

RECEIVED
San Jose City Clerk

2016 FEB -9 AM 9:00

Office of the City Attorney
RICHARD DOYLE, CITY ATTORNEY

JOHNNY V. PHAN
Sr. Deputy City Attorney
Direct Line: (408) 535-1981

February 8, 2016

TO ALL INTERESTED PARTIES:

Attached is the City Attorney's updated title and summary for the proposed measure to amend the San José Municipal Code to require employers to offer additional work hours to existing qualified part-time employees before hiring new staff. In preparing this updated title and summary, the City Attorney makes no representation about the merits or legality of the proposed measure, nor does the City Attorney verify or confirm any factual or legal assertions made in the proposed measure. Rather, the updated title and summary are presented as a "true and impartial statement of the purpose of the proposed measure" as required by California Elections Code Section 9203.

Very truly yours,

RICHARD DOYLE, City Attorney

By: _____


JOHNNY V. PHAN
Sr. Deputy City Attorney

JVP/jvp

INITIATIVE MEASURE TO BE SUBMITTED DIRECTLY TO THE VOTERS

The City Attorney of San José has prepared the following Title and Summary of the chief purpose and points of the proposed measure:

AN INITIATIVE ORDINANCE AMENDING 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

This measure proposes an ordinance requiring employers to offer additional work hours to existing qualified part-time employees before hiring new employees including subcontractors or use of temporary staffing services. The requirement to offer additional work hours does not apply where the existing qualified part-time employees would be paid overtime or other premium rate under any law or collective bargaining agreement.

Under the measure, an employee is any person who has performed at least 2 hours of work for an employer or is entitled to the California state minimum wage. The measure defines an employer as 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 (Municipal Code Chapter 4.76) or maintains a place of business in San José which is exempt under California law from San José's business tax. Businesses with 35 or fewer employees would be exempt from the ordinance, except that for a chain business not owned by a franchisee, the total number of employees would be determined by the combined number of employees at every location of the chain 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 operating under the same franchise, whether or not located in San José.

The measure requires the Office of Equality Assurance ("Office") or other office designated by the City Council to establish guidelines for monitoring, investigation, and enforcement of the additional work hour requirement. The Office may grant hardship exemptions for up to 12 months at a time to employers who demonstrate that they have exercised reasonable steps to comply with the ordinance and full and immediate compliance would be impracticable, impossible or futile.

The measure applies to welfare-to-work programs except participants have the option to file a written statement with the employer to opt out of the measure. The measure would require that the Office make available to employers annually a bulletin of the additional work hour requirement in various languages for posting at the workplace. This measure would authorize the Office to issue administrative fines and penalties for noncompliance; or a civil action to be brought in a court of law by any person harmed, any person on behalf of the public, or the City. The proposed measure would not preempt any federal law respecting an express waiver of all or any portion of the additional work hour requirement in a collective bargaining agreement.

This measure, if enacted, may be amended by the City Council without voter approval provided the changes do not decrease the measure's substantive requirements or scope. If approved, it would become effective on the 90th day following certification and apply prospectively.

**NOTICE TO THE PUBLIC: THIS PETITION MAY BE CIRCULATED BY A PAID SIGNATURE GATHERER OR VOLUNTEER. YOU HAVE THE RIGHT TO ASK.
SAN JOSE CITY REGISTERED VOTERS ONLY**

Silicon Valley

RISING

2102 Almaden Road, Suite 114, San Jose, CA 95125

408-606-2060

January 25, 2016

Ms. Toni Taber
City Clerk
City of San Jose
200 E. Santa Clara St.
San Jose, CA 95113

Re: Request for Title and Summary for Proposed Initiative

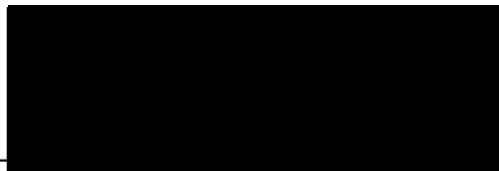
Dear Ms. Taber:

Pursuant to the California Elections Code, enclosed please find an original and one copy of the following documents: (1) a Notice of Intention to Circulate Petition; (2) a proposed initiative measure for the City of San Jose; and (3) and the acknowledgment of Elections Code section 18650 as required by law. A filing fee for \$200 is also enclosed.

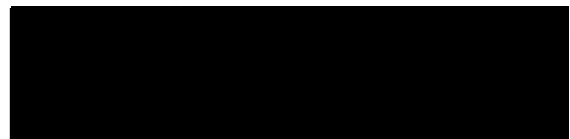
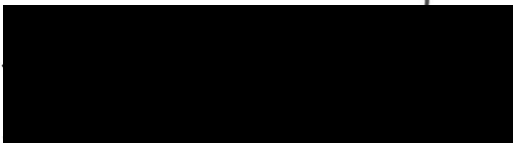
Pursuant to Elections Code section 9203, please request the City Attorney prepare a title and summary for the proposed measure.

Thank you for your time and attention to this important matter. Should you have any questions or require additional information, please contact us.

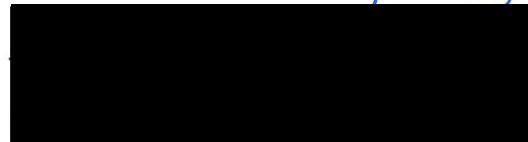
Sincerely,



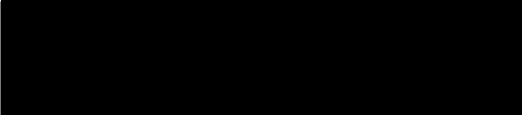
REGINALD SWILLEY



Carol Anne Garvey



Enclosures as stated.



SALVADOR BUSTAMANTE



Enclosures as stated.

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.

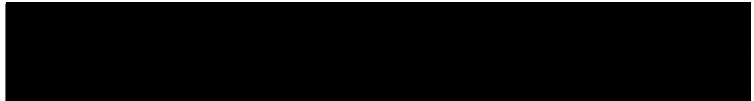
This ordinance shall become effective on the ninetieth (90) day after it is certified. This ordinance is intended to have prospective effect only.

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.

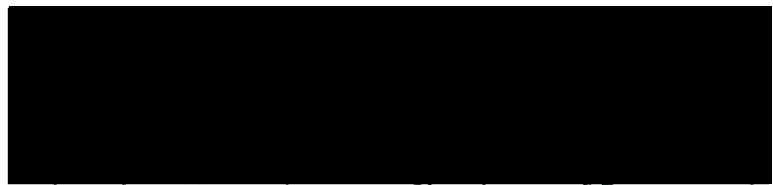
I, Salvador Bustamante acknowledge that it is a misdemeanor under state law (section 18650 of the Elections Code) to knowingly or willfully allow the signatures on an initiative petition to be used for any purpose other than qualification of the proposed measure for the ballot. I certify I will not knowingly or willfully allow the signatures for this initiative to be used for any purpose other than qualification of the measure for the ballot.



Signature of Proponent

Dated this 25th day of January, 2016

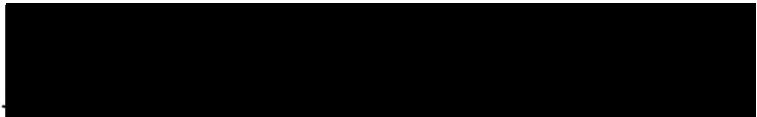
I, Reginald Swilley, acknowledge that it is a misdemeanor under state law (section 18650 of the Elections Code) to knowingly or willfully allow the signatures on an initiative petition to be used for any purpose other than qualification of the proposed measure for the ballot. I certify I will not knowingly or willfully allow the signatures for this initiative to be used for any purpose other than qualification of the measure for the ballot.

A large black rectangular redaction box covering the signature of the proponent.

Signature of Proponent

Dated this 25 day of January, 2016

I, Carol Anne Jarvey, acknowledge that it is a misdemeanor under state law (section 18650 of the Elections Code) to knowingly or willfully allow the signatures on an initiative petition to be used for any purpose other than qualification of the proposed measure for the ballot. I certify I will not knowingly or willfully allow the signatures for this initiative to be used for any purpose other than qualification of the measure for the ballot.

A solid black rectangular box redacting the signature of the proponent.

 Signature of Proponent

Dated this 25 day of January, 2016

Notice of Intent to Circulate Petition

Notice is hereby given to the persons whose names appear heron of their intention to circulate the petition within the City of San Jose for the purpose of placing an ordinance on the November Ballot for voter approval. A statement of the reasons of the proposed action as contemplated in the petition is as follows:

We need the "Opportunity to Work Initiative" because workers are experiencing an underemployment crisis. The Initiative will help hourly workers get access to enough hours so their paychecks cover the bills and put food on the table.

[NOTICE OF INTENT MUST ALSO BE SIGNED BY PROPONENTS]

