

# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Barry Ng

**SUBJECT: SAN JOSE OPPORTUNITY TO  
WORK ORDINANCE**

**DATE:** February 15, 2017

Approved

*D. DSYL*

Date

*2/17/17*

## INFORMATION

The Opportunity to Work Initiative, which was approved by 63.94% of San José voters on November 8, 2016, and certified by the City Council on December 13, 2016, will have its resultant ordinance go into effect on March 13, 2017. Under the Opportunity to Work Ordinance, employers with 36 or more employees and who are subject to the San José Business Tax, or who maintain a facility in San José, must offer additional work hours to existing qualified part-time employees before hiring new employees including subcontractors or the use of temporary staffing services. Covered employers will be required to post notices in the workplace informing employees of their rights as well as maintain work schedules, employment and payroll records and copies of written offers to current and former part-time employees for additional work hours for no less than four years. Employers may apply for a hardship exemption in 12-month increments. An exemption will be granted if the employer demonstrates they have taken all reasonable steps to comply with the Ordinance and full and immediate compliance would be impracticable, impossible or futile.

Enforcement of the Opportunity to Work Ordinance will be complaint-based. The Office of Equality Assurance will enforce the Ordinance's requirements once a complaint is filed. No fines, fees or civil penalties will be assessed for an employer's first violation - only a warning will be issued. Remedies available to persons harmed by a violation of the Ordinance may include: (1) right to sue in court to enforce the right to be offered additional work hours; (2) award of back wages; (3) civil penalties in the amount of \$50.00 per day to each employee harmed; and (4) recovery of reasonable attorneys' fees and costs.

Staff has begun its public outreach and public education efforts given the Ordinance's new requirements and the desire for a successful March 13 implementation. Frequently Asked Questions (FAQs) and the Official Notice have been developed and were posted on the City's website at <http://www.sanjoseca.gov/index.aspx?nid=5360> on January 27. With the FAQs, we have attempted to answer Councilmember Khamis' questions outlined in his memo to the December 14, 2016 Rules & Open Government Committee meeting (Item G.3.) [http://sanjose.granicus.com/Viewer.php?meta\\_id=606973](http://sanjose.granicus.com/Viewer.php?meta_id=606973). The Hardship Exemption application form was posted earlier this week. The FAQs, Notice and Hardship Exemption

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application form are downloadable. All three documents are currently being translated to Spanish, Vietnamese and Cantonese. Once completed, they will also be posted on the City's website.

Staff is using the Finance Department's Business Tax database to notify businesses with 36 or more employees by mail about the Ordinance and that it takes effect March 13, 2017. Later this week, a news release will be issued regarding the Ordinance. Staff from the Office of Equality Assurance will periodically update the website with answers to questions and concerns received from the website, email and telephone inquiries.

Outreach to the employer community will include: chambers of commerce (San Jose and adjacent cities); ethnic chambers of commerce; neighborhood business associations; Silicon Valley Council of Non-Profits; specific business associations such as those serving restaurants, contractors; building management industries; work2future job training vendors; and payroll service providers. Outreach to the employee community will include contacting San Jose State University; community colleges; high schools, especially those with job placement centers or school publications; Council Office newsletters; Spanish, Vietnamese and other Asian publications; radio and TV; public service announcements; labor organizations including Working Partnerships, South Bay Labor Council and the Santa Clara & San Benito Counties Building & Construction Trades Council; and other media opportunities.

/s/

BARRY NG

Director of Public Works

For questions, please contact Nina Grayson at (408) 535-8455 or Christopher Hickey at 408-535-8481.

