

INITIATIVE MEASURE TO BE SUBMITTED DIRECTLY TO THE VOTERS

The City Attorney has prepared the following title and summary of the chief purposes and points of the proposed initiative measure:

Ballot Title

AN ORDINANCE ESTABLISHING A HEALTHCARE WORKERS MINIMUM WAGE IN THE CITY OF DUARTE

Summary of Proposed Measure

This initiative, if adopted by a majority of the City of Duarte (“Duarte”) electorate voting on the matter, would add Chapter 5.92 of the Duarte Municipal Code via ordinance to establish a Minimum Wage for Healthcare Workers within Duarte. Employees, as defined in the Labor Code, cannot waive their rights under this ordinance.

For Healthcare Workers, Minimum Wage, defined as the minimum amount of Employee compensation, not including bonuses or reimbursements, or the cost of insurance, retirement, or similar benefits, would be no less than \$25 per hour, increased annually beginning on January 1, 2024, based on the Consumer Price Index for Urban Wage Earners and Clerical Workers for the Los Angeles Metropolitan Area. Employers must post a notice of Minimum Wage and retain payroll records for four years.

“Healthcare Worker” are Employees who provide healthcare or non-medical support services, but not managers, and who work at or are employed by privately owned general acute care hospitals, clinics, acute psychiatric hospitals, chronic dialysis clinics, and psychiatric health facilities, as they are defined in the Health and Safety Code, and facilities that are a part of a system that includes hospitals, healthcare service plans, medical foundation clinics, medical corporations, podiatry corporations, or any other form of physician partnership controlled by 10 or more physicians.

Minimum Wage increases cannot be funded by layoffs, increasing charges for work-related materials, or reducing worker pay, hours, or other benefits. Adverse action taken against an Employee within 90 days of the Employee’s exercise of rights under the ordinance is a rebuttable presumption of retaliation.

Courts may grant a one-year waiver from the Minimum Wage requirements if an Employer demonstrates by substantial evidence that compliance would raise substantial doubt about the Employer’s ability to continue.

Duarte must publish the adjusted Minimum Wage rates on January 1 each year and enforce the ordinance by:

1. Establishing and administering a process for reporting complaints of violations, investigations, administrative citations, and the imposition of fines or penalties;
2. Collecting back wages and disbursing them to the appropriate Employees; and
3. Conducting education and enforcement activities necessary to ensure compliance.

A Healthcare Worker, their representative, the City Attorney, or any person acting on behalf of the public may bring a civil action against an Employer violating the ordinance. A court must impose all remedies available under the law or in equity, including the payment of penalties in the amount of up to \$120 to each Healthcare Worker for each day that a violation occurred and reasonable attorneys’ fees unless the prevailing party is a person acting on behalf of the public. Such prevailing persons shall be entitled to attorneys’ fees and costs, equitable and injunctive relief and/or restitution. For retaliatory action by the Employer, the Healthcare Worker shall be entitled to reinstatement and a trebling of all wages and penalties owed.

February 28, 2022

/s/
Thai Viet Phan
Assistant City Attorney/Acting City Attorney

To the City Council of the City of Duarte:

We, the undersigned, registered, qualified voters and residents of the City of Duarte, California, hereby propose amendments to the Duarte Municipal Code relating to the minimum wage for covered healthcare workers, and petition the City Council to submit the same to the voters of the City of Duarte for their adoption or rejection at the next general election or as otherwise provided by law. The proposed amendments are set forth below and on the subsequent pages and read as follows:

Ordinance No. _____

An ordinance proposed by initiative petition to add Chapter 5.92 to Title 5 of the Duarte Municipal Code, establishing the “Healthcare Workers Minimum Wage Ordinance.”

THE PEOPLE OF THE CITY OF DUARTE

DO ORDAIN AS FOLLOWS:

SECTION 1. Name

This measure shall be known as the “Healthcare Workers Minimum Wage Ordinance.”

SECTION 2. Chapter 5.92, entitled HEALTHCARE WORKERS MINIMUM WAGE, is added to Title 5 of the Duarte Municipal Code, to read:

5.92.010 - Findings and purposes.

This Ordinance, adopted by the People of the City of Duarte, makes the following findings and has the following purposes:

The purpose of this Ordinance is to establish a minimum wage for covered healthcare workers within the City of Duarte.

The City of Duarte 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 short-

ages 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 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 Duarte, and will fairly compensate healthcare workers for their contributions and sacrifices.

5.92.020 - Definitions.

The following definitions shall apply to this chapter:

- (a) “City” means the City of Duarte.
- (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.

(c) "Covered Physician Group" means a medical group practice, including a professional medical corporation as defined in Section 2406 of the California Business and Professions Code, another form of corporation controlled by physicians and surgeons, a medical partnership, or an independent practice association, provided that the group includes a total of 10 or more physicians.

(d) "Employee" has the same meaning as in Section 2775 of the California Labor Code.

(e) "Employer" means any Person, including a corporate officer or executive, who directly or indirectly or through any other Person, including through the services of a temporary service, staffing agency, or similar entity, employs or exercises control over the wages, hours or working conditions of any Employee.

(f) "Healthcare Worker" means an Employee who is employed to work at or by a Covered Healthcare Facility to provide patient care, healthcare services, or services supporting the provision of healthcare. "Healthcare Worker" includes a clinician, professional, non-professional, nurse, certified nursing assistant, aide, technician, maintenance worker, janitorial or housekeeping staffperson, ground-keeper, guard, food service worker, laundry worker, pharmacist, nonmanagerial administrative worker and business office clerical worker, but does not include a manager or supervisor. A "Healthcare Worker" works at a Covered Healthcare Facility only if that individual's primary work assignment is physically located at one or more such facilities; for example, delivery workers employed principally outside a Covered Healthcare Facility are not Healthcare Workers for purposes of this chapter unless employed by such a facility.

(g) "Integrated Healthcare Delivery System" means a system that includes both of the following: (1) one or more hospitals and (2) Covered Physician Groups, health care service plans, medical foundation clinics, or other facilities or entities, where the hospital or hospitals and other facilities or entities are related through:

(1) Parent/subsidiary relationships, common ownership or control, or common boards of directors and shared senior management; or

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

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

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

(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 domestic or foreign.

5.92.030 - Payment of minimum wage to healthcare workers.

(a) An Employer shall ensure that each Healthcare Worker it employs, or over whom it exercises control, is paid a Minimum Wage equivalent to no less than the hourly rate set forth herein or under the authority of this chapter for hours worked within the geographic boundaries of the City.

(b) The Minimum Wage for Healthcare Workers shall be as follows:

(1) On the effective date of this chapter, the Minimum Wage shall be no less than \$25 per hour.

(2) On January 1, 2024, and annually thereafter, the Minimum Wage shall increase based on the annual increase in the cost of living, as measured by the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) for the Los Angeles metropolitan area (Los Angeles-Long Beach-

Anaheim, CA), which is published by the Bureau of Labor Statistics. The City shall publish a bulletin announcing the adjusted rates, which shall take effect on January 1 of each year.

(c) An Employer may not fund the Minimum Wage increases required by this chapter in any of the following ways:

(1) Reducing Healthcare Workers' premium pay rates or shift differentials;

(2) Reducing vacation, healthcare, or other non-wage benefits of any Healthcare Worker;

(3) Reducing Healthcare Workers' hours of work;

(4) Laying off Healthcare Workers; or

(5) Increasing charges to any Healthcare Worker for parking, work-related materials or equipment.

(d) An Employer is in violation of subsection (c) of this section if the Minimum Wage requirements of this chapter are a motivating factor in the Employer's decision to take any of the actions described in subsection (c) of this section, 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.

5.92.040 - 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.

5.92.050 - 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.

5.92.060 - 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 through the administrative citation process, civil actions, or other approaches on behalf of Healthcare Workers, collecting back wages and any other amounts owed to Healthcare Workers, and disbursing them to Healthcare Workers.

(5) Conducting 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 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. If the City, a Healthcare Worker, or a representative of a Healthcare Worker prevails in the action, the Court shall impose 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.

5.92.070 - 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.

5.92.080 - 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.

5.92.090 - 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.

5.92.100 - 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.

5.92.110 - 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.