

ORDINANCE NO. _____

URGENCY ORDINANCE OF THE COUNCIL OF THE CITY OF SANTA ROSA ADDING CHAPTER 10-47 TO THE SANTA ROSA CITY CODE TO EXTEND CITY REQUIREMENTS THAT EMPLOYERS PROVIDE COVID RELATED PAID SICK LEAVE BENEFITS THROUGH MARCH 31, 2021, REPLACING EXPIRED CITY ORDINANCE ORD-2020-006

WHEREAS, on January 30, 2020, the World Health Organization (WHO) declared the COVID-19 outbreak a public health emergency of international concern, on January 31, 2020, the U.S. Department of Health and Human Services declared a Public Health Emergency for the United States of America, and on March 1, 2020, the President of the United States issued a Proclamation Declaring a National Emergency Concerning COVID-19; and

WHEREAS, on March 2, 2020, the Sonoma County Health Officer and the County of Sonoma Director of Emergency Services proclaimed a Local Health Emergency due to the potential introduction of COVID-19 in Sonoma County; and

WHEREAS, on March 4, 2020, the Governor of California proclaimed a State of Emergency (Executive Order N-25-20) to exist in California based on the threats to public health caused by COVID-19; and

WHEREAS, on March 17, 2020, the Sonoma County Health Officer issued Order No. C19-03, directing that all individuals living in the County shelter at their place of residence, except as necessary for essential activities; and

WHEREAS, on March 19, 2020, the Governor of the State of California issued Executive Order N-33-20, ordering that all individuals living in the State of California stay home or at their place of residence except as necessary for essential activities; and

WHEREAS, effective April 1, 2020, the Emergency Paid Sick Leave Act (enacted as part of the Families First Corona Virus Response Act) mandates that certain employers provide their employees with paid sick leave to be used for any of the following COVID-19 related reasons:

- The employee is subject to quarantine or isolation by federal, state or local order, or is caring for someone who is quarantined or isolated,
- The employee is advised by a health-care provider to self-quarantine or is caring for someone who is so advised by a health-care provider,
- The employee experiences symptoms and is seeking medical diagnosis, or
- The employee is caring for a minor child because of a closed school or daycare; and

WHEREAS, the federal Emergency Paid Sick Leave Act mandates 80 hours of sick leave for full-time employees and the average number of hours an employee works over a two (2) -

week period as the sick leave hours for part-time employees; and

WHEREAS, the federal Emergency Paid Sick Leave Act requires sick leave to be available immediately regardless of the length of employment; and

WHEREAS, the sick leave requirements of the federal Emergency Paid Sick Leave Act contain the following limitations:

- The Act does not apply to employers with more than 500 employees, and
- The Act authorizes the Department of Labor to exempt businesses with less than 50 employees from providing the child care benefit if providing the benefit would jeopardize the viability of the business as a going concern, and
- The Act authorizes an employer to elect not to provide the benefit to employees who are health care providers or emergency first responders; and

WHEREAS, on May 1, 2020, the County Health Officer issued Order No. C19-09, extending the shelter in place Order, and amended that Order on May 7, 2020 and May 14, 2020; and

WHEREAS, on June 5, 2020, the Sonoma County Health Officer issued Order No. C19-14, further extending and modifying the original shelter in place Order; and

WHEREAS, given the extraordinary health threat caused by COVID-19 and the need to take extraordinary measures to limit its spread, on July 7, 2020, the City Council enacted Urgency Ordinance ORD-2020-006, which set forth paid sick-leave requirements for employees not covered by the federal Emergency Paid Sick Leave Act; and

WHEREAS, both the federal law and the City's ordinance sunset on December 31, 2020; and

WHEREAS, the federal law tax credits continue through March 31, 2021; and

WHEREAS, the California Department of Public Health and Sonoma County Health Officer continue to implement further Stay at Home Orders given the surge in COVID-19 cases resulting in hospitalizations and impacts on intensive care units; and

WHEREAS, Government Code section 36937(b) allows an ordinance to take effect immediately, if it is an ordinance for the immediate preservation of public peace, health or safety and it contains a declaration of the facts constituting the urgency. The facts constituting the urgency are as follows:

- A. COVID-19 is a pandemic threatening the health and safety of the City's residents, as reflected by the various emergencies declared at the local, state and national levels.

- B. Immediate efforts to limit the spread of COVID-19 are critical to protecting the health and safety of the City's residents.
- C. Among the most effective ways to limit the spread of COVID-19 is for people to "shelter in their places of residence" and to follow "Social Distancing Requirements" as mandated by the Orders issued by the Sonoma County Public Health Officer, and as urged by other state and national declarations of emergency.
- D. Efforts to limit the spread of COVID-19 are undermined if individuals, based on not having paid sick leave benefits, feel compelled to leave their residences to continue to receive income and engage in "Allowed or Essential Work," even though they are advised to self-quarantine due to COVID-19 exposure or are experiencing symptoms of COVID-19.
- E. Any delay in making available the paid sick-leave benefits provided under this Ordinance could result in the unnecessary spread of COVID-19 resulting from individuals engaged in "Allowed or Essential Work," who do so even though they have been advised to self quarantine due to COVID-19 exposure or are experiencing symptoms of COVID-19; and

WHEREAS, Section 8 of the Santa Rosa City Charter authorizes the City Council to adopt an urgency measure to take effect immediately upon its adoption if necessary to preserve the public peace, health or safety if such ordinance contains the reasons for its urgency; and

WHEREAS, such an urgency measure requires a five-sevenths vote of the City Council for adoption; and

WHEREAS, as provided herein, this Ordinance shall be in effect immediately upon its adoption; and

WHEREAS, the City Council has been provided with information upon which the findings and actions set forth in this Ordinance are based, allowing the Council to adopt this urgency ordinance to be effective upon adoption; and

WHEREAS, for the reasons set forth above, this Ordinance is declared by the Council of the City of Santa Rosa to be necessary for preserving the public peace, welfare, health or safety and to avoid a current, immediate and direct threat to peace, health, safety or welfare of the community and the recitals above taken together constitute the City Council's statement of the reason for adopting this Ordinance on an urgency basis.

THE PEOPLE OF THE CITY OF SANTA ROSA DO ENACT AS FOLLOWS:

Section 1. The Council finds, based on evidence and records presented, that this Ordinance is necessary for the protection of the public peace, health, safety and welfare.

Section 2. Chapter 10-47 is added to the Santa Rosa City Code as follows:

“Chapter 10-47 COVID-19 PAID SICK LEAVE ORDINANCE

10-47.010 Definitions.

As used in this chapter, the following capitalized terms shall have the following meaning:

(A) "Allowed or Essential Work" means work activities and services - as permitted in the Orders issued by the Sonoma County Public Health Officer.

(B) "Employee" means a person employed by an Employer (as defined below) and who has worked at least two (2) hours within the geographic boundaries of the City of Santa Rosa for such Employer. An employee who works part of their hours within Santa Rosa city limits is entitled to paid sick leave hours equal to the number of hours he/she works on average over a two (2) -week period in Santa Rosa.

(C) "Employer" means any person, including corporate officers or executives, who directly or indirectly (including through the services of a temporary services or staffing agency or similar entity) employs or exercises control over the wages, hours or working conditions of any employee, unless exempt by law.

10-47.020 Covered Employers.

(A) This chapter applies to all Employers, except as provided below.

(B) This chapter does not apply to any government Employer, except it does apply to the City of Santa Rosa.

(C) This chapter does not apply to an Employer with less than 50 Employees that would have qualified for the exemption under the Act. This exemption only applies to Employees who are caring for a child under Section 10-47.050(A)(5).

(D) If the Employer can show that the need for an Employee’s requested leave is due to the Employee’s intentional violation of a health order, then the Employer may deny the benefit.

10-47.030 Sick Leave Requirement.

Employers subject to this chapter under Section 10-47.020 must provide the paid sick-leave benefit described in this chapter to each Employee who performs Allowed or Essential Work. This benefit is effective immediately on the effective date of the ordinance codified in this chapter.

10-47.040 Sick Leave Hours.

(A) A fulltime Employee is entitled to eighty (80) hours of paid sick leave. These hours are available on the effective date of the sick leave benefit.

(B) A part-time Employee is entitled to sick leave hours equal to the number of hours he/she works on average over a two (2) -week period. These hours are available on the effective date of the sick leave benefit.

10-47.050 Scope of Benefit.

Paid sick leave hours are subject to the requirements set forth in this Section 10-47.050.

(A) An Employee can use paid sick leave if they are unable to work due to ~~for~~ any of the following ~~reasons~~purposes:

(1) The Employee is subject to quarantine or isolation by federal, state or local order due to COVID-19, or

(2) The Employee is advised by a health-care provider to self-quarantine due to COVID-19, or

(3) The Employee experiences symptoms of COVID-19 and is seeking medical diagnosis, or

(4) The Employee is caring for an individual ~~someone~~ who is quarantined or isolated, or otherwise unable to receive care due to COVID-19, or

(5) The Employee is caring for a minor child because a school or daycare is closed, or the child care provider is not available due to COVID-19.

(B) The Employer will pay the Employee for properly used sick leave at the Employee's regular rate of pay up to \$511 per day not to exceed an aggregate of \$5,110, if an Employee qualifies under subsections (A)(1)-(3), above, and at two-thirds of the Employee's regular rate of pay up to \$200 per day not to exceed an aggregate of \$2,000, if an Employee qualifies under subsections (A)(4)-(5), above.

(C) An Employer cannot require an Employee to find a replacement as a condition of using sick leave.

(D) An Employee is not entitled to carryover sick leave between years and is not entitled, under any circumstances, to be paid for unused sick leave. Unused sick leave will not be available after the sunset of the ordinance codified in this chapter.

10-47.060 Exemption/Offset.

(A) This chapter does not apply to any Employer that has already provided its Employees, on the effective date of the ordinance codified in this chapter, with some combination of paid personal leave at least equivalent to the paid sick time required by this chapter for a COVID-related leave per Section 10.47.050. An Employer that provides some combination of paid sick leave less than the paid sick time required by this chapter is required to comply with this chapter to the extent of such deficiency. This chapter is intended to provide additional COVID-related paid sick leave beyond what an Employer normally provides.

10-47.070 Enforcement.

(A) An Employee claiming a violation of this chapter may bring an action in Superior Court of the State of California against an Employer and may be awarded:

(1) Reinstatement to the position the Employee was discharged in violation of this chapter.

(2) Any benefit provided by this chapter that is unlawfully withheld, calculated at the Employee's average rate of pay.

(3) Other legal or equitable relief the court may deem appropriate.

(B) If an Employee is the prevailing party in any legal action taken pursuant to this chapter, the court may award reasonable attorneys' fees and costs as part of the costs recoverable.

10-47.080 Retaliatory Action Prohibited.

No Employer shall discharge, reduce in compensation or otherwise discriminate against any Employee for opposing any practice proscribed by this chapter, for requesting to use or actually using sick leave under this chapter, for participating in proceedings related to this chapter, for seeking to enforce his or her rights under this chapter by any lawful means, or for otherwise asserting rights under this chapter.²²

10-47.090 Notice Requirement.

Employer shall give written notice to each Employee of Employee's rights pursuant to this chapter. Each Employer shall give the same notice to each new Employee within one week of the start of each new Employee's employment.

10-47.100 Interaction with Federal and State Law.

To the extent that federal or state law requires Employers to provide paid leave or paid sick time specifically related to COVID-19, Employers may substitute leave under the federal or state law for its obligations under this ordinance to the extent ~~they~~ those obligations coincide and the relevant federal or state law permits such concurrent use of paid leave; provided, however, that Employers shall be required to provide additional paid sick leave under this chapter to the extent that the requirements of this chapter exceed the requirements of those laws.

Section 3. Authority. This Ordinance is enacted pursuant to the City of Santa Rosa's general police powers, Section 8 of the Charter of the City of Santa Rosa, and Article XI of the California Constitution and Government Code.

Section 4. Environmental Determination. Adoption of this Ordinance is exempt from the provisions of the California Environmental Quality Act (CEQA) because it is not a project which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, pursuant to CEQA Guideline section 15378.

Section 5. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid and/or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance.

Section 6. Effective Date. This Ordinance shall take effect immediately upon its adoption.

Section 7. Sunset Date. This Ordinance sunsets on March 31, 2021, or upon expiration of the applicable tax credits, whichever is later.

IN COUNCIL DULY PASSED AND ADOPTED this 2nd day of February, 2021.

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST: _____ APPROVED: _____
City Clerk Mayor

APPROVED AS TO FORM:

City Attorney