



Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL
FROM: Richard Doyle
City Attorney
SUBJECT: COVID Paid Sick Leave Ordinance
DATE: April 2, 2020

COUNCIL DISTRICT: CITYWIDE

Recommendation:

- A. Adopt an urgency ordinance mandating that employers in San José not required to provide paid sick time under the federal Emergency Paid Sick Leave Act provide paid sick time to certain employees to be used for health reasons related to COVID-19 and setting forth the facts constituting the urgency.
- B. Approve an ordinance mandating that employers in San José not required to provide paid sick time under the federal Emergency Paid Sick Leave Act provide paid sick time to certain employees to be used for health reasons related to COVID-19.

Background:

At its April 1, 2020 special meeting, Council directed this Office to return on April 7, 2020 with an urgency ordinance implementing COVID-19 related paid sick leave benefits. Council directed the ordinance to include the recommendations in the Mayor's March 24, 2020 memorandum to the Rules and Open Government Committee with modifications reflected in the March 27, 2020 memorandum from Councilmembers Esparza, Carrasco and Arenas. Council directed the ordinance to sunset on December 31, 2020, which coincides with the sunset of the federal Emergency Paid Sick Leave Act.

Analysis:

The urgency ordinance and regular ordinance provided by this Office reflect Council direction. The only issue discussed in this memorandum is the impact of Council's direction to extend the sunset of the ordinance to December 31, 2020.

The ordinance applies to employers that do not have to provide paid sick leave under the federal Emergency Paid Sick Leave Act. The Mayor's memorandum recommended the ordinance apply to covered employers that "are lawfully permitted to continue

operations under the County and State stay-home mandates. . . .” It recommended the ordinance sunset on the expiration of the City’s state of emergency.

Similarly, the Esparza/Carrasco/Arenas memorandum recommended the ordinance exempt “[a]ny employer not permitted to operate or employ people at a California work site pursuant to current State/County public health mandates. . . .”

Given the above recommendations and the possibility of the County Health Officer lifting the “stay-home” mandate before the expiration of the City’s state of emergency, this Office’s March 30, 2020 memorandum suggested Council might want to consider having the ordinance sunset when the “stay-home” mandate is lifted. Council rejected this suggestion, directing that the ordinance sunset December 31, 2020.

The County Health Officer will likely lift the “stay-home” mandate before December 31, 2020. Based on Council’s direction that the ordinance apply to covered employers “lawfully permitted to continue operations under the County and State stay-home mandates,” the urgency ordinance would continue to apply **only** to those employers *even after the “stay-home” mandate is lifted*. The ordinance would not apply to other covered employers whose employees return to work outside the home.

If the Council did not intend the above result, then it needs to give direction that the language of the ordinance be amended to:

- Apply only to covered employers that are lawfully permitted to continue operations under the “stay-home” mandate *during the pendency of the mandate*, and
- Apply to all covered employers once the “stay-home” mandate is lifted.

RICHARD DOYLE
City Attorney

By: /s/ Glenn Schwarzbach
Glenn Schwarzbach
Sr. Deputy City Attorney

cc: David Sykes