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Memorandum

TO: TONI J. TABER, CMC
City Clerk

FROM: RICHARD DOYLE
City Attorney

SUBJECT: IMPARTIAL ANALYSIS

DATE: August 22, 2016

Attached is the original Impartial Analysis signed by the City Attorney for the Opportunity to Work Initiative Measure, Measure E, on the November 8, 2016 ballot. Please provide the City Attorney's Office with a date-stamped copy from the Registrar of Voters confirming their receipt of the Impartial Analysis.

Please call me if you have any questions at x51957.

RICHARD DOYLE
City Attorney

By: _____

[Signature]
JON CALEGARI
Deputy City Attorney

CITY ATTORNEY'S IMPARTIAL ANALYSIS OF MEASURE E

Measure E, if approved by a majority of the voters, would add a new chapter to the San José Municipal Code (the "Code") to require employers to offer additional work hours to existing qualified part-time employees before hiring new employees, including subcontractors or temporary staffing services. Measure E was placed on the ballot by an initiative petition signed by the required number of voters. The existing Code does not include an offer of additional work requirement.

Application. The proposed ordinance defines employees and employers subject to its requirements. An employee is any person who has performed at least 2 hours of work for an employer and is entitled to the State minimum wage. An employer is any person that employs or exercises direct or indirect control over wages, hours or working conditions of any employee, and either is subject to San José's business tax or maintains a place of business in San José which State law exempts from San José's business tax. This definition covers employers exempt under State law from San José's business tax, including banks, insurance companies and certain nonprofits. The offer of additional work requirement does not apply where the part-time employees would be paid a premium rate or when an express waiver of the additional work requirement has been agreed to in a collective bargaining agreement. It applies to welfare-to-work programs except participants may opt out.

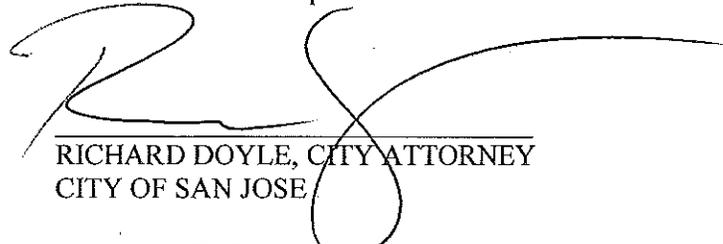
Exemptions. Businesses with 35 or fewer employees would be exempt from the ordinance. The number of employees of a chain business is determined by the combined number of employees at every location of the business, whether or not located in San José. For a franchisee, the total number of employees would be determined by the combined total number of employees at every location owned by the franchisee, whether or not located in San José. The proposed ordinance also provides that the City may grant hardship exemptions for up to 12 months at a time to employers who demonstrate that they have exercised reasonable steps to comply and full and immediate compliance would be impracticable, impossible or futile.

Administration. The proposed ordinance includes a number of administrative requirements and enforcement provisions. Employers would be required to annually post a bulletin of the additional work hour requirement in various languages at the workplace. The City would be authorized to issue administrative fines and penalties for noncompliance. A civil action based on a violation of the ordinance can be brought by any person harmed, any person on behalf of the public, or the City.

Effective Date/Amendment. If approved by a majority of the voters, the proposed ordinance would become effective 90 days after certification. The City Council may amend the ordinance to address administration and enforcement but not to reduce its substantive requirements or scope.

A "Yes" vote is a vote to amend the Code to implement the offer of additional work requirement.

A "No" vote is a vote to not implement the offer of additional work requirement.


RICHARD DOYLE, CITY ATTORNEY
CITY OF SAN JOSE

The above statement is an impartial analysis of Measure E. If you would like to read the full text of the measure, 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.