



Memorandum

TO: RULES AND OPEN GOVERNMENT GOVERNMENT COMMITTEE **FROM:** Councilmember Esparza
Councilmember Carrasco
Councilmember Arenas

SUBJECT: PAID SICK LEAVE ORDINANCE **DATE:** March 12, 2020

Approved

Maya Esparza *[Signature]* Date *March 12, 2020*

RECOMMENDATION:

1. Direct City Attorney to return to the City Council on April 7th, 2020 with an ordinance and a companion urgency ordinance to allow employees in San Jose to earn paid sick time to address their personal and family health needs and prevent unnecessary death and illness during public health emergencies, including from the novel coronavirus (COVID-19) pandemic, under the following conditions:
 - a. An ordinance will cover all employees, as provided under Sections 2750.3 and 245.5 of the California Labor Code, who have worked at least two hours within the geographic boundaries of San Jose for an employer.
 - b. Building on local ordinances including San Diego, Oakland and San Francisco, the ordinance should require employers to provide workers with one hour of paid sick leave for every 30 hours worked for an employer. Employees should be able to accrue a maximum of 80 hours of paid sick leave [or equal to two weeks' worth of paid sick leave] and should be allowed to begin using paid sick days after no more than 90 calendar days of employment.
 - c. Employees should be eligible to use paid sick days when they are ill or injured or for the purpose of receiving medical care, treatment, prevention or diagnosis, as provided under California Labor Code 233(b)(4) but also for children, parents, legal guardians, siblings, grandparents, grandchildren and relationships resulting from adoption and foster care. This should include recovery from physical or psychological injury or disability from sexual assault or domestic violence.
 - d. The ordinance should integrate an enforcement mechanism, building off of the City of Oakland's paid sick days ordinance, including protections for workers from retaliation for use of paid sick days under the ordinance.

- e. Any employer with an existing plan that provides paid sick leave equal to or greater than the City's protection should have its program grandfathered and be exempt from the ordinance.
 - f. In the event of a public health emergency impacting San Jose, as declared by the US Department of Health and Human Services, State or County public health officials, the ordinance should provide employees additional paid sick time from their employer, in addition to any amount of sick days already accrued. The amount should be equal to number of hours that employee regularly works in a 14 day period, calculated as an average of either the past 12 months of employment or since being employed by their current employer.
2. The City Manager should be directed to prepare a budget amendment to extend such paid sick leave protection to City hourly workers, utilizing resources from available budget reserves.
 3. Direct intergovernmental relations and Economic Development staff to work to advocate to state and federal authorities for appropriate subsidies, financing and other financial assistance to small business and micro businesses adapting to these new rules and the impacts of the public health emergency related to the novel coronavirus (COVID-19).

BACKGROUND

No one should have to choose between making rent and taking care of their family, yet far too many working people — especially people who cook and serve us food, care for our children and seniors, and clean our buildings — have no choice but to keep working while sick.

Of the four largest cities in California, San Jose is the only one that has not enacted a paid sick leave ordinance. California law provides workers with 24 hours of paid sick leave annually, but three days of sick leave per year is insufficient for workers in labor-intensive service jobs that require coming into contact with the public. In a public health emergency, only having three sick days only increases the risks for workers and the public of preventable illness and even loss of lives.

The most current research on COVID-19 finds that the virus has an average incubation period of 5 days, which extends as long as 14 days for some patients. Testimony from the Santa Clara County's Health Officer, Dr. Sara Cody at the March 10, 2020 Board of Supervisors meeting also revealed that those infected typically pass it on to two to three people. Since the outbreak has spread to the community, Dr. Cody admitted that containment is no longer an option. Rather, the top priority has shifted toward slowing the spread of the virus to ensure that the healthcare delivery system does not become overwhelmed. To this end, the Public Health Department's message to the public has been clear: if you are sick, stay home and do not come to work.

Unfortunately, many of San Jose's most vulnerable workers are unable to adhere to this urgent public health recommendation for one simple reason: their jobs lack the access to sufficient paid sick time. A majority of hourly and contracted workers work in the service and hospitality industries, and the nature of their work makes common workplace mitigation strategies like working remotely impossible. Without adequate paid sick leave benefits, hourly and contracted

workers - many of whom work in settings like foodservice and hospitality with high contact with the public - would come to work sick, dramatically increasing the risk of spreading the virus. For families who are already rent burdened and struggling with the region's cost of living, workers without adequate paid sick leave who choose to do the right thing and not come into work due to illness face potentially catastrophic financial hardship through lost wages, or worse yet, termination.

The data is clear, without appropriate access to sick leave, workers will come into work sick and illness can spread. A CDC study found that nationally, 1 in 5 food service workers had to work while they were sick with vomiting or diarrhea. A 2014 study, looking at data before California adopted its current state-wide sick leave policy, found that 35% of workers in San José — 136,754 people — lacked any paid sick leave, with women, Latino, and Black workers particularly at risk. Sick days beyond the state required minimum are especially rare in jobs requiring frequent contact with the public, such as restaurant workers, child care providers, and cleaning staff.

This has serious consequences for our public health. Researchers found that during the H1N1 swine flu outbreak, roughly 30% of sick employees had to keep working, and may have infected up to 7 million more people as a result. Sick days are vital outside of a pandemic as well: the CDC estimates that providing paid sick leave to workers could decrease the number of workdays lost due to flu and similar illnesses by up to 11 million a year. We have an opportunity at this time to take action to prevent the spread of COVID-19 by taking emergency action on paid sick days.

Our leaders in Washington are calling for federal policy on paid sick days, including enough to replace up to 14 days of income in the event of the current public health emergency. Given the rising number of people infected and the demands from our Public Health authorities to slowing its spread, we have an opportunity to take leadership locally. We have also seen through experience in San Francisco, Oakland, Los Angeles, San Diego and other local governments the success and impact of providing paid sick days above and beyond the state requirements, including the positive economic outcomes.

Because implementing these policies may provide challenges for some small businesses and micro businesses, it will be important for the City to work with our state and federal leaders to seek out the resources necessary to support small and minority owned businesses who need support while implementing these new policies and dealing with the impacts of the virus. In the long-term, economic studies show strong economic benefits of such policies, and as we deal with this disaster, we need to think about the priceless value of protecting human life.

Enacting a common sense paid sick leave ordinance with stronger provisions during declared public health emergencies not only protects workers and their colleagues - it is a critical component to protecting public health. By doing so, not only will we strengthen San Jose's workforce overall, but it will make our communities better equipped and better prepared for future pandemics.

The signers of this memorandum have not had, and will not have, any private conversation with any other member of the City council, or that member's staff, concerning any action discussed in the memorandum, and that each signer's staff members have not had, and have been instructed not to have, any such conversation with any other member of the City Council or that member's staff.