



# Memorandum

**TO:** HONORABLE MAYOR AND  
CITY COUNCIL

**FROM:**  
Vice Mayor Chappie Jones  
Councilmember Pam Foley  
Councilmember Johnny Khamis

**SUBJECT: PAID SICK LEAVE ORDINANCE**

**DATE:** April 1, 2020

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Approved  
Date: April 1, 2020

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## RECOMMENDATION

Accept the draft COVID-19 Paid Sick Leave Ordinance submitted by the City Attorney with the following modifications and direction:

1. Align the expiration of the ordinance with the City's state of emergency declaration; when the City ends its state of emergency, the proposed ordinance shall sunset.
2. Exempt the following employers from this mandate:
  - Employers with fewer than 35 full-time employees, or equivalent, whose business would have a demonstrable hardship due to compliance with the proposed ordinance, or if the provision would result in the business's expenses and financial obligations exceeding available business revenues and cause the business to cease operating at a minimal capacity;
  - As noted in the 3/27/20 memo of Councilmembers Esparza, Carrasco, and Arenas, employers that provide a minimum paid vacation, sick, or personal leave of at least 80 hours.

Direct the City Manager to provide education of and prioritization of funding opportunities for businesses that are mandated to comply with the ordinance to support continuity of business amid the COVID-19 crisis.

3. Prioritize no-interest loans or grants for small businesses that comply with this ordinance through the Silicon Valley Strong Fund.

4. Provide communication and easy-to-understand information and in multiple languages, via direct mail, in addition to other communications channels, to small and medium-sized businesses on:
  - Eligibility for federal tax credits made available through recent legislation that will offset the cost of the federal and local mandates.
  - Small Business Administration loans and technical assistance, such as:
    - Paycheck Protection Program under the *CARES Act* which provides forgivable loans under \$10 million via SBA 7(a) lending partners which would be treated like grants as long as business owners prove those dollars went exclusively toward employee payroll, mortgage, rent and utilities for payments.
    - Economic Injury Disaster Loans & Emergency Economic Injury Grants up to \$2 million.
  - The prioritization of grants through Silicon Valley Strong Fund.
  - Other federal, state, and local philanthropic programs, e.g. Facebook Small Business Grant Program, Google Small Business Grant Program
5. Perform the needed analysis, implement stakeholder engagement, and monitor state and federal legislation before returning to City Council on April 7, 2020.

## **BACKGROUND**

Our objective is to create the least amount of confusion for small businesses when complying with an emergency paid sick leave policy considering federal, state, and now a local ordinance. We appreciate the leadership of the Mayor and Councilmembers Arenas, Carrasco, and Esparza in leading the effort to further protect our workers and ensure their safety and health through a City paid sick leave policy. This is an unprecedented time for our City, as residents strive to stay healthy and safe and essential businesses strive to stay open. It is imperative we support our businesses and do our best not to add more burdens to their operations. Our proposed exemption for businesses with 35 employees or less is consistent with the City's definition of small business and is intended to assist those small businesses which are not able to front the cost of paid sick leave and wait three months for a reimbursement from the federal government. Unfortunately, the lack of cash flow may very well prevent a business from complying with a new paid sick leave requirement and choose to close its doors instead – an outcome we seek to prevent. Over one million unemployment claims have been filed since March 13<sup>th</sup>. We want to help prevent our small businesses from closing their doors and preserve jobs.

We are grateful to the generosity and philanthropy of our larger businesses and individual donors that have contributed to the San José-led effort, Silicon Valley Strong, and the donation fund intended to provide assistance for residents, small businesses, and non-profits. For small businesses, the loans will be facilitated through a partnership with Opportunity Fund. To our knowledge, businesses which are eligible must be located in and owned by an individual who lives in Santa Clara County and have lost clientele or income due to cancellations/closures, or health and safety restrictions. The priority is for those having immediate liquidity issues. We request that businesses mandated to comply with the proposed sick leave policy be prioritized if they apply for funding, and that distribution of funds occur as grants, as opposed to loans.

In addition to the City's efforts in providing guidance and resources to small and medium sized businesses via a new webpage, direct email blasts, and webinars, we recommend providing communication via direct mail to ensure business owners are aware of City services and various grant opportunities in easy-to-understand languages. San José has over 56,000 small businesses; over half of which are immigrant and minority-owned (60 percent and 51 percent, respectively). These business owners may not be accustomed to accepting resources and services through their local government or may not have access to the internet. It is imperative we do our due diligence and attempt to establish a point of contact via multiple mediums to ensure they are aware of resources available to them. Other strategies could include developing an outreach plan and working with each City Council office to prepare a series of communications to every business within their districts, informing owners how to access programs and resources.

Finally, it is imperative that we do everything we can to help prevent our small businesses from closing their doors and preserve the jobs of our residents. As we craft a policy that we expect our small businesses to comply with for the safety and health of our residents and community, we should never lose sight of the negative impact to our business owners, workers, and community if our small businesses close during this crisis.

*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.*