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NB-27

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Assistant City Attorney

August 9, 2022

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Assistant City Attorney

HONORABLE MAYOR AND CITY COUNCIL
City of Long Beach
California

RECOMMENDATION:

Declare an Ordinance amending the Long Beach Municipal Code by adding Chapter 5.96, establishing the Healthcare Workers Minimum Wage Ordinance, read the first time and laid over to the next regular meeting of the City Council for final reading.
(Citywide)

DISCUSSION

Per the City Council's request on August 2, 2022, we have prepared the attached Ordinance amending the Long Beach Municipal Code by adding Chapter 5.96, establishing the Healthcare Minimum Wage Ordinance, for the City Council's review and approval.

SUGGESTED ACTION:

Approve recommendation.

Respectfully Submitted,

CHARLES PARKIN, City Attorney

By: *Erin Weesner-McKinley*
ERIN WEESNER-MCKINLEY
Deputy City Attorney

EWM:kfa
A22-01827; 01422050.DOCX
Attachment

ORDINANCE NO.

1
2 AN ORDINANCE OF THE CITY COUNCIL OF THE
3 CITY OF LONG BEACH AMENDING THE LONG BEACH
4 MUNICIPAL CODE BY ADDING CHAPTER 5.96,
5 ESTABLISHING THE "HEALTHCARE WORKERS MINIMUM
6 WAGE ORDINANCE."

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8 WHEREAS, on June 6, 2022, proponents of the Long Beach Minimum Wage
9 for Healthcare Workers petition submitted signatures to the City Clerk in support of their
10 proposed Initiative Ordinance pursuant to Elections Code Section 9215; and

11 WHEREAS, on June 14, 2022 while the initiative was pending review by the
12 Los Angeles County Registrar-Recorder/County Clerk (LACRRCC), the City Council
13 directed the City Manager to prepare an Economic Impact Report for the proposed Long
14 Beach Minimum Wage for Healthcare Workers Initiative Ordinance pursuant to Election
15 Code 9212; and

16 WHEREAS, on June 5, 2022, the LACRRCC notified the City Clerk that
17 sufficiency of signatures was met for the proposed Initiative Ordinance and provided a
18 Certificate of Completion; and

19 WHEREAS, on July 19, 2022, the Certificate of Completion was presented
20 to the City Council and pursuant to Elections Code Section 9212, the City Council directed
21 that the proposed Initiative Ordinance be brought to City council on August 2, 2022 to be
22 considered along with the presentation of the Economic Impact Report; and

23 WHEREAS, on August 2, 2022, the Economic Impact Report was presented
24 to the City Council and the City Council directed the City Attorney's office to bring the
25 proposed Initiative Ordinance back to the City Council for adoption without alteration.

26 NOW, THEREFORE, the City Council of the City of Long Beach ordains as
27 follows:

28 Section 1. Name. This measure shall be known as the "Healthcare

1 Workers Minimum Wage Ordinance.”

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3 Section 2. Chapter 5.96, entitled HEALTHCARE WORKERS MINIMUM
4 WAGE, is added to Title 5 of the Long Beach Municipal Code, to read:

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CHAPTER 5.96

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HEALTHCARE WORKERS MINIMUM WAGE

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5.96.010 Findings and Purpose.

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This Ordinance, adopted by the City Council of the City of Long
11 Beach, makes the following findings and has the following purposes:

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The purpose of this ordinance is to establish a minimum wage for
13 covered healthcare workers within the City of Long Beach.

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The City of Long Beach needs a sufficient healthcare workforce to
ensure that healthcare facilities that provide necessary care to residents and
visitors offer consistent, timely, high- quality care. Hospitals, health systems,
and clinics are facing staffing shortages that could jeopardize the availability
of care in our city. Healthcare job vacancies are rising as workers on the
frontlines deal with the emotional, mental, and physical fallout of providing
healthcare during a pandemic. Workforce shortages across industries also
mean that the healthcare industry is competing with other economic sectors to
fill critical non-clinical positions such as for cleaning staff, food service workers,
and IT administrators. With rising housing costs, healthcare workers are being
forced to live further from their places of work, increasing their stress and
leading to retention challenges. While healthcare workers are experiencing
unprecedentedly difficult working conditions and burnout, the healthcare
industry received billions of dollars in stimulus funds during the pandemic and
many CEOs were paid compensation packages in the millions. The healthcare

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industry needs to fairly compensate workers who are sacrificing every day to care for their patients. Raising the minimum wage will help address retention challenges and workforce shortages affecting healthcare facilities in Long Beach, and will fairly compensate healthcare workers for their contributions and sacrifices.

5.96.020 Definitions.

The following definitions shall apply to this Chapter:

- A. **"City"** means the City of Long Beach.
- B. **"Covered Healthcare Facility"** means the following types of facilities, provided that they are privately owned and are located within the boundaries of the City:
 - 1. A licensed general acute care hospital as defined in Section 1250(a) of the California Health and Safety Code, including a distinct part of any such hospital.
 - 2. A clinic, as defined in Section 1206(d) of the California Health and Safety Code, that is conducted, operated, or maintained as an outpatient department of a general acute care hospital or acute psychiatric hospital.
 - 3. A licensed acute psychiatric hospital as defined in Section 1250(b) of the California Health and Safety Code, including a distinct part of any such hospital.
 - 4. A licensed chronic dialysis clinic as described in Section 1204(b)(2) of the California Health and Safety Code.
 - 5. A licensed psychiatric health facility as defined in Section 1250.2 of the California Health and Safety Code.
 - 6. All facilities that are part of an Integrated Healthcare Delivery System.

1 C. **"Covered Physician Group"** means a medical group practice,
2 including a professional medical corporation as defined in Section 2406 of
3 the California Business and Professions Code, another form of corporation
4 controlled by physicians and surgeons, a medical partnership, or an
5 independent practice association, provided that the group includes a total of
6 10 or more physicians.

7 D. **"Employee"** has the same meaning as in Section 2775 of the
8 California Labor Code.

9 E. **"Employer"** means any Person, including a corporate officer
10 or executive, who directly or indirectly or through any other Person, including
11 through the services of a temporary service, staffing agency, or similar entity,
12 employs or exercises control over the wages, hours or working conditions of
13 any Employee.

14 F. **"Healthcare Worker"** means an Employee who is employed
15 to work at or by a Covered Healthcare Facility to provide patient care,
16 healthcare services, or services supporting the provision of healthcare.
17 "Healthcare Worker" includes a clinician, professional, non-professional,
18 nurse, certified nursing assistant, aide, technician, maintenance worker,
19 janitorial or housekeeping staff person, groundskeeper, guard, food service
20 worker, laundry worker, pharmacist, nonmanagerial administrative worker
21 and business office clerical worker, but does not include a manager or
22 supervisor. A "Healthcare Worker" works at a Covered Healthcare Facility
23 only if that individual's primary work assignment is physically located at one
24 or more such facilities; for example, delivery workers employed principally
25 outside a Covered Healthcare Facility are not Healthcare Workers for
26 purposes of this Chapter unless employed by such a facility.

27 G. **"Integrated Healthcare Delivery System"** means a system that
28 includes both of the following: (1) one or more hospitals and (2) Covered

1 Physician Groups, health care service plans, medical foundation clinics, or
2 other facilities or entities, where the hospital or hospitals and other facilities
3 or entities are related through:

4 1. Parent/subsidiary relationships, common ownership or
5 control, or common boards of directors and shared senior management; or

6 2. A contractual relationship in which affiliated Covered
7 Physician Groups or medical foundation clinics contract with a health care
8 service plan, hospital or other part of the system, all operating under a
9 common trade name; or

10 3. A contractual relationship in which a nonprofit health
11 care service plan provides medical services to enrollees in a specific
12 geographic region of the state through an affiliated hospital system, and
13 contracts with a single Covered Physician Group in each geographic region
14 of the state to provide medical services to a majority of the plan's enrollees
15 in that region.

16 H. **"Minimum Wage"** means the minimum amount that must be
17 paid to Employees as compensation for their labor, whether the amount is
18 fixed or ascertained by the standard of time, task, piece, commission basis,
19 or other method of calculation. "Minimum Wage" does not include bonuses,
20 shift differentials, premium pay, reimbursement or allowances for work-
21 related equipment or other expenses, credits for meals or lodging, tips,
22 gratuities, or the cost of medical, dental, retirement or similar benefits.

23 I. **"Person"** means an individual, corporation, partnership, limited
24 partnership, limited liability partnership, limited liability company, business
25 trust, estate, trust, association, joint venture, agency, instrumentality, or any
26 other legal or commercial entity, whether domestic or foreign.

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1 5.96.030 Payment of Minimum Wage to Healthcare Workers.

2 A. An Employer shall ensure that each Healthcare Worker it

3 employs, or over whom it exercises control, is paid a Minimum Wage

4 equivalent to no less than the hourly rate set forth herein or under the authority

5 of this Chapter for hours worked within the geographic boundaries of the City.

6 B. The Minimum Wage for Healthcare Workers shall be as follows:

7 1. On the effective date of this Chapter, the Minimum Wage

8 shall be no less than \$25 per hour.

9 2. On January 1, 2024, and annually thereafter, the

10 Minimum Wage shall increase based on the annual increase in the cost of

11 living, as measured by the Consumer Price Index for Urban Wage Earners

12 and Clerical Workers (CPI-W) for the Los Angeles metropolitan area (Los

13 Angeles-Long Beach-Anaheim, CA), which is published by the Bureau of

14 Labor Statistics. The City shall publish a bulletin announcing the adjusted

15 rates, which shall take effect on January 1 of each year.

16 C. An Employer may not fund the Minimum Wage increases

17 required by this Chapter in any of the following ways:

18 1. Reducing Healthcare Workers' premium pay rates or

19 shift differentials;

20 2. Reducing vacation, healthcare, or other non-wage

21 benefits of any Healthcare Worker;

22 3. Reducing Healthcare Workers' hours of work;

23 4. Laying off Healthcare Workers; or

24 5. Increasing charges to any Healthcare Worker for

25 parking, work-related materials or equipment.

26 D. An Employer is in violation of Subsection C of Section 5.96.030

27 if the Minimum Wage requirements of this Chapter are a motivating factor in

28 the Employer's decision to take any of the actions described in Subsections

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C(I-5) of Section 5.96.030, unless the Employer proves that it would have taken the same action at the time that it did irrespective of the operation of this Chapter.

5.96.040 Retaliation.

No Employer shall discharge, terminate a contract with, reduce compensation to, or otherwise discriminate against or take adverse action against any Healthcare Worker for opposing any practice proscribed by this Chapter, for participating in proceedings related to this Chapter, for seeking to enforce rights under this Chapter by any lawful means, or for otherwise asserting rights under this Chapter. Protections of this Section shall apply to any Healthcare Worker who mistakenly, but in good faith, alleges noncompliance with this Chapter. Taking any adverse action against a Healthcare Worker within 90 days of the Healthcare Worker's exercise of rights protected under this Chapter shall raise a rebuttable presumption of having done so in retaliation for the exercise of such rights.

5.96.050 Posting and Payroll Records.

A. Covered Healthcare Facilities shall post in a conspicuous place a notice of the current Minimum Wage for Healthcare Workers required by this Chapter.

B. Employers of Healthcare Workers shall retain payroll records pertaining to Healthcare Workers for a minimum of four years, and shall allow the City or its designee access to such records, with appropriate notice and during business hours, to monitor compliance with the requirements of this Chapter.

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5.96.060 Enforcement and Implementation.

A. The City shall have responsibility for enforcement of this Chapter, including, at a minimum:

1. Establishing a process for reporting complaints of violations of this Chapter.

2. Establishing and implementing processes for investigating complaints and other possible violations of this Chapter. Employers and Covered Healthcare Facilities shall cooperate fully in any such investigation.

3. Establishing and implementing an administrative citation process that may include the issuance of correction orders, a hearing and appeal process, and the imposition of administrative fines or penalties owed to the City.

4. Taking appropriate enforcement action on behalf of Healthcare Workers, collecting back wages and any other amounts owed to Healthcare Workers, and disbursing them to Healthcare Workers.

5. Any other education and enforcement activities necessary to ensure compliance with this Chapter.

B. The City is authorized to promulgate rules and regulations and issue determinations and interpretations relating to this Chapter that are consistent with its purposes.

C. The City may seek to enter into an agreement with the Department of Consumer and Business Affairs of the County of Los Angeles to allow the County's Wage Enforcement Program to provide wage enforcement and education services necessary for enforcement of this Chapter. If the City and County enter into such an agreement, it may include any services necessary to carry out the enforcement and education responsibilities and activities described in Subsection A of this Section or

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pursuant to rules and regulations relating to this Chapter.

D. A Healthcare Worker, a representative of a Healthcare Worker, the City Attorney, or another Person 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 an Employer violating this Chapter. The City, a Healthcare Worker, or a representative of a Healthcare Worker, upon prevailing, shall be entitled to all remedies available under the law or in equity, including injunctive or other equitable relief, reinstatement, the payment of any wages unlawfully withheld, the payment of penalties in the amount of up to \$120 to each Healthcare Worker for each day that a violation occurred or continued, and reasonable attorneys' fees and costs. For retaliatory action by the Employer, the Healthcare Worker shall be entitled to reinstatement and a trebling of all wages and penalties owed. Any other Person enforcing this Chapter on the public's behalf, upon prevailing, shall be entitled to an award of only equitable, injunctive, and/or restitutionary relief, and reasonable attorneys' fees and costs.

5.96.070 No Waiver of Rights.

Any waiver by a Healthcare Worker of any or all of the provisions of this Chapter or of rights or protections afforded under the authority of this Chapter shall be deemed contrary to public policy and shall be void and unenforceable.

5.96.080 Coexistence with Other Available Relief.

The provisions of this Chapter shall not be construed as limiting any Healthcare Worker's right to obtain relief to which the Healthcare Worker may be entitled at law or in equity.

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5.96.090 One-Year Court-Granted Waiver.

This Chapter is not intended to cause reduction in employment or work hours for Healthcare Workers. Therefore, a court may grant a one-year waiver from the Minimum Wage requirements of this Chapter if an Employer can demonstrate by substantial evidence that compliance with this Chapter would raise substantial doubt about the Employer's ability to continue as a going concern under generally accepted accounting standards. The evidence must include documentation of the Employer's financial condition, as well as the condition of any parent or affiliated entity, and evidence of the actual or potential direct financial impact of compliance with this Chapter. A one-year waiver granted by a court pursuant to this Section does not exempt an Employer from complying with any and all federal, state, or local laws and regulations, including any other applicable federal, state, or local minimum wage requirement.

5.96.100 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.

5.96.110 Severability.

If any subsection, sentence, clause, phrase, or provision of this Chapter is found invalid or unconstitutional by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect.

Section 3. Effective Date. If the City Council approves this measure, or if a majority of the voters pass this Ordinance, it shall take effect on the earliest date allowed by law.

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Section 4. The City Clerk shall certify to the passage of this ordinance by the City Council and cause it to be posted in three (3) conspicuous places in the City of Long Beach, and it shall take effect on the thirty-first (31st) day after it is approved by the Mayor.

I hereby certify that the foregoing ordinance was adopted by the City Council of the City of Long Beach at its meeting of _____, 2022, by the following vote:

Ayes: Councilmembers: _____

Noes: Councilmembers: _____

Absent: Councilmembers: _____

Recusal(s): Councilmembers: _____

City Clerk

Approved: _____
(Date)

Mayor