



CITY OF SAN JOSÉ, CALIFORNIA

Office of the City Clerk
200 East Santa Clara Street
San José, California 95113
Telephone (408) 535-1260
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RECEIVED
JUL 06 2016

REGISTRAR OF VOTERS
COUNTY OF SANTA CLARA

Toni J. Taber, CMC
City Clerk

July 6, 2016

Via Hand Delivery

Megan Doyle, Clerk of the Board
Santa Clara County Board of Supervisors
70 West Hedding Street, East Wing, 10th Fl.
San Jose, California 95110

Via Hand Delivery

Shannon Bushey, Registrar
Santa Clara County Registrar of Voters
1555 Berger Drive, Building 2, 1st Fl.
San Jose, California 95112

Dear Megan and Shannon:

Enclosed is a certified copy of Resolution No. 77867 as adopted by the Council of the City of San José on Tuesday, June 28, 2016. The Resolution calls for the submission to the electors of the City of San José, at a special municipal election to be consolidated with the next general election to be held on November 8, 2016, an initiative to amend Title 4 of the San José Municipal Code to Require Employers to Offer Additional Work Hours to Existing Qualified Part-Time Employees Before Hiring New Staff. The Resolution approves arguments and rebuttals, but did not authorize including the full text of the measure.

This letter also confirms the argument deadlines as provided by the ROV are:

Arguments: Tuesday, August 17

Rebuttals: Tuesday, August 23

Impartial Analysis: Tuesday, August 23

Please contact me (Phone: 408-535-1270; e-mail: toni.taber@sanjoseca.gov) if you have any questions or require additional information. We look forward to working with County staff in conducting these elections.

Sincerely,

Toni J. Taber, CMC
City Clerk

Enclosure - Resolution No. 77867

RESOLUTION NO. 77867

FILED
JUL 06 2016

REGISTRAR OF VOTERS
COUNTY OF SANTA CLARA

Deputy

By 

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE CALLING AND GIVING NOTICE OF THE SUBMISSION TO THE ELECTORS OF THE CITY OF SAN JOSE, AT A SPECIAL MUNICIPAL ELECTION TO BE CONSOLIDATED WITH THE NEXT GENERAL ELECTION TO BE HELD ON NOVEMBER 8, 2016, AN INITIATIVE TO AMEND TITLE 4 OF THE SAN JOSE MUNICIPAL CODE TO REQUIRE EMPLOYERS TO OFFER ADDITIONAL WORK HOURS TO EXISTING QUALIFIED PART-TIME EMPLOYEES BEFORE HIRING NEW STAFF

WHEREAS, on April 26, 2016, the proponents of the initiative submitted petition signatures to the Office of the City Clerk and on the same day the City Clerk transferred petition signatures to the County of Santa Clara Registrar of Voters for signature verification pursuant to Elections Code Section 9115; and

WHEREAS, on May 17, 2016, the Registrar of Voters certified that the initiative petition has qualified with the sufficient number of signatures with a total of 21,562 which is 5.72% of the Registered Voters in the City of San José in the last report filed by the Registrar of Voters with the Secretary of State in effect at the time the notice of intent to circulate the petition was published; and

WHEREAS, on May 24, 2016, the City Council accepted the Certificate of Sufficiency issued by the County of Santa Clara Registrar of Voters and ordered a report on the effects of the proposed ordinance consistent with Elections Code Section 9212; and

WHEREAS, on June 21, 2016, the City Council accepted the report pursuant to Elections Code Section 9212; and

WHEREAS, San José City Charter Sections 1600 and 1601 authorize the City Council to set the date for a Special Municipal Election; and

WHEREAS, pursuant to California Elections Code Section 9215 and the San José City Charter Section 1603(a)(2), the City Council is required to submit to the electors of the City of San José an initiative to amend Title 4 of the San José Municipal Code;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE THAT:

SECTION 1. A Special Municipal Election is hereby called and ordered to be held in the City of San José on November 8, 2016, for the purpose of voting on an initiative to amend Title 4 of the San José Municipal Code to require employers to offer additional work hours to existing qualified part-time employees before hiring new staff, which shall become operative if a majority of the electors voting on the measure vote to approve the amendment to Title 4. The full text of the measure and actual language of the proposed initiative amending the Code is attached to this Resolution as Exhibit A.

SECTION 2. The initiative will be placed on the ballot for the November 8, 2016 election in the following form:

MEASURE _____
Opportunity to Work Ordinance

Shall an ordinance be adopted amending the San Jose Municipal Code to require employers of 36 or more employees to offer additional work hours to existing qualified part-time employees before hiring new employees or contractors, unless waived through a collective bargaining agreement or a welfare to work program; and, authorize the City to enforce, and grant hardship exemptions from, the offer of work requirement?	YES	
	NO	

SECTION 3. The City Council hereby requests the Board of Supervisors of the County of Santa Clara, California to permit the Registrar of Voters of Santa Clara County to

render to the City of San José such services as the City Clerk of the City of San José may request relating to the conduct of the above-described Special Municipal Election with respect to the following matters:

Coordination of election precincts, polling places, voting booths, voting systems and election officers; Printing and mailing of voter pamphlets; Preparation of tabulation of result of votes cast.

SECTION 4. The City Council hereby requests that the Registrar of Voters of the County of Santa Clara consolidate the Special Municipal Election called and ordered to be held on November 8, 2016 with any other election that may be held on that date.

SECTION 5. The City Council hereby authorizes the Board of Supervisors of Santa Clara County, California to canvass the returns of the Special Municipal Election.

SECTION 6. The City Council hereby directs the City Clerk to reimburse the County of Santa Clara in full for any of the above-mentioned services which may be performed by the Registrar of Voters, upon presentation of a bill to the City, with funds already appropriated to the City Clerk for election purposes.

SECTION 7. The City Council hereby directs the City Clerk to take all actions necessary in order to facilitate the Special Municipal Election in the time frame specified herein and comply with provisions of the Elections Code of the State of California, City Charter, Ordinances, Resolutions and Policies with regard to the conduct of the Special Municipal Election.

SECTION 8. Pursuant to Section 12111 of the California Elections Code, the City Council hereby directs the City Clerk to (a) cause a synopsis of the proposed initiative to be published at least one time not later than one week before the election in the San José Mercury News, a newspaper of general circulation within the City of San José; (b) consolidate the Notice of Initiative to be Voted with the Notice of Election into a single

notice; (c) cause the following statement to be printed in the impartial analysis to be prepared by the City Attorney: "If you would like to read the full text of the initiative, see <http://www.sanjoseca.gov/index.aspx?NID=446> or call 408-535-1260 and a copy will be sent at no cost to you."; and (d) do all other things required by law to submit the specified initiative above to the electors of the City of San José at the Special Municipal Election, including causing the full text of the proposed initiative to be made available in the Office of the City Clerk at no cost and posted on the City Clerk's website.

SECTION 9. Pursuant to Sections 9282 and 9285 of the California Elections Code, the City Council hereby approves the submittal of direct arguments for and against the ballot initiative, if any, and authorizes the Mayor to author and submit a ballot initiative argument in opposition of the ballot initiative and approves the submittal of rebuttal arguments in response to arguments for and against the ballot initiative and authorizes the Mayor to author and submit a rebuttal, if any.

SECTION 10. The City Council hereby directs the City Clerk to transmit a copy of the initiative qualifying for placement on the ballot to the City Attorney for preparation of an impartial analysis.

SECTION 11. Acknowledge that the consolidated election will be held and conducted in the manner prescribed in California Elections Code Section 10418.


ADOPTED this 28th day of June, 2016, by the following vote:

AYES: CARRASCO, HERRERA, JONES, KHAMIS,
M. NGUYEN, OLIVERIO; LICCARDO.

NOES: KALRA, T. NGUYEN, PERALEZ, ROCHA.

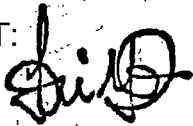
ABSENT: NONE.

DISQUALIFIED: NONE.



SAM LICCARDO
Mayor

ATTEST:



TONI J. TABER, CMC
City Clerk

The foregoing instrument is
a correct copy of the original
on file in this office.

Attest:

TONI J. TABER
City Clerk

City Clerk of the City of San Jose
County of Santa Clara, State of California

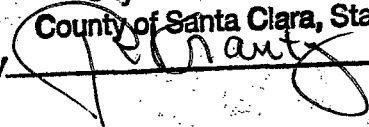
By , Deputy

EXHIBIT A

AN INITIATIVE ORDINANCE OF THE CITY OF SAN JOSE AMENDING TITLE 4 OF THE SAN JOSE MUNICIPAL CODE TO REQUIRE EMPLOYERS TO OFFER HOURS OF WORK TO EXISTING QUALIFIED PART-TIME EMPLOYEES BEFORE HIRING NEW STAFF

WHEREAS workers need to work enough hours to earn an adequate weekly income to provide for their families and public policies which help achieve that goal are beneficial; and

WHEREAS many employers choose to employ workers on a part-time basis to avoid providing health insurance and other important job-related benefits; and

WHEREAS tens of thousands of hourly workers in the San Jose municipal area would prefer to work full-time but can only find part-time work; and

WHEREAS the unpredictable hours associated with many part-time hourly jobs make it difficult for employees to maintain second or third jobs to supplement their incomes;

WHEREAS promoting full-time jobs advances the interests of the City as a whole by creating jobs that keep workers and their families out of poverty; and

WHEREAS providing full-time hours for workers who want to work full-time will allow workers to meet basic needs and avoid economic hardship, while preserving opportunities for workers who want to work part-time; and

WHEREAS the added cost of commuting between multiple part time jobs increases the amount of hours workers need to earn an adequate income; and

WHEREAS added commuting between multiple part time jobs has a negative environmental impact; and

WHEREAS this ordinance is intended to improve the quality of services provided in the City to the public by reducing high turnover absenteeism and instability in the workplace; and

WHEREAS prompt and efficient enforcement of this Chapter will provide workers with economic security and the assurance that their rights will be respected.

NOW THEREFORE, BE IT ORDAINED, BY THE PEOPLE OF THE CITY OF SAN JOSE:

SECTION 1. Title 4 of the San Jose Municipal Code is hereby amended to add a new Chapter to be numbered entitled and to read as follows:

CHAPTER 4.101

"Opportunity to Work Ordinance."

4.101. 010 TITLE.

This ordinance shall be known as the "Opportunity to Work Ordinance."

4.101. 020 AUTHORITY.

This Chapter is adopted pursuant to the powers vested in the City of San Jose under the laws and Constitution of the State of California but not limited to, the police powers vested in the City pursuant to Article XI Section 7 of the California Constitution and Section 1205(b) of the California Labor Law.

4.101.030 DEFINITIONS.

The following terms shall have the following meanings:

- A. "Chain" shall mean a set of businesses that share a common brand or are characterized by standardized options of décor, marketing, packaging, products or services.
- B. "City" shall have the meaning provided in Section 4.100.030.
- C. "Employee" shall have the meaning provided in Section 4.100.030.
- D. "Employer" shall mean any person, including corporate officers or executives, as defined in Section 18 of the California Labor Code, who
 - 1. directly or indirectly through any other person, including through the services of a temporary employment agency, staffing agency or similar entity, employs or exercises control over the wages, hours or working conditions of any Employee;
 - 2. is either subject to the Business License Tax Chapter 4.76 of the Municipal Code or has a place of business in the city which is exempt under state law from the tax imposed by Chapter 4.76.
- E. "Franchise" shall have the meaning provided in California Business & Professions Code section 20001.
- F. "Franchisee" shall have the meaning provided in California Business & Professions Code section 20002.
- G. "Office" shall have the meaning provided in Section 4.100.030.
- H. "Retaliation" shall mean any form of intimidation, threat, reprisal, harassment, discrimination or adverse employment action, including discipline, discharge, suspension, transfer or assignment to a lesser position in terms of job classification, job security, or other condition of employment, reduction in pay or hours or denial of additional hours, informing another Employer that the person has engaged in activities protected by this article, or reporting or threatening to report the actual or suspected citizenship or immigration status of an Employee, former Employee or family member of an Employee to a federal, state or local agency, because the Employee or former Employee exercises a right under this chapter.
- I. "Shift" shall mean the consecutive hours an Employer requires an Employee to work or to be on call to work. Breaks totaling two hours or less shall not be considered an interruption of consecutive hours.
- J. "Welfare-to-Work Program" shall have the meaning provided in Section 4.100.030.

K. "Work schedule" shall mean all of an Employee's regular and on-call shifts, including specific start and end times for each shift, during a consecutive seven-day period.

4.101.040 ACCESS TO HOURS OF WORK FOR QUALIFIED PART-TIME EMPLOYEES.

A. Before hiring additional Employees or subcontractors, including hiring through the use of temporary services or staffing agencies, an Employer must offer additional hours of work to existing Employees who, in the Employer's good faith and reasonable judgment, have the skills and experience to perform the work, and shall use a transparent and nondiscriminatory process to distribute the hours of work among those existing Employees.

B. The City shall have the authority to issue guidelines to encourage Employers to create training opportunities to permit Employees to perform work for which the Employer can be expected to have a need for additional hours of work.

C. This section shall not be construed to require any Employer to offer an Employee work hours if the Employer would be required to compensate the Employee at time-and-a-half or other premium rate under any law or collective bargaining agreement, nor to prohibit any Employer from offering such work hours.

4.101.050 NOTICE, POSTING AND RETENTION OF RECORDS.

A. The Office shall publish and Employers shall post a notice of Employee rights under this Chapter pursuant to section 4.100.060.

B. The record retention provisions of section 4.100.600(C) shall apply to this Chapter. Employers shall retain:

1. For any new hire of Employees or subcontractors, documentation of the offer of additional hours of work to existing Employees prior to completing the hire;
2. Employee work schedules; and
3. Any other records the Office requires that Employers maintain to demonstrate compliance.

4.101.060 RETALIATION, IMPLEMENTATION, ENFORCEMENT, AND FEES.

The provisions of sections 4.100.070, 4.100.080, 4.100.090, and 4.100.120 shall apply in their entirety to this Chapter, with the exception that no fines, fees or civil penalties shall be assessed for an Employer's first violation of 4.101.040.

4.101.070 RELATIONSHIP TO OTHER REQUIREMENTS.

This Chapter requires Employers to offer hours of work to existing qualified part-time Employees and shall not be construed to preempt or otherwise limit or affect the applicability of any other law, regulation, requirement, policy or standard that provides for payment of higher or supplemental wages or benefits, or that extends other protections.

4.101.080 HARDSHIP EXEMPTION.

A. The Office may grant a hardship exemption for up to twelve months to an Employer who demonstrates that:

1. The Employer has undertaken in good faith all reasonable steps to comply; and
2. Full and immediate compliance would be impracticable, impossible or futile.

B. Thereafter, the Office may extend the hardship exemption in twelve-month increments if an Employer demonstrates that, despite the Employer's best effort to come into compliance, hardship conditions continue to exist.

4.101.090 SMALL BUSINESS EXEMPTION.

A small business enterprise that qualifies under Municipal Code Section 4.12.060 shall be exempt from the application of this Chapter except that:

- (A) For a chain business that is not owned by a franchisee, the number of Employees for purposes of qualifying as a small business enterprise shall be determined by the combined total number of Employees at every location of that chain business, whether or not located in the City.
- (B) For a franchisee, the number of Employees for purposes of qualifying as a small business enterprise shall be determined by the combined total number of Employees at every location owned by that franchisee and operated under the same franchise, whether or not located in the City.

4.101.100 APPLICATION TO WELFARE-TO-WORK PROGRAMS.

This Chapter shall apply to the Welfare-to-Work programs under which persons must perform work in exchange for receipt of benefits, except that participants in such programs shall have the option to file a written statement with his or her Employer opting out of the coverage of 4.101. 040.

4.101.110 COLLECTIVE BARGAINING UNDER FEDERAL LAW.

The provisions of sections 4.100.050 shall apply in their entirety to this Chapter.

4.101.120 AMENDMENT BY THE CITY COUNCIL.

This Chapter may be amended by the City Council without a vote of the people as regards the implementation or enforcement thereof, in order to achieve the purposes of this Chapter, but not in a manner that lessens the substantive requirements of the Chapter or its scope of coverage.

SECTION 2. EFFECTIVE DATE.

This ordinance shall become effective on the ninetieth (90) day after it is certified. This ordinance is intended to have prospective effect only.

SECTION 3. SEVERABILITY.

If any part or provision of this ordinance, or the application of this ordinance to any person or circumstance, is held invalid, the remainder of this ordinance, including the application of such part or

provisions to other persons or circumstances, shall not be affected by such a holding and shall continue in full force and effect. To this end, the provisions of this ordinance are severable.