

BOARD of SUPERVISORS



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MEMORANDUM

GOVERNMENT AUDIT AND OVERSIGHT COMMITTEE

SAN FRANCISCO BOARD OF SUPERVISORS

TO: Supervisor Gordon Mar, Chair
Government Audit and Oversight Committee

FROM: John Carroll, Assistant Clerk

DATE: January 8, 2021

SUBJECT: **COMMITTEE REPORT, BOARD MEETING**
Tuesday, January 12, 20210

The following file should be presented as COMMITTEE REPORT at the regular Board meeting on Tuesday, January 12, 2021. This ordinance was acted upon at the regular Government Audit and Oversight Committee meeting on Thursday, January 7, 2021, at 10:00 a.m., by the votes indicated.

Item No. 11 **File No. 201287**

Reenactment of emergency ordinance (Ordinance No. 104-20, as reenacted by Ordinance Nos. 159-20 and 231-20) temporarily creating a right to reemployment for certain employees laid off due to the COVID-19 pandemic if their employer seeks to fill the same position as, or a position substantially similar to, the position previously held by the laid-off employee.

RECOMMENDED AS A COMMITTEE REPORT

Vote: Supervisor Gordon Mar - Aye
Supervisor Aaron Peskin - Absent
Supervisor Matt Haney - Aye

Cc: Board of Supervisors
Angela Calvillo, Clerk of the Board
Alisa Somera, Legislative Deputy
Anne Pearson, Deputy City Attorney

File No. 201287

Committee Item No. 7

Board Item No. 11

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Government Audit and Oversight

Date: January 7, 2021

Board of Supervisors Meeting:

Date: January 12, 2021

Cmte Board

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| <input type="checkbox"/> | <input type="checkbox"/> | Motion |
| <input type="checkbox"/> | <input type="checkbox"/> | Resolution |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Ordinance |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Legislative Digest |
| <input type="checkbox"/> | <input type="checkbox"/> | Budget and Legislative Analyst Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Youth Commission Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Introduction Form |
| <input type="checkbox"/> | <input type="checkbox"/> | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/> | <input type="checkbox"/> | MOU |
| <input type="checkbox"/> | <input type="checkbox"/> | Grant Information Form |
| <input type="checkbox"/> | <input type="checkbox"/> | Grant Budget |
| <input type="checkbox"/> | <input type="checkbox"/> | Subcontract Budget |
| <input type="checkbox"/> | <input type="checkbox"/> | Contract/Agreement |
| <input type="checkbox"/> | <input type="checkbox"/> | Form 126 – Ethics Commission |
| <input type="checkbox"/> | <input type="checkbox"/> | Award Letter |
| <input type="checkbox"/> | <input type="checkbox"/> | Application |
| <input type="checkbox"/> | <input type="checkbox"/> | Public Correspondence |

OTHER

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Prepared by: John Carroll

Date: December 31, 2020

Prepared by: John Carroll

Date: January 8, 2021

1 [Emergency Ordinance - Temporary Right to Reemployment Following Layoff Due to COVID-
2 19 Pandemic]

3 **Reenactment of emergency ordinance (Ordinance No. 104-20, as reenacted by**
4 **Ordinance Nos. 159-20 and 231-20) temporarily creating a right to reemployment for**
5 **certain employees laid off due to the COVID-19 pandemic if their employer seeks to fill**
6 **the same position as, or a position substantially similar to, the position previously held**
7 **by the laid-off employee.**

8 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
9 **Additions to Codes** are in *single-underline italics Times New Roman font*.
10 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
11 **Board amendment additions** are in double-underlined Arial font.
12 **Board amendment deletions** are in ~~strikethrough Arial font~~.
13 **Asterisks (* * * *)** indicate the omission of unchanged Code
14 subsections or parts of tables.

15 Be it ordained by the People of the City and County of San Francisco:

16 Section 1. Declaration of Emergency Pursuant to Charter Section 2.107.

17 (a) Section 2.107 of the Charter authorizes passage of an emergency ordinance in
18 cases of public emergency affecting life, health, or property, or for the uninterrupted operation
19 of any City or County department or office required to comply with time limitations established
20 by law. An emergency ordinance enacted under Charter Section 2.107 automatically
21 terminates on the 61st day after passage, but may be reenacted upon the same terms and
22 conditions applicable to its initial enactment.

23 (b) Pursuant to Charter Section 2.107, the City enacted Ordinance No. 104-20, the
24 “Back to Work” emergency ordinance, which temporarily requires certain employers operating
25 in San Francisco to offer reemployment to eligible employees laid off as a result of the
COVID-19 public health emergency. The emergency ordinance became effective when

1 enacted, on July 3, 2020. On September 4, 2020, Ordinance No. 159-20 reenacted Ordinance
2 No. 104-20, retroactive to September 1, 2020, the date that Ordinance No. 104-20 had
3 expired. On November 13, 2020, Ordinance No. 231-20 reenacted Ordinance No. 104-20, as
4 reenacted by Ordinance No. 159-20, retroactive to October 31, 2020, the date that Ordinance
5 No. 104-20, as reenacted, had expired. The original emergency ordinance, Ordinance No.
6 104-20, will terminate automatically on December 30, 2020, unless reenacted.

7 (c) The Board of Supervisors hereby finds that the findings declared in Sections 2 and
8 3 of Ordinance No. 104-20 and reaffirmed in Section 1 of Ordinance No. 159-20 and Section 1
9 of Ordinance No. 231-20 remain valid and compelling, and declares further that an actual
10 emergency continues to exist that requires the reenactment of the Back to Work emergency
11 ordinance to mitigate the economic effects of layoffs caused by the public health emergency.
12 COVID-19 continues to present an extremely dangerous public health risk to the community,
13 and the adverse economic impact on workers and their families remains severe,
14 notwithstanding gradual efforts to reopen sectors of the economy. Further, many employees
15 continue to experience family caregiving challenges due to school and care facility closures,
16 challenges securing caregiving assistance, and the continuation of distance learning for
17 school children.

18
19 Section 2. Reenactment of Emergency Ordinance.

20 Consistent with Charter Section 2.107, this emergency ordinance reenacts for an
21 additional 60 days the emergency ordinance temporarily requiring certain employers operating
22 in San Francisco to offer reemployment to eligible employees laid off as a result of the
23 COVID-19 public health emergency (Ordinance No. 104-20, as reenacted by Ordinance No.
24 159-20 and Ordinance No. 231-20).

1 Section 3. Effective Date; Expiration.

2 (a) If enacted prior to the expiration of Ordinance No. 231-20, which reenacted
3 Ordinance No. 104-20, this reenacted emergency ordinance shall become effective
4 immediately upon the date of expiration of Ordinance No. 231-20, and shall itself expire on the
5 61st day following its effective date unless reenacted as provided by Charter Section 2.107.

6 (b) If enacted after the expiration of Ordinance No. 231-20, this reenacted emergency
7 ordinance shall become effective immediately upon enactment, shall have operative effect
8 retroactively to the date that Ordinance No. 231-20 expired, and shall expire on the 61st day
9 following the date that Ordinance No. 231-20, expired, unless reenacted as provided by
10 Charter Section 2.107.

11
12 Section 4. Directions to Clerk.

13 The Clerk of the Board of Supervisors is hereby directed to place a copy of this
14 reenacted emergency ordinance in File No. 200455 for Ordinance No. 104-20, File No.
15 200816 for Ordinance No. 159-20, and File No. 201087 for Ordinance No. 231-20 and to
16 make a notation cross-referencing this emergency ordinance where Ordinance No. 104-20,
17 Ordinance No. 159-20, and Ordinance No. 231-20 appear on the Board of Supervisors
18 website as legislation passed.

1 Section 5. Supermajority Vote Required.

2 In accordance with Charter Section 2.107, passage of this reenacted emergency
3 ordinance by the Board of Supervisors requires an affirmative vote of two-thirds of the Board
4 of Supervisors.

5
6 APPROVED AS TO FORM:
7 DENNIS J. HERRERA, City Attorney

8 By: /s/ Lisa Powell
9 LISA POWELL
Deputy City Attorney

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LEGISLATIVE DIGEST

[Emergency Ordinance - Temporary Right to Reemployment Following Layoff Due to COVID-19 Pandemic]

Reenactment of emergency ordinance (Ordinance No. 104-20, as reenacted by Ordinance Nos. 159-20 and 231-20) temporarily creating a right to reemployment for certain employees laid off due to the COVID-19 pandemic if their employer seeks to fill the same position as, or a position substantially similar to, the position previously held by the laid-off employee.

Existing Law

In general, under existing law, there is no right to reemployment for employees working in San Francisco in the event that their employer separates them from employment. However, an emergency ordinance (Ordinance No. 104-20, as reenacted by Ordinance No. 159-20 and Ordinance No. 231-20) temporarily requires certain employers operating in San Francisco to offer reemployment to eligible employees laid off as a result of the COVID-19 public health emergency. The legislative digest for Ordinance No. 104-20 can be found in Board File No. 200455. Lightly edited, it summarizes the emergency ordinance as follows:

The emergency ordinance applies to employers that operate in San Francisco and employ 100 or more employees, except healthcare operations. The emergency ordinance applies to employees who were employed for at least 90 days of the calendar year preceding the notice of a layoff and who suffered layoff due to the emergency. A layoff is a separation from employment of 10 or more eligible employees within a 30-day period, starting on or after February 25, 2020, due to the emergency. If an employer seeks to rehire employees to the same or similar positions previously held by laid-off eligible employees, an employer shall offer reemployment to such eligible employees in order of seniority.

Under the emergency ordinance, the Office of Economic and Workforce Development (OEWD) receives notices of layoffs and offers of reemployment and operates a hotline for workers. The Office of Labor Standards Enforcement (OLSE) is authorized to issue regulations.

Additionally, the emergency ordinance requires employers to reasonably accommodate employees who cannot work because of a family care hardship. A family care hardship is a circumstance in which the employee is unable to work due to any reason for which a person may use paid sick leave under Administrative Code § 12W.4(a) to provide care for someone other than themselves, including but not limited to a need to care for a child whose school or place of care has been closed or whose childcare provider is unavailable as a result of the public health emergency and no other suitable person is available to care for the child during the period of such leave.

Amendments to Existing Law

The proposed emergency ordinance reenacts Ordinance No. 104-20, as reenacted by Ordinance No. 159-20 and Ordinance No. 231-20, with the result that it does not terminate on December 30, 2020, but rather is extended for an additional 60 days.

Introduction Form

By a Member of the Board of Supervisors or Mayor

Time stamp
or meeting date

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee. (An Ordinance, Resolution, Motion or Charter Amendment).
- 2. Request for next printed agenda Without Reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning : "Supervisor inquiries"
- 5. City Attorney Request.
- 6. Call File No. from Committee.
- 7. Budget Analyst request (attached written motion).
- 8. Substitute Legislation File No.
- 9. Reactivate File No.
- 10. Topic submitted for Mayoral Appearance before the BOS on

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission
- Youth Commission
- Ethics Commission
- Planning Commission
- Building Inspection Commission

Note: For the Imperative Agenda (a resolution not on the printed agenda), use the Imperative Form.

Sponsor(s):

Subject:

The text is listed:

Signature of Sponsoring Supervisor:

For Clerk's Use Only