

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING  
THE SAN JOSE MUNICIPAL CODE TO ADD A NEW  
CHAPTER 14.11 TO TITLE 14 THAT ADDS FAMILY CARE  
HARDSHIP AND PRIVATE RIGHT OF ACTION  
REQUIREMENTS TO SUPPLEMENT SENATE BILL 93**

**WHEREAS**, the City Council adopts this Ordinance for the reasons set forth in the memorandum from the City Attorney's Office dated May 6, 2021; and

**WHEREAS**, pursuant to the provisions and requirements of the California Environmental Quality Act of 1970, together with related State CEQA Guidelines and Title 21 of the San José Municipal Code, the Director of Planning, Building and Code Enforcement has determined that the provisions of this Ordinance do not constitute a project, under File No. PP17-008 (General Procedure and Policy Making resulting in no changes to the physical environment); and

**WHEREAS**, the City Council of the City of San José is the decision-making body for this Ordinance; and

**WHEREAS**, this Council has reviewed and considered the "not a project" determination under CEQA prior to taking any approval actions on this Ordinance;

**NOW, THEREFORE**, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

The San Jose Municipal Code is hereby amended by adding a new Chapter to Title 14 to be numbered, entitled and to read as follows:

**CHAPTER 14.11**

**REQUIREMENTS SUPPLEMENTING CALIFORNIA LABOR CODE SECTION 2810.8**

#### **14.11.020 Intent**

- A. California Labor Code Section 2810.8 sets forth requirements for certain employers in the travel and hospitality sector of the economy to offer reemployment to a worker laid off due to the COVID-19 pandemic if the employer is hiring for the same or a substantial similar job formerly held by the laid off worker. Paragraph (f) of Section 2810.8 expressly allows local jurisdictions to enact ordinances that impose greater standards or establish additional enforcement provisions.
- B. **This Chapter 14.11 incorporates Labor Code Section 2810.8 and** ~~The intent of this Chapter 14.11 is~~ **intended** to impose greater standards and to establish an additional enforcement provision to supplement the requirements of Labor Code Section 2810.8.

#### **14.11.040 Definitions**

The definitions in Labor Code Section 2810.8 and the following additional definitions govern the application and interpretation of this Chapter 14.11.

- A. “Business Day” means any weekday, Monday through Friday, excepting any day that is a local, state or federal holiday.
- B. “Child” means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is under eighteen (18) years of age or who is incapable of self-care because of a mental or physical disability.
- C. “Family Care Hardship” means a circumstance in which a Laid-Off Employee is unable to work due to any reason for which an Employee may use paid sick

leave to provide care for another person, including but not limited to a need to care for a Child whose school or place of care has been closed or whose childcare provider is unavailable as a result of the COVID-19 public health emergency and no other suitable person is available to care for the Child during the period of such leave.

D. "State Law" means California Labor Code Section 2810.8.

#### **14.11.060 Family Care Hardship**

In addition to the State Law requirements, the following requirements apply to Family Care Hardships.

- A. A Laid-Off Employee is entitled to reasonable accommodation of a job duty or job requirement if a Family Care Hardship impacts the Laid-Off Employee's ability to perform a job duty or to satisfy a job requirement.
- B. In response to a request for accommodation by a Laid-Off Employee, an Employer must make good faith efforts to reasonably accommodate the Laid-Off Employee during the period in which the Laid-Off Employee experiences a Family Care Hardship.
- C. Reasonably accommodating a Laid-Off Employee under this Section 14.11.060 includes, without limitation, modifying a Laid-Off Employee's schedule, delaying the start date of reemployment, modifying the number of hours to be worked, or permitting telework, to the extent operationally feasible, to accommodate the Laid-Off Employee's Family Care Hardship.
- D. In implementing State Law and the provisions of this Chapter 14.11, an Employer is prohibited from discriminating against or taking an adverse employment action

against a Laid-Off Employee because of a Laid-Off Employee experiencing a Family Care Hardship.

#### **14.11.080 Private Right of Action**

In addition to the enforcement provided by State Law, a Laid-Off Employee can bring a civil action in the Superior Court of the State of California against an Employer for violations of State Law or this Chapter 14.11 after complying with the following requirements:

- A. The Laid-Off Employee provides written notice to the Employer of the alleged violation(s) and the facts supporting the alleged violation(s), and
- B. The Employer is provided fifteen (15) Business Days from receipt of the written notice to cure any such alleged violation(s).

#### **14.11.100 Severability**

If a court of competent jurisdiction invalidates, for any reason, any subsection, sentence, clause or phrase of this Chapter 14.11, such decision does not affect the validity of the remaining portions of this Chapter 14.11 and the remaining portion will remain in full force and effect.

#### **14.11.120 Sunset Provision**

This Chapter 14.11 is automatically repealed, without any further action, on the same date State Law is repealed.

PASSED FOR PUBLICATION of title this \_\_\_\_\_ day of \_\_\_\_\_, 2021, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

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SAM LICCARDO  
Mayor

ATTEST:

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TONI J. TABER, CMC  
City Clerk