

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.