Covid”. The lingering effects of COVID-19 on these individuals may continue to place a strain on the healthcare system and on hospital workers for a period of time going forward. There is also limited data on vaccine protection in people who are immunocompromised. Hospital workers’ employment requires them to continue to treat and interface with people with immunocompromising conditions.

Overall, as reported by LAC DPH, as of May 17, 2021 over 24,000 COVID-19 deaths have been reported in Los Angeles County, and over 1,237,500 positive COVID-19 cases. The CDC reported that multiple COVID-19 variants are circulating globally, including in California and Los Angeles County. Other nearby states, including Oregon, Nevada, Utah and Arizona, are experiencing a recent increase in cases and hospitalization rates. Under these circumstances, COVID-19 remains a risk in the community and to hospital workers. The CDC in fact still calls for wearing masks in hospitals, while relaxing mask wearing guidelines overall, which recognizes the COVID-19 risks still facing hospital workers.

At the April 12, 2021 City Council Meeting, after discussion, the City Council voted 3-2 in favor of agendizing the introduction of an Ordinance establishing premium hazard pay for on-site hospital workers at covered hospitals. On that same date, the City Council voted to also agendize introducing an ordinance establishing premium hazard pay for grocery and drug retail workers, which was introduced at the April 26, 2021 City Council meeting and adopted on May 10, 2021.

This Staff Report was postponed from the May 10, 2021 City Council meeting and agendized for discussion this evening.

DISCUSSION

As directed by City Council, the Proposed Ordinance for hospital workers is similar to the Premium Hazard Pay Ordinance adopted by the City of Los Angeles for grocery and retail drug store workers.

The Proposed Ordinance includes the following provisions:

- **Covered Hospital:** A covered hospital is one included in California Health and Safety Code section 1250(a), i.e., “a general acute care hospital having a duly constituted governing body with overall administrative and professional responsibility and an organized medical staff that provides 24-hour inpatient care, including the following basic services: medical, nursing, surgical, anesthesia, laboratory, radiology, pharmacy, and dietary services.”
- **Eligible Employees:** The Ordinance uses the term “Hospital Workers”, defined as individuals providing direct patient care and support services at a Covered Hospital including but not limited to, clinicians, nurses, aides, technicians, janitorial and housekeeping staff, security guards, food services workers, laundry workers, pharmacists, and nonmanagerial administrative staff, but does not include any exempt manager or an individual performing exclusively managerial or supervisory functions, or any physician or surgeon licensed by the State of California
- **Employer:** As used in the Ordinance, an Employer is obligated to pay Premium Hazard Pay to Hospital Workers. An Employer includes 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.

- Premium Hazard Pay: A Hospital Worker is entitled to no less than five dollars (\$5.00) per hour in Premium Hazard Pay for each hour worked on-site at a Covered Hospital in the City for an Employer.
- A Covered Hospital shall reimburse any contracted Employer for Premium Hazard Pay paid to Hospital Workers under the Ordinance.
- Private Right of Action: Any Hospital Worker may bring a civil action against the Employer for violating the Ordinance.
- No Covered Hospital or Employer shall discharge, reduce in compensation or otherwise discriminate against a Hospital Worker for seeking to enforce their rights under the Ordinance.
- An exemption to the provision stating that no provision of the Ordinance may be waived by an employee, except if expressly waived in writing in a collective bargaining agreement.
- Ordinance Sunset Date - 120 days after the effective date of the Ordinance; however, the Ordinance states that City Council may rescind the Ordinance sooner if conditions render it advisable to do so.

Potential Legal Challenges

At this time, staff has not found another municipality that has adopted an ordinance relative to providing healthcare worker or hospital worker hazard pay. The ordinance, if adopted, may be subject to legal challenges similar to the challenges brought by opponents to the grocery store hazard pay ordinances against the City of Long Beach, West Hollywood, Montebello, San Jose, and other California cities. For instance, in litigation against the City of Long Beach, the California Grocers Association (CGA) alleged that the grocery store worker hazard pay ordinance violated the National Labor Relations Act (NLRA) by regulating activity that Congress intended to be left to economic forces; that it violates the Equal Protection Clause of the U.S. and California constitutions by singling out certain workers but ignoring others similarly situated; that it interferes with collective bargaining and violates the Contract Clause of the constitution.

The Proposed Ordinance is presented for City Council's consideration for introduction (Attachment 1).

FISCAL ANALYSIS

There is no fiscal impact relative to introducing the premium hazard pay for this on-site hospital workers at covered hospitals ordinance. There would be costs associated with defending any litigation that may be filed against the City if the ordinance is adopted.

ATTACHMENTS

1. 2021-05-24__ ATT__ Ordinance - Premium Hazard Pay for on-site hospital workers at covered hospitals.

MOTION

That the City Council:

1. Introduce an Ordinance Establishing Premium Hazard Pay for on-site hospital workers at covered hospitals; or
2. Provide alternate direction to the City Manager as deemed appropriate.