

BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. (415) 554-5184
Fax No. (415) 554-5163
TDD/TTY No. (415) 554-5227

MEMORANDUM

TO: Ben Rosenfield, City Controller, Office of the Controller

FROM: Victor Young, Assistant Clerk, Rules Committee
Board of Supervisors

A handwritten signature in cursive that reads "Victor Young".

DATE: January 18, 2022

SUBJECT: INITIATIVE ORDINANCE INTRODUCED
June 7, 2022 Election

The Board of Supervisors' Rules Committee has received the following Charter Amendment for the June 7, 2022, Election. This matter is being referred to you in accordance with Rules of Order 2.22.3.

File No. 220022

Motion ordering submitted to the voters at an election to be held on June 7, 2022, an Ordinance to amend the Police Code to require employers to provide public health emergency leave during a public health emergency.

Please review and prepare a financial analysis of the proposed measure prior to the first Rules Committee hearing.

If you have any questions or concerns, please call me at (415) 554-7723 or email: victor.young@sfgov.org. To submit documentation, please email or forward to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

c: Todd Rydstrom, Deputy City Controller
Peg Stevenson, City Performance Director
Natasha Mihal, City Services Auditor



City and County of San Francisco

Master Report

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

File Number: 220022 **File Type:** Motion **Status:** 30 Day Rule

Enacted: _____ **Effective:** _____

Version: 1 **In Control:** Rules Committee

File Name: Initiative Ordinance - Police Code - Public Health
Emergency Leave **Date Introduced:** 01/04/2022

Requester: _____ **Cost:** _____ **Final Action:** _____

Comment: _____ **Title:** Motion ordering submitted to the voters at an election to be held on June 7, 2022, an Ordinance to amend the Police Code to require employers to provide public health emergency leave during a public health emergency.

Sponsor: Mar

History of Legislative File 220022

Ver	Acting Body	Date	Action	Sent To	Due Date	Result
1	President	01/04/2022	ASSIGNED UNDER 30 DAY RULE	Rules Committee	02/03/2022	

1 [Initiative Ordinance - Police Code - Public Health Emergency Leave]

2

3 **Motion ordering submitted to the voters at an election to be held on June 7, 2022, an**
4 **Ordinance to amend the Police Code to require employers to provide public health**
5 **emergency leave during a public health emergency.**

6

7 MOVED, That the Board of Supervisors hereby submits the following ordinance to the
8 voters of the City and County of San Francisco, at an election to be held on June 7, 2022.

9

10 **Ordinance to amend the Police Code to require employers to provide public health**
11 **emergency leave during a public health emergency.**

12

13 NOTE: **Unchanged Code text and uncodified text** are in plain font.
14 **Additions to Codes** are in *single-underline italics Times New Roman font*.
15 **Deletions to Codes** are in ~~italics Times New Roman font~~.
16 **Asterisks (* * * *)** indicate the omission of unchanged Code subsections or parts of tables.

16

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

18 Section 1. The Police Code is hereby amended by adding Article 33P, consisting of
19 Sections 3300P.1 through 3300P.14, to read as follows:

20

21 **ARTICLE 33P: PUBLIC HEALTH EMERGENCY LEAVE**

22

23 **SEC. 3300P.1. TITLE.**

24 *This Article 33P shall be known as the “Public Health Emergency Leave Ordinance.”*

25

1 **SEC. 3300P.2. DEFINITIONS.**

2 *For purposes of this Article 33P, the following definitions apply:*

3 *“Agency” means the Office of Labor Standards Enforcement or its successor agency.*

4 *“Air Quality Emergency” means (a) a day when the Air Quality Index in San Francisco, as*
5 *measured by the Bay Area Air Quality Management District, is 151 or more; or (b) with respect to an*
6 *Employee who is a member of a Vulnerable Population or who works primarily outdoors, a day when*
7 *the Air Quality Index in San Francisco, as measured by the Bay Area Air Quality Management District,*
8 *is 101 or more.*

9 *“Air Quality Index” means the index for reporting daily air quality developed by the U.S.*
10 *Environmental Protection Agency.*

11 *“City” means the City and County of San Francisco.*

12 *“Emergency Responder” means an Employee whose work involves emergency medical services,*
13 *including but not limited to emergency medical services personnel, physicians, nurses, public health*
14 *personnel, emergency medical technicians, paramedics, 911 operators, and persons with skills or*
15 *training in operating specialized equipment or other skills needed to provide aid in a Public Health*
16 *Emergency.*

17 *“Employee” means any person providing labor or services for remuneration who is an*
18 *employee under California Labor Code Section 2775, as may be amended from time to time, including*
19 *a part-time or temporary employee, and who performs work as an employee within the geographic*
20 *boundaries of the City. “Employee” includes a participant in a Welfare-to-Work Program when the*
21 *participant is engaged in work activity that would be considered “employment” under the federal Fair*
22 *Labor Standards Act (FLSA), 29 U.S.C. §§ 201 et seq., and any applicable U.S. Department of Labor*
23 *Guidelines. “Welfare-to-Work Program” includes any public assistance program administered by the*
24 *Human Services Agency, including but not limited to CalWORKS and the County Adult Assistance*
25

1 Program (CAAP), and any substantially similar successor programs, that require a public assistance
2 applicant or recipient to work in exchange for their grant.

3 “Employer” means any person, as defined in Section 18 of the California Labor and
4 Employment Code, including corporate officers or executives, who directly or indirectly or through an
5 agent or any other person, including through the services of a temporary services or staffing agency or
6 similar entity, employs or exercises control over the wages, hours, or working conditions of 100 or
7 more employees worldwide, including one or more Employees; provided however that “Employer”
8 shall not include a Non-Profit Organization if the majority of the annual revenue of the Non-Profit
9 Organization is program service revenue that is not unrelated business taxable income under 26 U.S.C.
10 § 512, as may be amended from time to time, and the Non-Profit Organization does not engage in
11 Healthcare Operations. “Employer” shall include the City, but shall not include any government entity
12 other than the City.

13 “Family Member” means any person for whom an Employee may use paid sick leave to provide
14 care pursuant to Administrative Code Section 12W.4(a), as may be amended from time to time.

15 “Healthcare Operations” means the provision of diagnostic and healthcare services and
16 devices including, without limitation, hospitals, medical clinics, diagnostic testing locations, dentists,
17 pharmacies, blood banks and blood drives, pharmaceutical and biotechnology companies, other
18 healthcare facilities, healthcare suppliers, home healthcare services providers, mental health
19 providers, or any related and/or ancillary healthcare services. “Healthcare Operations” also includes
20 veterinary care and all healthcare services provided to animals. “Healthcare Operations” excludes
21 fitness and exercise gyms and similar facilities.

22 “Healthcare Provider” means a “Health care provider” as that term is defined in the
23 regulations implementing the federal Family and Medical Leave Act, 29 C.F.R. § 825.102, as may be
24 amended from time to time.

1 “Nonprofit Organization” means a nonprofit corporation, duly organized, validly existing and
2 in good standing under the laws of the jurisdiction of its incorporation and (if a foreign corporation) in
3 good standing under the laws of the State of California, which corporation has established and
4 maintains valid nonprofit status under 26 U.S.C. § 501(c)(3), as may be amended from time to time,
5 and all rules and regulations promulgated under such Section.

6 “Operative Date” means the date this Article 33P becomes operative, which shall be 30 days
7 after the effective date of this Article.

8 “Public Health Emergency” means a local or statewide health emergency related to any
9 contagious, infectious, or communicable disease, declared by the City’s local health officer or the state
10 health officer pursuant to the California Health and Safety Code, or an Air Quality Emergency.

11 “Public Health Emergency Leave” means paid leave provided by an Employer to an Employee
12 during a Public Health Emergency for the uses described in Section 3300P.4(a) or Section 3300P.4(b),
13 as applicable.

14 “Vulnerable Population” means a person who has been diagnosed with heart or lung disease;
15 has respiratory problems including but not limited to asthma, emphysema, and chronic obstructive
16 pulmonary disease; is pregnant; is age 60 or older; or with respect to a specific contagious, infectious,
17 or communicable disease is identified as particularly vulnerable or at-risk in a federal, state, or local
18 health order, rule, or guidance document.

19
20 **SEC. 3300P.3. PUBLIC HEALTH EMERGENCY LEAVE REQUIREMENTS.**

21 (a) Allocation of Public Health Emergency Leave.

22 (1) Except as provided in subsection (a)(2) below, on the Operative Date, and on
23 January 1 of each year thereafter, an Employer shall allocate Public Health Emergency Leave to each
24 Employee that may be used for all purposes specified in Section 3300P.4(a) or Section 3300P.4(b), as
25 applicable, during that calendar year. The allocation shall be calculated as follows:

1 (A) For an Employee who works a full-time, regular, or fixed schedule, the
2 allocation shall be equal to the number of hours over a two-week period that the Employee regularly
3 works or takes paid leave, not to exceed 80 hours; provided, however, for the initial partial year
4 beginning on the Operative Date, the allocation shall be equal to the number of hours over a one-week
5 period that the Employee regularly works or takes paid leave, not to exceed 40 hours.

6 (B) For an Employee whose number of weekly work hours varies, the allocation
7 shall be equal to the average number of hours over a two-week period that the Employee worked or
8 took paid leave during the previous calendar year, or since the Employee's start date if after the
9 beginning of the previous calendar year, not to exceed 80 hours; provided, however, for the initial
10 partial year beginning on the Operative Date, the allocation shall be equal to the average number of
11 hours over a one-week period that the Employee worked or took paid leave during the previous
12 calendar year, or since the Employee's start date if after the beginning of the previous calendar year,
13 not to exceed 40 hours.

14 (2) If an Employee was not employed on the Operative Date, or on January 1 of a
15 calendar year thereafter, on the start date of the first Public Health Emergency that begins during the
16 Employee's employment, an Employer shall allocate Public Health Emergency Leave to each such
17 Employee that may be used for all purposes specified in Section 3300P.4(a) or Section 3300P.4(b), as
18 applicable, during that calendar year. The allocation shall be calculated as follows:

19 (A) For an Employee who works a full-time, regular, or fixed schedule, the
20 allocation shall be equal to the number of hours over a two-week period that the Employee regularly
21 works or takes paid leave, not to exceed 80 hours; provided, however, for the initial partial year
22 beginning on the Operative Date, the allocation shall be equal to the number of hours over a one-week
23 period that the Employee regularly works or takes paid leave, not to exceed 40 hours.

24 (B) For an Employee whose number of weekly work hours varies, the allocation
25 shall be equal to the average number of hours over a two-week period that the Employee worked or

1 took paid leave during the previous 90 days, or since the Employee's start date if the Employee has
2 been employed for fewer than 90 days, not to exceed 80 hours; provided, however, for the initial partial
3 year beginning on the Operative Date, the allocation shall be equal to the average number of hours
4 over a one-week period that the Employee worked or took paid leave during the previous 90 days, or
5 since the Employee's start date if the Employee has been employed for fewer than 90 days, not to
6 exceed 40 hours.

7 (b) For the duration of a Public Health Emergency, Public Health Emergency Leave shall be
8 made available to Employees in addition to any paid leave that the Employer offered or provided to
9 Employees as of the date the Public Health Emergency began.

10 (c) Public Health Emergency Leave shall be available for immediate use for the purposes
11 described in Section 3300P.4(a) or Section 3300P.4(b), as applicable, regardless of how long the
12 Employee has been employed by the Employer, the Employee's status (as full-time, part-time,
13 permanent, temporary, seasonal, salaried, paid by commission, or any other status), or any other
14 consideration pertaining to the Employee.

15 (d) An Employee may use Public Health Emergency Leave for the purposes described in Section
16 3300P.4(a) or Section 3300P.4(b), as applicable, before using other accrued paid leave. An Employee
17 may voluntarily choose, but an Employer may not require, induce, or encourage the Employee, to use
18 other accrued paid leave provided by the Employer to the Employee before the Employee uses Public
19 Health Emergency Leave.

20 (e) This Article 33P provides minimum requirements pertaining to Public Health Emergency
21 Leave and shall not be construed to prevent an Employer from providing or advancing additional paid
22 leave to an Employee, and shall not be construed to limit the amount of paid leave that may be
23 provided to an Employee. This Article shall not be construed to preempt, limit, or otherwise affect the
24 applicability of any other law, regulation, requirement, policy, or standard that provides for greater or
25 different types of paid or unpaid leave, or that extends other protections to employees.

1 (f) An Employer is not required to carry over an Employee's unused Public Health Emergency
2 Leave from year to year.

3 (g) Compensation rates under this Article 33P shall be:

4 (1) For an Employee who is not exempt from the overtime provisions of the FLSA, an
5 Employer may calculate pay for Public Health Emergency Leave using either of the following methods:

6 (A) In the same manner as the regular rate of pay for the workweek in which the
7 Employee uses Public Health Emergency Leave, whether or not the Employee works overtime in that
8 workweek; or

9 (B) By dividing the Employee's total wages, not including overtime premium pay,
10 by the Employee's total hours worked in the full pay periods of the 90 days of employment prior to the
11 Employee's use of Public Health Emergency Leave.

12 (2) For an Employee who is exempt from the overtime provisions of FLSA and
13 California labor law, pay for Public Health Emergency Leave shall be calculated in the same manner
14 as the Employer calculates wages for other forms of paid leave.

15 (3) In no circumstance may Public Health Emergency Leave be provided at less than the
16 minimum wage rate required by the Minimum Wage Ordinance, Administrative Code Chapter 12R.

17
18 **SEC. 3300P.4. PUBLIC HEALTH EMERGENCY LEAVE USE.**

19 (a) Except as provided in subsections (b) and (c) below, an Employee may use Public Health
20 Emergency Leave during a Public Health Emergency if the Employee is unable to work due to any of
21 the following:

22 (1) The recommendations or requirements of an individual or general federal, state, or
23 local health order (including an order issued by the local jurisdiction in which an Employee resides)
24 related to the Public Health Emergency. With respect to an Employee who is a member of a Vulnerable
25 Population, this includes any applicable recommendations for Vulnerable Populations.

1 (2) The Employee has been advised by a Healthcare Provider to isolate or quarantine.

2 (3) The Employee is experiencing symptoms of and seeking a medical diagnosis, or has
3 received a positive medical diagnosis, for a possible infectious, contagious, or communicable disease
4 associated with the Public Health Emergency.

5 (4) The Employee is caring for a Family Member who is subject to an order as
6 described in subsection (a)(1), has been advised as described in subsection (a)(2), or is experiencing
7 symptoms as described in subsection (a)(3).

8 (5) The Employee is caring for a Family Member if the school or place of care of the
9 Family Member has been closed, or the care provider of such Family Member is unavailable, due to
10 the Public Health Emergency.

11 (6) An Air Quality Emergency.

12 (b) An Employer of an Employee who is a Healthcare Provider or an Emergency Responder
13 may elect to limit such an Employee’s use of Public Health Emergency Leave, but at a minimum such
14 an Employee may use Public Health Emergency Leave during a Public Health Emergency to the extent
15 that the Employee is unable to work due to any of the following:

16 (1) The Employee has been advised by a Healthcare Provider to isolate or quarantine.

17 (2) The Employee is experiencing symptoms of and is seeking a medical diagnosis, or
18 has received a positive medical diagnosis, for a possible infectious, contagious, or communicable
19 disease associated with the Public Health Emergency and does not meet federal, state, or local
20 guidance to return to work.

21 (3) An Air Quality Emergency, if the Employee has been advised by a Healthcare
22 Provider not to work during an Air Quality Emergency.

23 (c) With respect to subsections (a)(1), (2), and (6) and subsections (b)(1) and (3) above, if an
24 Employee is able to telework without increasing the Employee’s exposure to disease or unhealthy air
25 quality, the Employee may not use Public Health Emergency Leave.

1 (d) An Employer may not require, as a condition of an Employee's taking Public Health
2 Emergency Leave, that the Employee search for or find a replacement worker to cover the hours during
3 which the Employee is on Public Health Emergency Leave.

4 (e) An Employer may not require, as a condition of an Employee's taking Public Health
5 Emergency Leave, that the Employee take Public Health Emergency Leave in increments of more than
6 one hour.

7 (f) An Employer may require the Employee to follow reasonable notice procedures in order to
8 use Public Health Emergency Leave, but only when the need for Public Health Emergency Leave is
9 foreseeable.

10 (g) An Employer may not require the disclosure of health information for use of Public Health
11 Emergency Leave, except as needed to confirm an Employee's status as a member of a Vulnerable
12 Population, if that Employee uses Public Health Emergency Leave for a use inapplicable to an
13 Employee who is not a member of a Vulnerable Population.

14 (h) An Employer shall provide payment for Public Health Emergency Leave taken by an
15 Employee no later than the payday for the next regular payroll period after the Public Health
16 Emergency Leave is taken.

17
18 **SEC. 3300P.5. NOTICE OF EMPLOYEE RIGHTS.**

19 (a) The Agency shall, no later than 30 days after the effective date of this Article 33P, publish
20 and make available to Employers, in English, Spanish, Chinese, Filipino, and any other language
21 spoken by more than 5% of the San Francisco workforce, a notice suitable for posting by Employers in
22 the workplace informing Employees of their rights under this Article 33P. The Agency shall update this
23 notice on December 1 of any year in which there is a change in the languages spoken by more than 5%
24 of the San Francisco workforce. In its discretion, the Agency may combine this notice with the notice
25 required by Section 12W.5(a) of the Administrative Code.

1 (b) Every Employer shall provide the notice prepared by the Agency under subsection (a) above
2 to Employees in all languages the Agency makes available by posting it in a conspicuous place at any
3 workplace or job site where any of its Employees works, and where feasible by providing it to
4 Employees via electronic communication, which may include email, text, and/or posting in a
5 conspicuous place in an Employer’s web-based or app-based platform.

6 (c) On the written notice that an Employer is required to provide under Section 246(i) of the
7 California Labor Code, as may be amended from time to time, an Employer shall set forth the amount
8 of Public Health Emergency Leave that is available to the Employee under this Article 33P. If an
9 Employer provides unlimited paid leave or paid time off to an Employee, the Employer may satisfy this
10 subsection (c) by indicating on the notice or the Employee’s itemized wage statement “unlimited.” This
11 subsection (c) shall apply only to Employers that are required by state law to provide such notice to
12 Employees regarding paid sick leave available under California law.

13
14 **SEC. 3300P.6. EXERCISE OF RIGHTS PROTECTED; RETALIATION PROHIBITED.**

15 (a) It shall be unlawful for an Employer or any other person to interfere with, restrain, or deny
16 the exercise of, or the attempt to exercise, any right protected under this Article 33P.

17 (b) It shall be unlawful for an Employer or any other person to discharge, threaten to
18 discharge, demote, suspend, reduce other Employee benefits, or in any manner discriminate or take
19 adverse action against any person in retaliation for exercising rights protected under this Article 33P.
20 Such rights include but are not limited to the right to use Public Health Emergency Leave pursuant to
21 this Article 33P; the right to file a complaint or inform any person about any Employer’s alleged
22 violation of this Article 33P; the right to cooperate with the Agency in its investigations of alleged
23 violations of this Article 33P; and the right to inform any person of that person’s potential rights under
24 this Article 33P.

1 (c) It shall be unlawful for any Employer absence control policy to count an Employee's use of
2 Public Health Emergency Leave as an absence that, alone or in combination with other absences, may
3 lead to or result in discipline, discharge, demotion, suspension, or any other adverse action.

4 (d) Protections of this Section 3300P.6 shall apply to any person who mistakenly but in good
5 faith alleges violations of this Article 33P.

6 (e) Taking adverse action against a person within 90 days of, the person's filing a complaint
7 with the Agency or a court alleging a violation of any provision of this Article 33P; informing any
8 person about an Employer's alleged violation of this Article; cooperating with the Agency or other
9 persons in the investigation or prosecution of any alleged violation of this Article; opposing any policy,
10 practice, or act that is unlawful under this Article; or informing any person of that person's rights
11 under this Article shall raise a rebuttable presumption that such adverse action was taken in retaliation
12 for the exercise of one or more of the aforementioned rights.

13
14 **SEC. 3300P.7. EMPLOYER RECORDS.**

15 Employers shall retain records documenting hours worked by Employees and Public Health
16 Emergency Leave taken by Employees, for a period of four years, and shall allow the Agency access to
17 such records, with reasonable notice, to monitor compliance with the requirements of this Article 33P.
18 When an issue arises as to an Employee's entitlement to Public Health Emergency Leave under this
19 Article, if the Employer does not maintain or retain accurate and adequate records documenting hours
20 worked by the Employee and Public Health Emergency Leave taken by the Employee, or does not allow
21 the Agency reasonable access to such records, it shall be presumed that the Employer has violated this
22 Article, absent clear and convincing evidence otherwise.

23
24 **SEC. 3300P.8. IMPLEMENTATION AND ENFORCEMENT.**

1 (a) The Agency is authorized to implement and enforce this Article 33P and may promulgate
2 guidelines or rules for such purposes. Any rules promulgated by the Agency shall have the force and
3 effect of law and may be relied on by Employers, Employees, and other persons to determine their
4 rights and responsibilities under this Article.

5 (b) An Employee or any other person, who has reason to believe that a violation of this Article
6 33P has occurred may report the suspected violation to the Agency. The Agency shall encourage such
7 reporting by keeping confidential, to the maximum extent permitted by law, the name and other
8 identifying information of the individual reporting the suspected violation; provided, however, that with
9 the authorization of the reporting individual, the Agency may disclose the name of the reporting
10 individual and identifying information as necessary to enforce this Article or for other lawful purposes.

11 (c) The Agency may investigate possible violations of this Article 33P.

12 (1) Where the Agency has reason to believe that a violation has occurred, it may order
13 any appropriate temporary or interim relief to mitigate the violation or maintain the status quo pending
14 completion of a full investigation.

15 (2) Where, following an investigation that affords due process, including notice of the
16 alleged violation and the right to respond, the Agency determines that a violation has occurred, the
17 Agency may issue a determination of violation and order any appropriate relief.

18 (A) If any Public Health Emergency Leave was unlawfully withheld, the dollar
19 amount of paid leave withheld from the Employee multiplied by three, or \$500, whichever amount is
20 greater, shall be awarded as an administrative penalty paid to the Employee, pursuant to California
21 Constitution Article XIIC, Section 1(e)(5).

22 (B) For violation of Section 3300P.6, the Agency shall award appropriate
23 restitution to each person subjected to the violation, including but not limited to reinstatement and back
24 pay.

1 (C) Pursuant to California Constitution Article XIII C, Section 1(e)(5), the
2 Agency may order administrative penalties of \$500 for each of the following violations: failure to post
3 notice pursuant to Section 3300P.5, violation of Section 3300P.6, refusing to allow access to records
4 pursuant to Section 3300P.7, failure to maintain or retain accurate and adequate records pursuant to
5 Section 3300P.7, and any other violation not specified in this Section 3300P.8(c)(2). These penalties
6 shall be increased cumulatively by 50% for each subsequent violation of the same provision by the
7 same Employer within a three-year period.

8 (D) To compensate the City for the reasonable regulatory costs of investigating
9 and remedying the violation, pursuant to California Constitution Article XIII C, Section 1(e)(3), the
10 Agency may also order the Employer to pay to the City an amount that does not exceed its investigation
11 and administrative enforcement costs.

12 (3) The determination of violation shall provide notice to the Employer of the right to
13 appeal the determination to the City Controller and that failure to do so within 15 days shall result in
14 the determination becoming a final administrative decision, which the City may seek to enforce as a
15 judgment in superior court.

16 (4) The determination of violation shall specify a reasonable time period for payment of
17 any relief ordered. The Agency may award interest on all amounts due and unpaid at the expiration of
18 such time period at the rate of interest specified in subdivision (b) of Section 3289 of the California
19 Civil Code, as may be amended from time to time.

20 (5) The remedies and penalties provided under subsection (c)(2) above are cumulative.

21 (6) The Agency may require that remedies and penalties due and owing to Employees be
22 paid directly to the City for disbursement to the Employees. The Controller shall hold these funds in
23 escrow for the Employees. The Agency shall make best efforts to distribute such funds to Employees. In
24 the event such funds are unclaimed for a period of three years, the Controller may undertake
25 administrative procedures for escheat of unclaimed funds under California Government Code Section

1 50050, et seq., as may be amended from time to time. Such escheated funds shall be dedicated to the
2 enforcement of this Article 33P or other laws the Agency enforces.

3 (d) Appeal Procedure. An appeal from a determination of violation (“Appeal”) may be filed by
4 the Appellant in accordance with the following procedures:

5 (1) The Appellant shall file the Appeal with the City Controller and serve a copy on the
6 Agency. The Appeal shall be filed in writing within 15 days of the date of service of the determination
7 of violation, and shall specify the basis for the Appeal and shall request that the Controller appoint a
8 hearing officer to hear and decide the Appeal. Failure to submit a timely, written Appeal shall
9 constitute concession to the violation, and the determination of violation shall be deemed the final
10 administrative decision upon expiration of the 15-day period. Further, failure to submit a timely,
11 written Appeal shall constitute a failure to exhaust administrative remedies, which shall serve as a
12 complete defense to any petition or claim brought against the City regarding the determination of
13 violation.

14 (2) Following the filing of the Appeal and service of a copy on the Agency, the Agency
15 shall promptly afford Appellant an opportunity to meet and confer in good faith regarding possible
16 resolution of the Determination of Violation.

17 (3) Within 30 days of receiving an Appeal, the Controller shall appoint an impartial
18 hearing officer who is not part of the Agency and immediately notify the Agency and Appellant of the
19 appointment.

20 (4) The hearing officer shall promptly set a date for a hearing. The hearing must
21 commence within 45 days of the date of the Controller’s notice of appointment of the hearing officer,
22 and conclude within 75 days of such notice, provided, however, that the hearing officer may extend
23 these time limits upon a determination of good cause.

24 (5) The hearing officer shall conduct a fair and impartial evidentiary hearing. The
25 Agency shall have the burden of proof in such hearing.

1 (6) Within 30 days of the conclusion of the hearing, the hearing officer shall issue a
2 written decision affirming, modifying, or dismissing the determination of violation. The hearing
3 officer's decision shall be the final administrative decision. The decision shall consist of findings, a
4 determination, any relief ordered, a reasonable time period for payment of any relief ordered, and
5 notice to the Employer of the right to appeal by filing a petition for a writ of mandate in San Francisco
6 Superior Court under California Code of Civil Procedure, Section 1094.5, et seq., as may be amended
7 from time to time, and that failure to file a timely appeal shall result in the final administrative decision
8 becoming enforceable as a judgment by the superior court.

9 (7) Appellant may appeal the final administrative decision only by filing in San
10 Francisco Superior Court a petition for a writ of mandate under California Code of Civil Procedure,
11 Section 1094.5, et seq., as applicable, and as may be amended from time to time.

12 (e) Where an Employer fails to comply with a final administrative decision within the time
13 period required therein, the Agency may take any appropriate enforcement action to secure
14 compliance, including referring the action to the City Attorney to seek to enforce the final
15 administrative decision as a judgment in superior court, and/or except where prohibited by State or
16 Federal law, requesting that City agencies or departments revoke or suspend any registration
17 certificates, permits, or licenses held or requested by the Employer until such time as the violation is
18 remedied.

19
20 **SEC. 3300P.9. CIVIL ENFORCEMENT.**

21 The City Attorney or any person aggrieved by a violation of this Article 33P may bring a civil
22 action in a court of competent jurisdiction against an Employer for violating any requirement of this
23 Article 33P and, upon prevailing, shall be entitled to such legal or equitable relief as may be
24 appropriate to remedy the violation including, without limitation, all forms of relief available under
25 Section 3300P.8(c), plus interest on all amounts due and unpaid at the rate of interest specified in

1 subdivision (b) of Section 3289 of the California Civil Code. The court shall award reasonable
2 attorneys' fees and costs to the prevailing party.

3
4 **SEC. 3300P.10. WAIVER THROUGH COLLECTIVE BARGAINING.**

5 All or any portion of the requirements of this Article 33P shall not apply to Employees covered
6 by a bona fide collective bargaining agreement to the extent that such requirements are expressly
7 waived in the collective bargaining agreement in clear and unambiguous terms.

8
9 **SEC. 3300P.11. PREEMPTION.**

10 Nothing in this Article 33P shall be interpreted or applied so as to create any power, right, or
11 duty in conflict with federal or state law. The term "conflict," as used in this Section 3300P.11 means a
12 conflict that is preemptive under federal or state law.

13
14 **SEC. 3300P.12. CITY UNDERTAKING LIMITED TO PROMOTION OF THE GENERAL**
15 **WELFARE.**

16 In undertaking the adoption and enforcement of this Article 33P, the City is undertaking only to
17 promote the general welfare. The City is not assuming, nor is it imposing on its officers and employees,
18 an obligation for breach of which it is liable in money damages to any person who claims that such
19 breach proximately caused injury. This Article does not create a legally enforceable right by any
20 member of the public against the City.

21
22 **SEC. 3300P.13. SEVERABILITY.**

23 If any section, subsection, sentence, clause, phrase, or word of this Article 33P, or any
24 application thereof to any person or circumstance, is held to be invalid or unconstitutional by a
25 decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining

1 portions or applications of this Article. The voters hereby declare that they would have passed this
2 Article and every section, subsection, sentence, clause, phrase, and word not declared invalid and
3 unconstitutional without regard to whether any other portion of this Article or application thereof
4 would be subsequently declared invalid or unconstitutional.

5
6 **SEC. 3300P.14. AMENDMENT BY THE BOARD OF SUPERVISORS.**

7 (a) The Board of Supervisors may by ordinance amend this Article 33P with respect to matters
8 relating to its implementation and enforcement and matters relating to Employer requirements for
9 verification or documentation of an Employee's use of Public Health Emergency Leave, but not with
10 respect to this Article's substantive requirements or scope of coverage, except as stated in subsection
11 (b); provided, however, that, in the event any provision in this Article is held legally invalid, the Board
12 retains the power to adopt an ordinance concerning the subject matter that was covered in the invalid
13 provision.

14 (b) The Board of Supervisors may by ordinance amend this Article's substantive requirements
15 or scope of coverage for the purpose of adopting greater or additional substantive leave requirements
16 or broader coverage than this Article 33P.

17 (c) Nothing in this Article 33P prevents the Board of Supervisors by ordinance from providing
18 for greater or different types of paid or unpaid leave, or extending other protections to employees or
19 other workers.

20
21
22
23 Section 2. Effective Date and Operative Date.

24 (a) The effective date of this ordinance shall be 10 days after the date the official vote
25 count is declared by the Board of Supervisors.

1 (b) As stated in Police Code Section 3300P.2, this ordinance shall become operative
2 30 days after its effective date.

3 APPROVED AS TO FORM:

4 DAVID CHIU, City Attorney

5
6 By: /s/ _____
7 LISA POWELL
8 Deputy City Attorney

9 n:\legana\as2021\2200278\01574096.docx

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

LEGISLATIVE DIGEST

[Initiative Ordinance - Police Code - Public Health Emergency Leave]

Motion ordering submitted to the voters at an election to be held on June 7, 2022, an Ordinance to amend the Police Code to require employers to provide public health emergency leave during a public health emergency.

Existing Law

There is no current legal requirement pertaining to public health emergency leave.

Background Information

The federal Families First Coronavirus Response Act (FFCRA), Public Law No. 116-127, previously required certain employers to provide emergency paid sick leave to certain employees who were unable to work due to the COVID-19 pandemic, through December 31, 2020. The FFCRA exempted private employers with 500 or more employees. A City emergency ordinance (Ordinance No. 59-20) required private employers with 500 or more employees to provide paid public health emergency leave for many of the same purposes as FFCRA emergency sick leave to employees in the City, through April 11, 2021.

This initiative ordinance does not amend existing law, but it adopts requirements similar to the previous leave requirements in the FFCRA and Ordinance No. 59-20.

This initiative ordinance requires employers with more than 100 employees worldwide to provide public health emergency leave to employees who work in the City during a public health emergency. The ordinance exempts certain non-profit organizations from its requirements. Public health emergencies include local or state health emergencies related to contagious, infectious, or communicable diseases, as well as air quality emergencies.

Under the ordinance, employees will be provided two weeks' worth (up to 80 hours) of paid public health emergency leave. Because the initiative ordinance likely will become operative in mid- to late-2022, one week of leave will be provided for the year of the operative date. Public health emergency leave may be used if the employee is unable to work (including telework) due to:

- (1) The recommendations or requirements of a health order related to the public health emergency, including any applicable recommendations for an employee who is a member of a vulnerable population.
- (2) The employee has been advised by a health care provider to isolate or quarantine.

- (3) The employee is experiencing symptoms of and seeking a medical diagnosis, or has a positive diagnosis, for a possible infectious, contagious, or communicable disease associated with the public health emergency.
- (4) The employee is caring for a family member who is subject to an order as described in (1), has been advised as described in (2), or is experiencing symptoms as described in (3).
- (5) The employee is caring for a family member if the school or place of care of the family member has been closed, or whose care provider is unavailable, due to the public health emergency.
- (6) An air quality emergency.

The ordinance allows an employer of an employee who is a health care provider or an emergency responder to limit this leave, but requires such employers to provide such leave when the employee is unable to work: (1) due to a health care provider's advice to isolate or quarantine; (2) because the employee is experiencing symptoms of an infectious, contagious, or communicable disease associated with the public health emergency, and does not meet state or federal guidance to return to work; or (3) during an air quality emergency, if the employee has been advised by a health care provider not to work. Reasons 1, 2, and 6 (or reasons 1 and 3 for health care providers and emergency responders) do not apply if the employee may safely telework.

Public health emergency leave must be provided in addition to paid leave the employer provided before the date the public health emergency is declared and must be made available for immediate use during a public health emergency. Employers will not be required to roll over any unused public health emergency leave from year to year.

The Office of Labor Standards Enforcement ("OLSE") will implement and enforce the ordinance. Additionally, OLSE will publish a notice suitable for employers to inform employees of their rights under the ordinance, which employers will be required to post in the workplace, in English, Spanish, Chinese, Filipino, and any language spoken by at least 5% of the City workforce.

The ordinance includes anti-retaliation protections that, among other provisions, prohibit interfering with any right protected under the emergency ordinance and taking any adverse action against an employee for exercising rights protected under the ordinance.

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

From: [Wright, Edward \(BOS\)](#)
To: [BOS Legislation, \(BOS\)](#)
Cc: [Mar, Gordon \(BOS\)](#); [POWELL, LISA \(CAT\)](#)
Subject: Introduction - Mar - Initiative Ordinance - Public Health Emergency Leave
Date: Tuesday, January 4, 2022 2:47:53 PM
Attachments: [01574096.DOCX](#)
[01572004.docx](#)
[Introduction Form - PHEL.pdf](#)

Good afternoon,

Please find attached an initiative ordinance Supervisor Mar is introducing today for the June 7th 2022 election, along with its legislative digest, introduction form, and the word document version of the legislation, approved as to form by DCA Lisa Powell, with her correspondence included below.

Please let me know if there's anything further needed.

Thank you,

Edward Wright
Legislative Aide
District 4 Supervisor Gordon Mar
Office: (415) 554-7464
Pronouns: he, him

[Subscribe to the D4 Newsletter](#)

From: Powell, Lisa (CAT) <Lisa.Powell@sfcityatty.org>
Sent: Tuesday, January 4, 2022 2:28 PM
To: Wright, Edward (BOS) <edward.w.wright@sfgov.org>; Calvillo, Angela (BOS) <angela.calvillo@sfgov.org>
Cc: PEARSON, ANNE (CAT) <Anne.Pearson@sfcityatty.org>; ZAREFSKY, PAUL (CAT) <Paul.Zarefsky@sfcityatty.org>; BUTA, ODAYA (CAT) <Odaya.Buta@sfcityatty.org>; SAPERSTEIN, ALLIE (CAT) <Allie.Saperstein@sfcityatty.org>; CHEESEBOROUGH, PAMELA (CAT) <Pamela.Cheeseborough@sfcityatty.org>; HALL, ARLENE (CAT) <Arlene.G.Hall@sfcityatty.org>
Subject: Ballot Measure - Public Health Emergency Leave

Attached please find the Word document version of for the ballot measure to require employers to provide public health emergency leave during a public health emergency, which has been approved as to form. Also attached is the legislative digest. Please let me know if you need anything else on this.

Best,
Lisa Powell

Deputy City Attorney
Office of City Attorney Dennis Herrera
(415) 554-4762 Direct
www.sfcityattorney.org

CONFIDENTIALITY NOTICE:

This email contains information that may be confidential or protected by the attorney-client privilege and/or the work product doctrine and must not be disclosed. It is intended only for the use of the individual or entity named above. If you are not the intended recipient, you are hereby notified that any unauthorized interception, review, use, disclosure, dissemination, distribution, copying, or downloading of the information in this email is strictly prohibited. If you have received this communication in error, please notify me immediately and permanently delete the original message and attachments from your email system and destroy all copies. Thank you.

[Initiative Ordinance - Police Code - Public Health Emergency Leave]

Motion ordering submitted to the voters at an election to be held on June 7, 2022, an Ordinance to amend the Police Code to require employers to provide public health emergency leave during a public health emergency.

MOVED, That the Board of Supervisors hereby submits the following ordinance to the voters of the City and County of San Francisco, at an election to be held on June 7, 2022.

Ordinance to amend the Police Code to require employers to provide public health emergency leave during a public health emergency.

NOTE: **Unchanged Code text and uncodified text** are in plain font.
Additions to Codes are in *single-underline italics Times New Roman font*.
Deletions to Codes are in ~~italics Times New Roman font~~.
Asterisks (* * * *) indicate the omission of unchanged Code subsections or parts of tables.

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

Section 1. The Police Code is hereby amended by adding Article 33P, consisting of Sections 3300P.1 through 3300P.14, to read as follows:

ARTICLE 33P: PUBLIC HEALTH EMERGENCY LEAVE

SEC. 3300P.1. TITLE.

This Article 33P shall be known as the “Public Health Emergency Leave Ordinance.”

1 **SEC. 3300P.2. DEFINITIONS.**

2 *For purposes of this Article 33P, the following definitions apply:*

3 *“Agency” means the Office of Labor Standards Enforcement or its successor agency.*

4 *“Air Quality Emergency” means (a) a day when the Air Quality Index in San Francisco, as*
5 *measured by the Bay Area Air Quality Management District, is 151 or more; or (b) with respect to an*
6 *Employee who is a member of a Vulnerable Population or who works primarily outdoors, a day when*
7 *the Air Quality Index in San Francisco, as measured by the Bay Area Air Quality Management District,*
8 *is 101 or more.*

9 *“Air Quality Index” means the index for reporting daily air quality developed by the U.S.*
10 *Environmental Protection Agency.*

11 *“City” means the City and County of San Francisco.*

12 *“Emergency Responder” means an Employee whose work involves emergency medical services,*
13 *including but not limited to emergency medical services personnel, physicians, nurses, public health*
14 *personnel, emergency medical technicians, paramedics, 911 operators, and persons with skills or*
15 *training in operating specialized equipment or other skills needed to provide aid in a Public Health*
16 *Emergency.*

17 *“Employee” means any person providing labor or services for remuneration who is an*
18 *employee under California Labor Code Section 2775, as may be amended from time to time, including*
19 *a part-time or temporary employee, and who performs work as an employee within the geographic*
20 *boundaries of the City. “Employee” includes a participant in a Welfare-to-Work Program when the*
21 *participant is engaged in work activity that would be considered “employment” under the federal Fair*
22 *Labor Standards Act (FLSA), 29 U.S.C. §§ 201 et seq., and any applicable U.S. Department of Labor*
23 *Guidelines. “Welfare-to-Work Program” includes any public assistance program administered by the*
24 *Human Services Agency, including but not limited to CalWORKS and the County Adult Assistance*
25

1 Program (CAAP), and any substantially similar successor programs, that require a public assistance
2 applicant or recipient to work in exchange for their grant.

3 “Employer” means any person, as defined in Section 18 of the California Labor and
4 Employment Code, including corporate officers or executives, who directly or indirectly or through an
5 agent or any other person, including through the services of a temporary services or staffing agency or
6 similar entity, employs or exercises control over the wages, hours, or working conditions of 100 or
7 more employees worldwide, including one or more Employees; provided however that “Employer”
8 shall not include a Non-Profit Organization if the majority of the annual revenue of the Non-Profit
9 Organization is program service revenue that is not unrelated business taxable income under 26 U.S.C.
10 § 512, as may be amended from time to time, and the Non-Profit Organization does not engage in
11 Healthcare Operations. “Employer” shall include the City, but shall not include any government entity
12 other than the City.

13 “Family Member” means any person for whom an Employee may use paid sick leave to provide
14 care pursuant to Administrative Code Section 12W.4(a), as may be amended from time to time.

15 “Healthcare Operations” means the provision of diagnostic and healthcare services and
16 devices including, without limitation, hospitals, medical clinics, diagnostic testing locations, dentists,
17 pharmacies, blood banks and blood drives, pharmaceutical and biotechnology companies, other
18 healthcare facilities, healthcare suppliers, home healthcare services providers, mental health
19 providers, or any related and/or ancillary healthcare services. “Healthcare Operations” also includes
20 veterinary care and all healthcare services provided to animals. “Healthcare Operations” excludes
21 fitness and exercise gyms and similar facilities.

22 “Healthcare Provider” means a “Health care provider” as that term is defined in the
23 regulations implementing the federal Family and Medical Leave Act, 29 C.F.R. § 825.102, as may be
24 amended from time to time.

1 “Nonprofit Organization” means a nonprofit corporation, duly organized, validly existing and
2 in good standing under the laws of the jurisdiction of its incorporation and (if a foreign corporation) in
3 good standing under the laws of the State of California, which corporation has established and
4 maintains valid nonprofit status under 26 U.S.C. § 501(c)(3), as may be amended from time to time,
5 and all rules and regulations promulgated under such Section.

6 “Operative Date” means the date this Article 33P becomes operative, which shall be 30 days
7 after the effective date of this Article.

8 “Public Health Emergency” means a local or statewide health emergency related to any
9 contagious, infectious, or communicable disease, declared by the City’s local health officer or the state
10 health officer pursuant to the California Health and Safety Code, or an Air Quality Emergency.

11 “Public Health Emergency Leave” means paid leave provided by an Employer to an Employee
12 during a Public Health Emergency for the uses described in Section 3300P.4(a) or Section 3300P.4(b),
13 as applicable.

14 “Vulnerable Population” means a person who has been diagnosed with heart or lung disease;
15 has respiratory problems including but not limited to asthma, emphysema, and chronic obstructive
16 pulmonary disease; is pregnant; is age 60 or older; or with respect to a specific contagious, infectious,
17 or communicable disease is identified as particularly vulnerable or at-risk in a federal, state, or local
18 health order, rule, or guidance document.

19
20 **SEC. 3300P.3. PUBLIC HEALTH EMERGENCY LEAVE REQUIREMENTS.**

21 (a) Allocation of Public Health Emergency Leave.

22 (1) Except as provided in subsection (a)(2) below, on the Operative Date, and on
23 January 1 of each year thereafter, an Employer shall allocate Public Health Emergency Leave to each
24 Employee that may be used for all purposes specified in Section 3300P.4(a) or Section 3300P.4(b), as
25 applicable, during that calendar year. The allocation shall be calculated as follows:

1 (A) For an Employee who works a full-time, regular, or fixed schedule, the
2 allocation shall be equal to the number of hours over a two-week period that the Employee regularly
3 works or takes paid leave, not to exceed 80 hours; provided, however, for the initial partial year
4 beginning on the Operative Date, the allocation shall be equal to the number of hours over a one-week
5 period that the Employee regularly works or takes paid leave, not to exceed 40 hours.

6 (B) For an Employee whose number of weekly work hours varies, the allocation
7 shall be equal to the average number of hours over a two-week period that the Employee worked or
8 took paid leave during the previous calendar year, or since the Employee's start date if after the
9 beginning of the previous calendar year, not to exceed 80 hours; provided, however, for the initial
10 partial year beginning on the Operative Date, the allocation shall be equal to the average number of
11 hours over a one-week period that the Employee worked or took paid leave during the previous
12 calendar year, or since the Employee's start date if after the beginning of the previous calendar year,
13 not to exceed 40 hours.

14 (2) If an Employee was not employed on the Operative Date, or on January 1 of a
15 calendar year thereafter, on the start date of the first Public Health Emergency that begins during the
16 Employee's employment, an Employer shall allocate Public Health Emergency Leave to each such
17 Employee that may be used for all purposes specified in Section 3300P.4(a) or Section 3300P.4(b), as
18 applicable, during that calendar year. The allocation shall be calculated as follows:

19 (A) For an Employee who works a full-time, regular, or fixed schedule, the
20 allocation shall be equal to the number of hours over a two-week period that the Employee regularly
21 works or takes paid leave, not to exceed 80 hours; provided, however, for the initial partial year
22 beginning on the Operative Date, the allocation shall be equal to the number of hours over a one-week
23 period that the Employee regularly works or takes paid leave, not to exceed 40 hours.

24 (B) For an Employee whose number of weekly work hours varies, the allocation
25 shall be equal to the average number of hours over a two-week period that the Employee worked or

1 took paid leave during the previous 90 days, or since the Employee's start date if the Employee has
2 been employed for fewer than 90 days, not to exceed 80 hours; provided, however, for the initial partial
3 year beginning on the Operative Date, the allocation shall be equal to the average number of hours
4 over a one-week period that the Employee worked or took paid leave during the previous 90 days, or
5 since the Employee's start date if the Employee has been employed for fewer than 90 days, not to
6 exceed 40 hours.

7 (b) For the duration of a Public Health Emergency, Public Health Emergency Leave shall be
8 made available to Employees in addition to any paid leave that the Employer offered or provided to
9 Employees as of the date the Public Health Emergency began.

10 (c) Public Health Emergency Leave shall be available for immediate use for the purposes
11 described in Section 3300P.4(a) or Section 3300P.4(b), as applicable, regardless of how long the
12 Employee has been employed by the Employer, the Employee's status (as full-time, part-time,
13 permanent, temporary, seasonal, salaried, paid by commission, or any other status), or any other
14 consideration pertaining to the Employee.

15 (d) An Employee may use Public Health Emergency Leave for the purposes described in Section
16 3300P.4(a) or Section 3300P.4(b), as applicable, before using other accrued paid leave. An Employee
17 may voluntarily choose, but an Employer may not require, induce, or encourage the Employee, to use
18 other accrued paid leave provided by the Employer to the Employee before the Employee uses Public
19 Health Emergency Leave.

20 (e) This Article 33P provides minimum requirements pertaining to Public Health Emergency
21 Leave and shall not be construed to prevent an Employer from providing or advancing additional paid
22 leave to an Employee, and shall not be construed to limit the amount of paid leave that may be
23 provided to an Employee. This Article shall not be construed to preempt, limit, or otherwise affect the
24 applicability of any other law, regulation, requirement, policy, or standard that provides for greater or
25 different types of paid or unpaid leave, or that extends other protections to employees.

1 (f) An Employer is not required to carry over an Employee's unused Public Health Emergency
2 Leave from year to year.

3 (g) Compensation rates under this Article 33P shall be:

4 (1) For an Employee who is not exempt from the overtime provisions of the FLSA, an
5 Employer may calculate pay for Public Health Emergency Leave using either of the following methods:

6 (A) In the same manner as the regular rate of pay for the workweek in which the
7 Employee uses Public Health Emergency Leave, whether or not the Employee works overtime in that
8 workweek; or

9 (B) By dividing the Employee's total wages, not including overtime premium pay,
10 by the Employee's total hours worked in the full pay periods of the 90 days of employment prior to the
11 Employee's use of Public Health Emergency Leave.

12 (2) For an Employee who is exempt from the overtime provisions of FLSA and
13 California labor law, pay for Public Health Emergency Leave shall be calculated in the same manner
14 as the Employer calculates wages for other forms of paid leave.

15 (3) In no circumstance may Public Health Emergency Leave be provided at less than the
16 minimum wage rate required by the Minimum Wage Ordinance, Administrative Code Chapter 12R.

17
18 **SEC. 3300P.4. PUBLIC HEALTH EMERGENCY LEAVE USE.**

19 (a) Except as provided in subsections (b) and (c) below, an Employee may use Public Health
20 Emergency Leave during a Public Health Emergency if the Employee is unable to work due to any of
21 the following:

22 (1) The recommendations or requirements of an individual or general federal, state, or
23 local health order (including an order issued by the local jurisdiction in which an Employee resides)
24 related to the Public Health Emergency. With respect to an Employee who is a member of a Vulnerable
25 Population, this includes any applicable recommendations for Vulnerable Populations.

1 (2) The Employee has been advised by a Healthcare Provider to isolate or quarantine.

2 (3) The Employee is experiencing symptoms of and seeking a medical diagnosis, or has
3 received a positive medical diagnosis, for a possible infectious, contagious, or communicable disease
4 associated with the Public Health Emergency.

5 (4) The Employee is caring for a Family Member who is subject to an order as
6 described in subsection (a)(1), has been advised as described in subsection (a)(2), or is experiencing
7 symptoms as described in subsection (a)(3).

8 (5) The Employee is caring for a Family Member if the school or place of care of the
9 Family Member has been closed, or the care provider of such Family Member is unavailable, due to
10 the Public Health Emergency.

11 (6) An Air Quality Emergency.

12 (b) An Employer of an Employee who is a Healthcare Provider or an Emergency Responder
13 may elect to limit such an Employee's use of Public Health Emergency Leave, but at a minimum such
14 an Employee may use Public Health Emergency Leave during a Public Health Emergency to the extent
15 that the Employee is unable to work due to any of the following:

16 (1) The Employee has been advised by a Healthcare Provider to isolate or quarantine.

17 (2) The Employee is experiencing symptoms of and is seeking a medical diagnosis, or
18 has received a positive medical diagnosis, for a possible infectious, contagious, or communicable
19 disease associated with the Public Health Emergency and does not meet federal, state, or local
20 guidance to return to work.

21 (3) An Air Quality Emergency, if the Employee has been advised by a Healthcare
22 Provider not to work during an Air Quality Emergency.

23 (c) With respect to subsections (a)(1), (2), and (6) and subsections (b)(1) and (3) above, if an
24 Employee is able to telework without increasing the Employee's exposure to disease or unhealthy air
25 quality, the Employee may not use Public Health Emergency Leave.

1 (d) An Employer may not require, as a condition of an Employee's taking Public Health
2 Emergency Leave, that the Employee search for or find a replacement worker to cover the hours during
3 which the Employee is on Public Health Emergency Leave.

4 (e) An Employer may not require, as a condition of an Employee's taking Public Health
5 Emergency Leave, that the Employee take Public Health Emergency Leave in increments of more than
6 one hour.

7 (f) An Employer may require the Employee to follow reasonable notice procedures in order to
8 use Public Health Emergency Leave, but only when the need for Public Health Emergency Leave is
9 foreseeable.

10 (g) An Employer may not require the disclosure of health information for use of Public Health
11 Emergency Leave, except as needed to confirm an Employee's status as a member of a Vulnerable
12 Population, if that Employee uses Public Health Emergency Leave for a use inapplicable to an
13 Employee who is not a member of a Vulnerable Population.

14 (h) An Employer shall provide payment for Public Health Emergency Leave taken by an
15 Employee no later than the payday for the next regular payroll period after the Public Health
16 Emergency Leave is taken.

17
18 **SEC. 3300P.5. NOTICE OF EMPLOYEE RIGHTS.**

19 (a) The Agency shall, no later than 30 days after the effective date of this Article 33P, publish
20 and make available to Employers, in English, Spanish, Chinese, Filipino, and any other language
21 spoken by more than 5% of the San Francisco workforce, a notice suitable for posting by Employers in
22 the workplace informing Employees of their rights under this Article 33P. The Agency shall update this
23 notice on December 1 of any year in which there is a change in the languages spoken by more than 5%
24 of the San Francisco workforce. In its discretion, the Agency may combine this notice with the notice
25 required by Section 12W.5(a) of the Administrative Code.

1 (b) Every Employer shall provide the notice prepared by the Agency under subsection (a) above
2 to Employees in all languages the Agency makes available by posting it in a conspicuous place at any
3 workplace or job site where any of its Employees works, and where feasible by providing it to
4 Employees via electronic communication, which may include email, text, and/or posting in a
5 conspicuous place in an Employer’s web-based or app-based platform.

6 (c) On the written notice that an Employer is required to provide under Section 246(i) of the
7 California Labor Code, as may be amended from time to time, an Employer shall set forth the amount
8 of Public Health Emergency Leave that is available to the Employee under this Article 33P. If an
9 Employer provides unlimited paid leave or paid time off to an Employee, the Employer may satisfy this
10 subsection (c) by indicating on the notice or the Employee’s itemized wage statement “unlimited.” This
11 subsection (c) shall apply only to Employers that are required by state law to provide such notice to
12 Employees regarding paid sick leave available under California law.

13
14 **SEC. 3300P.6. EXERCISE OF RIGHTS PROTECTED; RETALIATION PROHIBITED.**

15 (a) It shall be unlawful for an Employer or any other person to interfere with, restrain, or deny
16 the exercise of, or the attempt to exercise, any right protected under this Article 33P.

17 (b) It shall be unlawful for an Employer or any other person to discharge, threaten to
18 discharge, demote, suspend, reduce other Employee benefits, or in any manner discriminate or take
19 adverse action against any person in retaliation for exercising rights protected under this Article 33P.
20 Such rights include but are not limited to the right to use Public Health Emergency Leave pursuant to
21 this Article 33P; the right to file a complaint or inform any person about any Employer’s alleged
22 violation of this Article 33P; the right to cooperate with the Agency in its investigations of alleged
23 violations of this Article 33P; and the right to inform any person of that person’s potential rights under
24 this Article 33P.

1 (c) It shall be unlawful for any Employer absence control policy to count an Employee's use of
2 Public Health Emergency Leave as an absence that, alone or in combination with other absences, may
3 lead to or result in discipline, discharge, demotion, suspension, or any other adverse action.

4 (d) Protections of this Section 3300P.6 shall apply to any person who mistakenly but in good
5 faith alleges violations of this Article 33P.

6 (e) Taking adverse action against a person within 90 days of, the person's filing a complaint
7 with the Agency or a court alleging a violation of any provision of this Article 33P; informing any
8 person about an Employer's alleged violation of this Article; cooperating with the Agency or other
9 persons in the investigation or prosecution of any alleged violation of this Article; opposing any policy,
10 practice, or act that is unlawful under this Article; or informing any person of that person's rights
11 under this Article shall raise a rebuttable presumption that such adverse action was taken in retaliation
12 for the exercise of one or more of the aforementioned rights.

13
14 **SEC. 3300P.7. EMPLOYER RECORDS.**

15 Employers shall retain records documenting hours worked by Employees and Public Health
16 Emergency Leave taken by Employees, for a period of four years, and shall allow the Agency access to
17 such records, with reasonable notice, to monitor compliance with the requirements of this Article 33P.
18 When an issue arises as to an Employee's entitlement to Public Health Emergency Leave under this
19 Article, if the Employer does not maintain or retain accurate and adequate records documenting hours
20 worked by the Employee and Public Health Emergency Leave taken by the Employee, or does not allow
21 the Agency reasonable access to such records, it shall be presumed that the Employer has violated this
22 Article, absent clear and convincing evidence otherwise.

23
24 **SEC. 3300P.8. IMPLEMENTATION AND ENFORCEMENT.**

1 (a) The Agency is authorized to implement and enforce this Article 33P and may promulgate
2 guidelines or rules for such purposes. Any rules promulgated by the Agency shall have the force and
3 effect of law and may be relied on by Employers, Employees, and other persons to determine their
4 rights and responsibilities under this Article.

5 (b) An Employee or any other person, who has reason to believe that a violation of this Article
6 33P has occurred may report the suspected violation to the Agency. The Agency shall encourage such
7 reporting by keeping confidential, to the maximum extent permitted by law, the name and other
8 identifying information of the individual reporting the suspected violation; provided, however, that with
9 the authorization of the reporting individual, the Agency may disclose the name of the reporting
10 individual and identifying information as necessary to enforce this Article or for other lawful purposes.

11 (c) The Agency may investigate possible violations of this Article 33P.

12 (1) Where the Agency has reason to believe that a violation has occurred, it may order
13 any appropriate temporary or interim relief to mitigate the violation or maintain the status quo pending
14 completion of a full investigation.

15 (2) Where, following an investigation that affords due process, including notice of the
16 alleged violation and the right to respond, the Agency determines that a violation has occurred, the
17 Agency may issue a determination of violation and order any appropriate relief.

18 (A) If any Public Health Emergency Leave was unlawfully withheld, the dollar
19 amount of paid leave withheld from the Employee multiplied by three, or \$500, whichever amount is
20 greater, shall be awarded as an administrative penalty paid to the Employee, pursuant to California
21 Constitution Article XIIC, Section 1(e)(5).

22 (B) For violation of Section 3300P.6, the Agency shall award appropriate
23 restitution to each person subjected to the violation, including but not limited to reinstatement and back
24 pay.

1 (C) Pursuant to California Constitution Article XIII C, Section 1(e)(5), the
2 Agency may order administrative penalties of \$500 for each of the following violations: failure to post
3 notice pursuant to Section 3300P.5, violation of Section 3300P.6, refusing to allow access to records
4 pursuant to Section 3300P.7, failure to maintain or retain accurate and adequate records pursuant to
5 Section 3300P.7, and any other violation not specified in this Section 3300P.8(c)(2). These penalties
6 shall be increased cumulatively by 50% for each subsequent violation of the same provision by the
7 same Employer within a three-year period.

8 (D) To compensate the City for the reasonable regulatory costs of investigating
9 and remedying the violation, pursuant to California Constitution Article XIII C, Section 1(e)(3), the
10 Agency may also order the Employer to pay to the City an amount that does not exceed its investigation
11 and administrative enforcement costs.

12 (3) The determination of violation shall provide notice to the Employer of the right to
13 appeal the determination to the City Controller and that failure to do so within 15 days shall result in
14 the determination becoming a final administrative decision, which the City may seek to enforce as a
15 judgment in superior court.

16 (4) The determination of violation shall specify a reasonable time period for payment of
17 any relief ordered. The Agency may award interest on all amounts due and unpaid at the expiration of
18 such time period at the rate of interest specified in subdivision (b) of Section 3289 of the California
19 Civil Code, as may be amended from time to time.

20 (5) The remedies and penalties provided under subsection (c)(2) above are cumulative.

21 (6) The Agency may require that remedies and penalties due and owing to Employees be
22 paid directly to the City for disbursement to the Employees. The Controller shall hold these funds in
23 escrow for the Employees. The Agency shall make best efforts to distribute such funds to Employees. In
24 the event such funds are unclaimed for a period of three years, the Controller may undertake
25 administrative procedures for escheat of unclaimed funds under California Government Code Section

1 50050, et seq., as may be amended from time to time. Such escheated funds shall be dedicated to the
2 enforcement of this Article 33P or other laws the Agency enforces.

3 (d) Appeal Procedure. An appeal from a determination of violation (“Appeal”) may be filed by
4 the Appellant in accordance with the following procedures:

5 (1) The Appellant shall file the Appeal with the City Controller and serve a copy on the
6 Agency. The Appeal shall be filed in writing within 15 days of the date of service of the determination
7 of violation, and shall specify the basis for the Appeal and shall request that the Controller appoint a
8 hearing officer to hear and decide the Appeal. Failure to submit a timely, written Appeal shall
9 constitute concession to the violation, and the determination of violation shall be deemed the final
10 administrative decision upon expiration of the 15-day period. Further, failure to submit a timely,
11 written Appeal shall constitute a failure to exhaust administrative remedies, which shall serve as a
12 complete defense to any petition or claim brought against the City regarding the determination of
13 violation.

14 (2) Following the filing of the Appeal and service of a copy on the Agency, the Agency
15 shall promptly afford Appellant an opportunity to meet and confer in good faith regarding possible
16 resolution of the Determination of Violation.

17 (3) Within 30 days of receiving an Appeal, the Controller shall appoint an impartial
18 hearing officer who is not part of the Agency and immediately notify the Agency and Appellant of the
19 appointment.

20 (4) The hearing officer shall promptly set a date for a hearing. The hearing must
21 commence within 45 days of the date of the Controller’s notice of appointment of the hearing officer,
22 and conclude within 75 days of such notice, provided, however, that the hearing officer may extend
23 these time limits upon a determination of good cause.

24 (5) The hearing officer shall conduct a fair and impartial evidentiary hearing. The
25 Agency shall have the burden of proof in such hearing.

1 (6) Within 30 days of the conclusion of the hearing, the hearing officer shall issue a
2 written decision affirming, modifying, or dismissing the determination of violation. The hearing
3 officer's decision shall be the final administrative decision. The decision shall consist of findings, a
4 determination, any relief ordered, a reasonable time period for payment of any relief ordered, and
5 notice to the Employer of the right to appeal by filing a petition for a writ of mandate in San Francisco
6 Superior Court under California Code of Civil Procedure, Section 1094.5, et seq., as may be amended
7 from time to time, and that failure to file a timely appeal shall result in the final administrative decision
8 becoming enforceable as a judgment by the superior court.

9 (7) Appellant may appeal the final administrative decision only by filing in San
10 Francisco Superior Court a petition for a writ of mandate under California Code of Civil Procedure,
11 Section 1094.5, et seq., as applicable, and as may be amended from time to time.

12 (e) Where an Employer fails to comply with a final administrative decision within the time
13 period required therein, the Agency may take any appropriate enforcement action to secure
14 compliance, including referring the action to the City Attorney to seek to enforce the final
15 administrative decision as a judgment in superior court, and/or except where prohibited by State or
16 Federal law, requesting that City agencies or departments revoke or suspend any registration
17 certificates, permits, or licenses held or requested by the Employer until such time as the violation is
18 remedied.

19
20 **SEC. 3300P.9. CIVIL ENFORCEMENT.**

21 The City Attorney or any person aggrieved by a violation of this Article 33P may bring a civil
22 action in a court of competent jurisdiction against an Employer for violating any requirement of this
23 Article 33P and, upon prevailing, shall be entitled to such legal or equitable relief as may be
24 appropriate to remedy the violation including, without limitation, all forms of relief available under
25 Section 3300P.8(c), plus interest on all amounts due and unpaid at the rate of interest specified in

1 subdivision (b) of Section 3289 of the California Civil Code. The court shall award reasonable
2 attorneys' fees and costs to the prevailing party.

3
4 **SEC. 3300P.10. WAIVER THROUGH COLLECTIVE BARGAINING.**

5 All or any portion of the requirements of this Article 33P shall not apply to Employees covered
6 by a bona fide collective bargaining agreement to the extent that such requirements are expressly
7 waived in the collective bargaining agreement in clear and unambiguous terms.

8
9 **SEC. 3300P.11. PREEMPTION.**

10 Nothing in this Article 33P shall be interpreted or applied so as to create any power, right, or
11 duty in conflict with federal or state law. The term "conflict," as used in this Section 3300P.11 means a
12 conflict that is preemptive under federal or state law.

13
14 **SEC. 3300P.12. CITY UNDERTAKING LIMITED TO PROMOTION OF THE GENERAL**
15 **WELFARE.**

16 In undertaking the adoption and enforcement of this Article 33P, the City is undertaking only to
17 promote the general welfare. The City is not assuming, nor is it imposing on its officers and employees,
18 an obligation for breach of which it is liable in money damages to any person who claims that such
19 breach proximately caused injury. This Article does not create a legally enforceable right by any
20 member of the public against the City.

21
22 **SEC. 3300P.13. SEVERABILITY.**

23 If any section, subsection, sentence, clause, phrase, or word of this Article 33P, or any
24 application thereof to any person or circumstance, is held to be invalid or unconstitutional by a
25 decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining

1 portions or applications of this Article. The voters hereby declare that they would have passed this
2 Article and every section, subsection, sentence, clause, phrase, and word not declared invalid and
3 unconstitutional without regard to whether any other portion of this Article or application thereof
4 would be subsequently declared invalid or unconstitutional.

5
6 **SEC. 3300P.14. AMENDMENT BY THE BOARD OF SUPERVISORS.**

7 (a) The Board of Supervisors may by ordinance amend this Article 33P with respect to matters
8 relating to its implementation and enforcement and matters relating to Employer requirements for
9 verification or documentation of an Employee's use of Public Health Emergency Leave, but not with
10 respect to this Article's substantive requirements or scope of coverage, except as stated in subsection
11 (b); provided, however, that, in the event any provision in this Article is held legally invalid, the Board
12 retains the power to adopt an ordinance concerning the subject matter that was covered in the invalid
13 provision.

14 (b) The Board of Supervisors may by ordinance amend this Article's substantive requirements
15 or scope of coverage for the purpose of adopting greater or additional substantive leave requirements
16 or broader coverage than this Article 33P.

17 (c) Nothing in this Article 33P prevents the Board of Supervisors by ordinance from providing
18 for greater or different types of paid or unpaid leave, or extending other protections to employees or
19 other workers.

20
21
22
23 **Section 2. Effective Date and Operative Date.**

24 (a) The effective date of this ordinance shall be 10 days after the date the official vote
25 count is declared by the Board of Supervisors.

1 (b) As stated in Police Code Section 3300P.2, this ordinance shall become operative
2 30 days after its effective date.

3 APPROVED AS TO FORM:

4 DAVID CHIU, City Attorney

5
6 By: /s/ _____
7 LISA POWELL
8 Deputy City Attorney

9 n:\legana\as2021\2200278\01574096.docx

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25