

MEASURE E

CITY ATTORNEY'S IMPARTIAL ANALYSIS OF MEASURE E

Measure E, if approved by a majority of the voters, would add a new chapter to the San Jose Municipal Code (the "Code") to require employers to offer additional work hours to existing qualified part-time employees before hiring new employees, including subcontractors or temporary staffing services. Measure E was placed on the ballot by an initiative petition signed by the required number of voters. The existing Code does not include an offer of additional work requirement.

Application. The proposed ordinance defines employees and employers subject to its requirements. An employee is any person who has performed at least 2 hours of work for an employer and is entitled to the State minimum wage. An employer is any person that employs or exercises direct or indirect control over wages, hours or working conditions of any employee, and either is subject to San Jose's business tax or maintains a place of business in San Jose which State law exempts from San Jose's business tax. This definition covers employers exempt under State law from San Jose's business tax, including banks, insurance companies and certain nonprofits. The offer of additional work requirement does not apply where the part-time employees would be paid a premium rate or when an express waiver of the additional work requirement has been agreed to in a collective bargaining agreement. It applies to welfare-to-work programs except participants may opt out.

Exemptions. Businesses with 35 or fewer employees would be exempt from the ordinance. The number of employees of a chain business is determined by the combined number of employees at every location of the business, whether or not located in San Jose. For a franchisee, the total number of employees would be determined by the combined total number of employees at every location owned by the franchisee, whether or not located in San Jose. The proposed ordinance also provides that the City may grant hardship exemptions for up to 12 months at a time to employers who demonstrate that they have exercised reasonable steps to comply and full and immediate compliance would be impracticable, impossible or futile.

Administration. The proposed ordinance includes a number of administrative requirements and enforcement provisions. Employers would be required to annually post a bulletin of the additional work hour requirement in various languages at the workplace. The City would be authorized to issue administrative fines and penalties for noncompliance. A civil action based on a violation of the ordinance can be brought by any person harmed, any person on behalf of the public, or the City.

Effective Date/Amendment. If approved by a majority of the voters, the proposed ordinance would become effective 90 days after certification. The City Council may amend the ordinance to address administration and enforcement but not to reduce its substantive requirements or scope.

A "Yes" vote is a vote to amend the Code to implement the offer of additional work requirement.

A "No" vote is a vote to not implement the offer of additional work requirement.

/s/ Richard Doyle
City Attorney, City of San Jose

CITY ATTORNEY'S IMPARTIAL ANALYSIS OF MEASURE E-Continued

The above statement is an impartial analysis of Measure E. If you would like to read the full text of the measure, see <http://www.sanjoseca.gov/index.aspx?NID=446> or call 408-535-1260 and a copy will be sent at no cost to you.

ARGUMENT IN FAVOR OF MEASURE E

Do you think part-time employees should have an opportunity to work more hours to earn enough to pay their bills and support their families?

If your answer is "yes," then vote "yes" on Measure E.

Measure E offers part-time workers a chance to get extra hours so they can pay for rent, utilities, food and the other basic necessities. Here's how it works. When large businesses decide they have more work, they will be called on to offer the additional hours to their existing, part-time workers. If the current employees don't want the additional hours, their employers can offer the hours to anyone else.

Tens of thousands of San Jose breadwinners--most of them women--work part-time, and the number is increasing as technology makes it easier to hire people just for the hours a business needs them.

Imagine what it feels like. You badly need to work more hours, but your boss says no. Why? Your boss may be trying to avoid paying for healthcare and other benefits by keeping employees part-time.

Measure E was drafted to be fair to employees and businesses. Businesses decide what hours need to be worked and what skills are needed. Existing employees get an opportunity to work. Small businesses are exempt, and businesses that find it impractical to follow the law can apply for a hardship exemption.

Why would anyone be opposed to such a common-sense plan? A few business groups oppose every idea that helps people who work hard to make ends meet. Opponents of Measure E include the same diehards who fought against increasing the minimum wage. Their arguments were wrong then, and they are wrong now.

Give people who want to work a fighting chance. Vote Yes on Measure E.

<http://www.opportunitytowork.org/>

/s/ Dave Cortese
President, Board of Supervisors

/s/ Jenny Do
Attorney-at-Law, Executive Director for Friends of Hue Foundation

/s/ Teresa Castellanos
SJUSD School Board Member

/s/ Jethroe Moore, II
Pastor, President, San Jose/Silicon Valley NAACP

/s/ Jon G. Pedigo
Rev., Director of Projects for Peace and Justice

REBUTTAL TO ARGUMENT IN FAVOR OF MEASURE E

We can solve our most pressing challenges through collaboration, not with risky, never-tried measures that can't be altered when unintended problems arise.

Measure E:

- doesn't automatically exempt non-profits or many smaller and mid-sized businesses;
- makes no routine allowance for seasonal or event-based businesses that uniquely depend on part-time workers; and,
- Invites an outpouring of nuisance lawsuits by interest groups and lawyers against responsible employers who cannot afford the cost of litigation.

Measure E's red tape and risk of lawsuits prompted one high-tech employer to say its passage would cause them to reconsider their plans to move 1,000 good-paying jobs to San Jose.

Measure E has never been tried anywhere else in the United States, yet it prohibits City leaders from making even minor changes that would narrow its scope or soften its impact. That's why the San Jose City Council rejected this unsound approach.

Instead of a rigid, take-it-or-leave-it approach, we could better provide more hours for part-time workers by working with businesses, non-profits and community groups to solve the problem. By working together, City leaders can craft common-sense ordinances that don't harm responsible, well-intentioned businesses and non-profits that are our engines of job creation.

No after-school program should have to risk a Measure E-inspired lawsuit just to add more part-time tutors.

Give San Jose the chance to do this the right way. Vote no on Measure E.

www.SaveSanJoseJobs.org

/s/ Sam Liccardo
Mayor, City of San Jose

/s/ Rose Herrera
Vice Mayor, City of San Jose

/s/ Victor Cuauhtemoc Gomez
Director of Public Policy, San Jose Silicon Valley Chamber of Commerce

/s/ Scott Knies
Executive Director, San Jose Downtown Association

/s/ Tracey Enfantino
General Manager, Environmental Systems, Inc.

ARGUMENT AGAINST MEASURE E

While well-intentioned, Measure E's inflexibility obstructs hiring and job-creation by responsible, well-intentioned employers, particularly nonprofit organizations and small businesses. An after-school program should not have to risk a lawsuit to add part-time tutors.

This measure was drafted without significant input from local businesses or nonprofits, and we're now presented with a risky "take-it-or-leave-it" measure that has never been tried anywhere else in the United States.

Nonprofits, small businesses, and other employers say that Measure E:

- Invites costly "nuisance lawsuits" in which lawyers and interest groups sue businesses with frivolous claims;
- Requires burdensome recordkeeping that will require hiring new staff just to comply;
- Makes no allowance for seasonal or event-based businesses, which often must hire largely part-time workers;
- Cuts down on the part-time jobs with flexible hours that young people need to gain entry-level experience and to pay for rising tuition costs;
- Makes no simple, clear exemption for nonprofits, instead requiring an annual, case-by-case review with uncertain outcomes;
- Has government bureaucracy meddling in potentially every hiring decision by a local business; and
- Prohibits City leaders from making even reasonable changes to cut Measure E's red tape or recordkeeping costs, increase flexibility, or remedy unintended problems that will inevitably result from a measure never before tried anywhere in the country.

We could have avoided many of these problems months ago had the measure's proponents crafted their proposal in conjunction with nonprofits and other employers. Instead, we face a rigid measure that one high-tech employer said would cause them to reconsider their decision to move 1,000 good-paying jobs to San Jose.

Let's reject Measure E, and instead support part-time workers by developing a collaborative solution with nonprofit, business, and governmental leaders unshackled by Measure E's red tape and unproven, rigid requirements.

ARGUMENT AGAINST MEASURE E-Continued

Read more at SaveSanJoseJobs.org

Vote no on Measure E.

/s/ Sam Liccardo
Mayor, City of San Jose

/s/ Rose Herrera
Vice Mayor, City of San Jose

/s/ Matthew R. Mahood
President & CEO, San Jose Silicon Valley Chamber of Commerce

/s/ Denise Belisle
Small Business Owner

/s/ Suzanne Salata
Vice President, Garden City Construction

REBUTTAL TO ARGUMENT AGAINST MEASURE E

Even our opponents agree that Measure E is “well-intentioned.” They’re right. Measure E’s intention is to help part-time workers who want to work get more hours to pay the family’s bills.

But our opponents’ arguments against Measure E are as wrong as the arguments they made against San Jose’s successful Minimum wage ordinance.

They claim Measure E will harm small businesses. In fact, Measure E exempts EVERY small business with 35 employees or less. Over 60,000 businesses pay the San Jose business license tax. Measure E covers only about 1,200 of the largest firms.

They claim Measure E is rigid. In fact, it includes a hardship clause that provides an exemption for any business or non-profit for whom compliance is impracticable.

They claim Measure E will cut down on part-time jobs for young people. In fact, the number of part-time jobs is increasing dramatically. Our problem isn’t a shortage of part-time jobs; it’s a shortage of jobs that enable a family to make ends meet.

They claim Measure E will cause lawsuits. But Measure E uses the same enforcement mechanism as the San Jose minimum wage ordinance. In 4 years, there were fewer than 20 complaints, and they all were resolved informally. There were no lawsuits.

Part-time workers struggling to support their families need more than good intentions. They need a fighting chance to work longer and earn more.

Join a bipartisan coalition of faith leaders, working families, non-profits, small businesses, community leaders and elected officials.

Vote Yes on E.

/s/ Richard Konda
Non-Profit Leader

/s/ Carol Been
Reverend, All Saints Lutheran Church Cupertino

/s/ Angelica Ramos
President, National Women’s Political Caucus, Silicon Valley

/s/ Walter Wilson
Board Member, AACSA (African American Community Service Agency), and Owner, Silicon Valley Minority Business Consortium

/s/ Donald Rocha
San Jose City Councilmember