City Clerk File No. Ord. 13.097

Agenda No. 3.A 1st Reading

Agenda No. 4.A. 2nd Reading & Final Passage

ORDINANCE OF JERSEY CITY, N.J.

COUNCIL AS A WHOLE
offered and moved adoption of the following ordinance:

CITY ORDINANCE 13.097

TITLE:
ORDINANCE AMENDING AND SUPPLEMENTING CHAPTER 3 (ADMINISTRATION OF GOVERNMENT) ARTICLE VI (DEPARTMENT OF ADMINISTRATION) OF THE JERSEY CITY MUNICIPAL CODE TO IMPLEMENT PAID SICK TIME

COUNCIL **offered and moved adoption of the following Ordinance:**

WHEREAS, most workers in Jersey City will at some time during each year need limited time off from work to take care of his or her own health needs or the health needs of family members; and

WHEREAS, nationally, nearly forty percent of private sector workers are without access to any paid sick time, and many workers who do have access to paid sick time are disciplined for using it, or cannot use that time to care for sick children; and

WHEREAS, the lack of paid sick days is a problem for residents of Jersey City as well; and

WHEREAS, low-income workers are significantly less likely to have access to paid sick time than other members of the workforce, and nationally, only one in five of the lowest-income workers (21 percent) has access to paid sick time; and

WHEREAS, providing workers time off to attend to their own health care and the health care of family members will ensure a healthier and more productive workforce in Jersey City; and

WHEREAS, paid sick time will have a positive effect on the individual and public health of Jersey City by allowing workers to earn a limited number of hours per year to care for themselves or a close family member when illness strikes or medical needs arise. Paid sick time will reduce recovery time, promote the use of regular medical providers rather than hospital emergency departments, and reduce the likelihood of people spreading illness to other members of the workforce and to the public; and

WHEREAS, paid sick time will also reduce health care expenditures by promoting access to primary and preventive care. Nationally, providing all workers with paid sick time would result in $1.1 billion in annual savings in hospital emergency department costs, including more than $500 million in savings to publicly-funded health insurance programs such as Medicare, Medicaid and SCHIP. Access to paid sick time can also help decrease the likelihood that a worker will put off needed care, and can increase the rates of preventive care among workers and their children; and

WHEREAS, paid sick time will allow parents to provide personal care for their sick children. Parental care makes children's recovery faster and can prevent future health problems. Parents who do not have paid sick time are more than twice as likely as parents with paid sick days to send a sick child to school or daycare, and five times more likely to report taking their child or a

family member to a hospital emergency room because they were unable to take time off work during their regular work hours; and

WHEREAS, paid sick time will reduce the spread of contagious diseases. Workers in jobs with high levels of public contact, such as restaurant workers and child care workers, are very unlikely to have access to paid sick time. As a result, these workers may have no choice but to go to work when they are ill, thereby increasing the risk of passing illnesses on to co-workers and customers while jeopardizing their own health. Overall, people without paid sick days are 1.5 times more likely than people with paid sick days to go to work with a contagious illness like the flu; and

WHEREAS, a recent peer-reviewed epidemiological study found that nearly one in five food service workers have come to work with vomit and/or diarrhea inducing illnesses in the past year, creating dangerous health conditions. The largest national survey of U.S. restaurant workers found that two-thirds of restaurant wait staff and cooks have come to work sick; and

WHEREAS, in the event of a disease outbreak that presents a threat to public health, for example the H1N1 outbreak of 2009, government officials request that sick workers stay home and keep sick children home from school or child care to prevent the spread of illness, and to safeguard workplace productivity. However, because many workers lack paid sick time, they may be unable to comply; and

WHEREAS, during the height of the H1N1 pandemic, workers with lower rates of access to paid sick days were more likely than those with higher rates of access to paid sick days to go to work sick and, as a result, the pandemic lasted longer in their workplaces as the virus spread from co-worker to co-worker. A new study estimates that lack of paid sick time was responsible for five million cases of influenza-like illness during the pandemic; and

WHEREAS, providing paid sick time is good for businesses because paid sick time results in reduced worker turnover, which leads to reduced costs incurred from advertising, interviewing and training new hires. Firing and replacing workers can cost anywhere from 25 to 200 percent of an employee's annual compensation; and

WHEREAS, paid sick time will reduce the risk of "presenteeism," workers coming to work with illnesses and health conditions that reduce their productivity, a problem that costs the national economy $160 billion annually; and

WHEREAS, paid sick time will reduce the competitive disadvantage that many employers face when they choose to provide sick time to their workers.

NOW, THEREFORE BE IT ORDAINED, by the Municipal Council of the City of Jersey City that:

A. The following amendments to Chapter 3 (Administration of Government) Article VI (Department of Administration) are hereby adopted:

ADMINISTRATION OF GOVERNMENT
ARTICLE VI
Department of Administration

§3-50. Definitions.

For the purposes of this Ordinance, the following terms shall have the meanings indicated:

CALENDAR YEAR – is a regular and consecutive twelve-month period, as determined by an employer.

DEPARTMENT– is the Department of Health & Human Services.

EMPLOYER – Any entity as defined by N.J.S.A. 34:11-56a1(g) that operates as a

business in Jersey City.

EMPOYEE(S) – Employee(s) as defined in N.J.S.A. 34:11-56a1(h) including an employee of a franchise(s) or business(s) owner located in Jersey City, who works in Jersey City for at least 80 hours in a year. Employee(s) for purposes of this ordinance does not include any person employed by any governmental entity or instrumentality including any New Jersey school district or Board of Education and including Rutgers, The State University and subdivisions of Rutgers.

FAMILY MEMBER – is defined as:
(a) a biological, adopted or foster child, stepchild or legal ward, a child of a domestic partner, a child of a civil union partner, or a child to whom the employee stands *in loco parentis*; (b) a biological, foster, stepparent or adoptive parent or legal guardian of an employee or an employee's spouse, domestic partner or civil union partner or a person who stood *in loco parentis* when the employee was a minor child; (c) a person to whom the employee is legally married under the laws of New Jersey or any other State or with whom the employee has entered into a civil union; (d) a grandparent or spouse, civil union partner or domestic partner of a grandparent; (e) a grandchild; (f) a sibling; (g) a domestic partner of an employee as defined in N.J.S.A. 26:8A-3 et seq.

HEALTH CARE PROFESSIONAL – means any person licensed under Federal or New Jersey law to provide medical or emergency services, including but not limited to doctors, nurses and emergency room personnel.

PAID SICK TIME – means time that is compensated at the same hourly rate and with the same benefits, including health care benefits, as the employee normally earns during hours worked and is provided by an employer to an employee for the purposes described in Section 3-52A(1-11) of this Ordinance, but in no case shall the hourly wage be less than that provided under N.J.S.A. 34:11-56a.

RETALIATION – means the denial of any right guaranteed under this Ordinance and any threat, discipline, discharge, suspension, demotion, reduction of hours, or any other adverse action against an employee for the exercise of any right guaranteed herein.

UNPAID SICK TIME – means time that is allowed and accrued in the same manner as Paid Sick Time however, but for which leave an employee is neither penalized nor compensated.

§3-51. Purpose.

Purposes of this ordinance are:

1. To diminish public and private health care costs and promote preventive health services in Jersey City by enabling workers to seek early and routine medical care for themselves and their family members;

2. To protect the public's health in Jersey City by reducing the spread of contagious diseases;

3. To promote the economic security and stability of workers and their families;

4. To protect employees in Jersey City from losing their jobs or facing workplace discipline while they use paid sick time to care for themselves or their families;

5. To safeguard the public welfare, health, safety and prosperity of the people of Jersey City; and

6. To accomplish the purposes described in paragraphs (1)-(7) in a manner that is feasible for employers.

§3-52. Application.

This Ordinance requires all those employed within the City of Jersey City to accrue either paid or unpaid sick time from their employer as mandated by this Ordinance utilizing the formula applied herein.

Individuals who work for employers who employ ten (10) or more employees shall accrue compensated sick time.

Individuals who work for employers who employ less than ten (10) employees shall accrue sick time. However, this sick time need not be compensated.

Taking of sick time, whether compensated or not shall not be the basis of an adverse employment action.

A. Accrual of Paid Sick Time.

1. Employees shall accrue a minimum of one hour of paid sick time for every 30 hours worked.

2. Employers who employ ten or more employees for compensation are not required to provide more than 40 hours of paid sick time in a calendar year. In determining the number of employees performing work for an employer, all employees performing work for compensation on a full-time, part-time, or temporary basis shall be counted, provided that where the number of employees who work for an employer for compensation fluctuates, the number of employees may be determined for the current calendar year based upon the average number of employees who worked for compensation during the preceding calendar year.

3. Employees who are exempt from overtime requirements under 29 U.S.C. § 201 et seq. of the Federal Fair Labor Standards Act are assumed to work 40 hours in each work week for purposes of paid sick time accrual unless their normal work week is less than 40 hours, in which case paid sick time accrues based upon that normal work week.

4. Paid sick time as provided in this section begins to accrue at the commencement of employment.

5. Employees begin to accrue paid sick time on the first day of employment. Employees are entitled to use accrued paid sick time beginning on the 90th calendar day of their employment. After the 90th calendar day of employment, employees may use paid sick time as it is accrued.

6. Paid sick time is carried over to the following calendar year except that no employer is required to carry over more than 40 hours of paid sick time from one calendar year to the next and nothing in this section entitles an employee to use more than 40 hours of paid sick time in a calendar year.

7. Any employer with a paid leave policy, such as a paid time off policy, that provides an amount of paid leave sufficient to meet the total annual accrual requirements of this section that may be used for the same purposes and under the same conditions as paid sick time under this Ordinance is not required to provide additional paid sick time.

8. Nothing in this section shall be construed as requiring financial or other reimbursement to an employee from an employer upon the employee's termination, resignation, retirement, or other separation from employment for accrued paid sick time that has not been used.

9. If an employee is transferred to a separate division, entity, or location, but remains employed by the same employer, the employee is entitled to all paid sick time accrued at the prior division, entity, or location and is entitled to use all paid sick time as provided in this section. If there is a separation from employment and the employee is rehired within

six (6) months of separation, previously accrued paid sick time that had not been used shall be reinstated. Further, the employee is entitled to use accrued paid sick time and accrue additional paid sick time at the re-commencement of employment.

10. When a different employer succeeds or takes the place of an existing employer, all employees of the original employer who remain employed by the successor employer are entitled to all paid sick time accrued when employed by the original employer and are entitled to use all paid sick leave previously accrued.

11. At its discretion, an employer may loan sick time to an employee in advance of accrual by such employee.

B. Accrual of Unpaid Sick Time.

1. Employees who are not entitled to paid sick time under this ordinance, shall accrue a minimum of one hour of unpaid sick time for every 30 hours worked.

2. Employers who employ less than ten employees for compensation are not required to provide more than 40 hours of unpaid sick time in a calendar year. In determining the number of employees performing work for an employer, all employees performing work for compensation on a full-time, part-time, or temporary basis shall be counted, provided that where the number of employees who work for an employer for compensation fluctuates, business size may be determined for the current calendar year based upon the average number of employees who worked for compensation during the preceding calendar year.

3. Employees who are exempt from overtime requirements under 29 U.S.C. § 201 et seq. of the Federal Fair Labor Standards Act are assumed to work 40 hours in each work week for purposes of paid sick time accrual unless their normal work week is less than 40 hours, in which case paid sick time accrues based upon that normal work week.

4. Unpaid sick time as provided in this section begins to accrue at the commencement of employment.

5. Employees begin to accrue unpaid sick time on the first day of employment. Employees are entitled to use accrued unpaid sick time beginning on the 90th calendar day of their employment. After the 90th calendar day of employment, employees may use unpaid sick time as it is accrued.

6. Unpaid sick time is carried over to the following calendar year except that no employer is required to carry over more than 40 hours of unpaid sick time from one calendar year to the next and nothing in this section entitles an employee to use more than 40 hours of unpaid sick time in a calendar year.

7. Any employer with a paid leave policy, such as a paid time off policy, that provides an amount of paid leave sufficient to meet the total annual accrual requirements of this section that may be used for the same purposes and under the same conditions as paid sick time under this Ordinance is not required to provide additional paid sick time.

8. Nothing in this section shall be construed as requiring financial or other reimbursement to an employee from an employer upon the employee's termination, resignation, retirement, or other separation from employment for accrued paid sick time that has not been used.

9. If an employee is transferred to a separate division, entity, or location, but remains employed by the same employer, the employee is entitled to all unpaid sick time accrued at the prior division, entity, or location and is entitled to use all unpaid sick time as provided in this section. If there is a separation from employment and the employee is rehired within six (6) months of separation, previously accrued unpaid sick time that had not been used shall be reinstated. Further, the employee is entitled to use accrued unpaid sick time and accrue additional unpaid sick time at the re-commencement of

employment.

10. When a different employer succeeds or takes the place of an existing employer, all employees of the original employer who remain employed by the successor employer are entitled to all paid sick time accrued when employed by the original employer and are entitled to use all paid sick leave previously accrued.

11. At its discretion, an employer may loan sick time to an employee in advance of accrual by such employee.

C. Use of Sick Time.

1. Sick time shall be provided to an employee by an employer for:

   a. An employee's mental or physical illness, injury, or health condition; an employee's need for medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; an employee's need for preventive medical care;

   b. Care of a family member with a mental or physical illness, injury, or health condition; care of a family member who needs medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; care of a family member who needs preventive medical care; and

   c. Closure of the employee's place of business by order of a public official due to a public health emergency or an employee's need to care for a child whose school or place of care has been closed by order of a public official due to a public health emergency, or care for a family member when it has been determined by the health authorities having jurisdiction or by a health care provider that the family member's presence in the community would jeopardize the health of others because of the family member's exposure to a communicable disease, whether or not the family member has actually contracted the communicable disease.

2. Sick time shall be provided upon the oral request of an employee.

3. An employee shall give an employer notice of the need to use sick time as soon as practicable.

4. An employer may not require, as a condition of an employee's taking sick time, that the employee search for or find a replacement worker to cover the hours during which the employee is absent.

5. Accrued sick time may be used in the smaller of hourly increments or the smallest increment that the employer's payroll system uses to account for absences or use of other time.

6. For sick time of more than three (3) consecutive days, an employer may require reasonable documentation that the paid sick time has been used for a purpose covered by Section 3-51.1A of this Ordinance. Reasonable documentation includes: documentation signed by a heath care professional indicating that paid sick time is necessary. An employer may not require that the documentation explain the nature of the illness.

§3-52.1. Exercise of Rights Protected; Retaliation Prohibited.

A. No person shall interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right protected under this Ordinance.

B. No person shall retaliate against an employee because the employee has exercised rights protected under this Ordinance.

C. The rights protected under this Ordinance include but are not limited to the right to request and use paid sick time pursuant to this Ordinance; the right to file a complaint or inform any person about any employer's alleged violation of this Ordinance; the right to cooperate with the Agency in its investigations of alleged violations of this Ordinance; the right to participate in any administrative or judicial action regarding an alleged violation of this chapter; and the right to inform any person of his or her potential rights under this Ordinance.

D. It is unlawful for an employer's absence control policy to count paid sick time taken under this Ordinance as an absence that may lead to or result in discipline, discharge, demotion, suspension, or any other adverse action.

E. Protections of this section apply to any person who mistakenly but in good faith alleges violations of this Ordinance.

F. There is a rebuttable presumption of unlawful retaliation under this section whenever an employer takes adverse action against a person within 90 days of when that person: (a) files a complaint with the Agency or a court alleging a violation of any provision of this Ordinance; (b) informs any person about an employer's alleged violation of this Ordinance; (c) cooperates with the Agency or other persons in the investigation or prosecution of any alleged violation of this Ordinance; (d) opposes any policy, practice, or Ordinance that is unlawful under this Ordinance; or (e) informs any person of his or her potential rights under this Ordinance.

§3-52.2. Notice and Posting.

A. All employers shall give individual written notice to each of their employees at the commencement of the employee's employment (or as soon as practicable if the employee is already employed on the effective date of this law) regarding employee's rights under this Ordinance. Such notice shall describe the right to paid sick time, the accrual rate and the amount of paid sick time, and the terms of its use guaranteed under this Ordinance; the right to be free from retaliation for requesting use of paid sick time; and the right to file a complaint or bring a civil action if paid sick time is denied by the employer or the employee is retaliated against for requesting or taking paid sick time. Such notice shall be in English and the primary language spoken by that employee provided that the Department has made available a translation of such notice into such language.

B. Employers shall also display a poster in a conspicuous and accessible place in each establishment where employees are employed containing notice of this Ordinance. The poster shall be in English and in any language that is the first language of at least 10% of the employer's workforce provided that the Department has made available a translation of such notice into such language.

C. The Department shall create and make available to employers individual notices and posters. Notices and posters shall be provided in English, Spanish, Italian, Chinese, Polish, Portuguese, Tagalog, and any other languages selected by the Agency.

D. An employer who violates the notice and posting requirements of this section is subject to a civil fine in an amount not to exceed $100 for each employee who was not given appropriate notice pursuant to this section and $500 for each establishment in which a poster was not displayed.

§3-52.3. Employer Records.

Employers shall retain for three years records documenting hours worked by employees and paid sick time taken by employees and shall allow the Department reasonable access to such records, to monitor compliance with the requirements of this Ordinance. An employer's failure to maintain or retain adequate records documenting hours worked by an employee and paid sick time taken by an employee create a rebuttable presumption that the employer has violated the

Ordinance, absent clear and convincing evidence otherwise.

§3-52.4. Enforcement and Regulations.

A. The Department shall coordinate implementation and enforcement of this Ordinance and shall promulgate appropriate guidelines or regulations for such purposes.

B. The Department shall coordinate implementation and enforcement of this Ordinance, including, but not limited to:

1. establishing a system to receive complaints, in writing and by telephone, in English, Spanish, and any other language deemed appropriate by the Department regarding the employers non-compliance with this Ordinance;

2. investigate and resolve complaints received by the Department in a timely manner and keep complainants notified regarding the status of the investigation;

3. engage in pro-active enforcement of this Ordinance through the use of audits, on-site investigations, or other measures to ensure employer's compliance. Investigators from the Department shall be empowered to interview employees and former employees in private outside the presence of the employer, and the power to determine whether or not employers have complied with this Ordinance. The Department shall also have the power to inform residents of the City of their rights under this Ordinance.

C. The Department shall maintain confidential the identity of any complaining person unless disclosure of the identity is necessary for resolution of the investigation. The Department shall, to the extent practicable, notify a complaining person that the Department will be disclosing his or her identity prior to such a disclosure.

D. The Department shall establish a system for reviewing and adjudicating complaints by employees. Employers deemed by the Department to be in violation of this Ordinance shall be subject to the penalty prescribed in § 1-25 of the Municipal Code: the maximum penalty for violating this Ordinance shall be, in the discretion of the Court, a fine of up to $1,250.00 and/or a period of community service not exceeding ninety (90) days. This penalty shall apply to each individual infraction of this Ordinance. This section shall not affect any mandatory minimum penalty established by any section of the Code or ordinance.

E. Any person claiming to be aggrieved by the violation of this Ordinance may bring a cause of action in any court of competent jurisdiction. Submitting a complaint to the Department is neither a prerequisite nor a bar to bringing private action.

§3-52.5. Confidentiality and Non-disclosure.

An employer may not require disclosure of details relating to an employee's or an employee's family member's medical condition as a condition of providing paid sick time under this Ordinance. If an employer possesses health information about an employee or employee's family member, such information shall be treated as confidential and not disclosed except to the affected employee or with the permission of the affected employee.

§3-52.6. Encouragement of More Generous Paid Sick Time Policies; No Effect on More Generous Policies.

A. Nothing in this Ordinance shall be construed to discourage or prohibit an employer from the adoption or retention of a paid sick time policy more generous than the one required herein.

B. Nothing in this Ordinance shall be construed as diminishing the obligation of an employer to comply with any contract, collective bargaining agreement, employment

benefit plan, or other agreement providing more generous paid sick time to an employee than required herein.

C. Nothing in this Ordinance shall be construed as diminishing the rights of public employees regarding paid sick time or use of paid sick time as provided in the laws of the State of New Jersey pertaining to public employees.

§3-52.7. Research.

The City shall contract to have a research study undertaken to measure and evaluate the economic impact on businesses and the impact on the health of residents as a result of this Ordinance. This study shall begin one year from the effective date of this Ordinance, and the City shall engage the services of a competent research institution to conduct this study.

§3-52.8. Severability.

If any provision of this Ordinance or application thereof to any person or circumstance is judged invalid, the invalidity shall not affect other provisions or applications of the Ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared severable.

§3-52.9. Effective Date.

This Ordinance will take effect 120 days following enactment except that in the case of employees covered by a collective bargaining agreement in effect on the effective date prescribed herein, this Ordinance shall apply on the date of the termination of such agreement.

B. All ordinances and parts of ordinances inconsistent herewith are hereby repealed.

C. The City Clerk shall have this ordinance codified and incorporated in the official copies of the Jersey City Code.

D. This ordinance shall take effect at the time and in the manner as provided by law.

E. The City Clerk and the Corporation Counsel may change any chapter numbers, article numbers and section numbers if codification of this ordinance reveals a conflict between those numbers and the existing code, in order to avoid confusion and possible accidental repealers of existing provisions.

Note: All material is new, therefore underlining has been omitted.

APPROVED AS TO LEGAL FORM

Corporation Counsel

Certification Required ☐

Not Required ☐

APPROVED:

APPROVED:

Business Administrator