

BOARD of SUPERVISORS



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

MEMORANDUM

TO: All City Department Heads via Sophia Kittler, Liaison to the Board of Supervisors, Mayor's Office

FROM: Linda Wong, Assistant Clerk
Budget and Finance Committee

DATE: May 7, 2020

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Budget and Finance Committee has received the following proposed legislation, introduced by Mayor London N. Breed on April 21, 2020:

File No. 200396

Emergency ordinance to delegate Board of Supervisors approval authority under Charter, Section 9.118, to City departments to amend certain existing agreements to comply with recommendations and requirements for potential reimbursement of funds from the Federal Emergency Management Agency or the California Governor's Office of Emergency Services for expenditures in response to the public health emergency related to COVID-19.

If you have comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102 or by email at: linda.wong@sfgov.org

1 [Emergency Ordinance - Delegation of Authority to Amend Certain Agreements]

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3 **Emergency ordinance to delegate Board of Supervisors approval authority under**
4 **Charter, Section 9.118, to City departments to amend certain existing agreements to**
5 **comply with recommendations and requirements for potential reimbursement of funds**
6 **from the Federal Emergency Management Agency or the California Governor’s Office**
7 **of Emergency Services for expenditures in response to the public health emergency**
8 **related to COVID-19.**

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

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

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

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21 (a) Section 2.107 of the Charter authorizes passage of an emergency ordinance in
22 cases of public emergency affecting life, health, or property, or for the uninterrupted operation
23 of any City or County department or office required to comply with time limitations established
24 by law. The Board of Supervisors hereby finds and declares that an actual emergency exists
25 that requires the passage of this emergency ordinance.

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28 (b) On February 25, 2020, Mayor London Breed proclaimed a state of emergency in
29 response to the spread of the novel coronavirus COVID-19. On March 3, 2020, the Board of

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1 Supervisors concurred in the February 25 Proclamation and in the actions taken by the Mayor
2 to meet the emergency.

3 (c) To mitigate the spread of COVID-19, on March 16, 2020, the Local Health Officer
4 issued Order No. C19-07, replaced by Order No. C19-07b on March 31, 2020, directing San
5 Franciscans to stay safe in their homes. These Orders generally require individuals to stay in
6 their homes through May 3, and require businesses to cease all non-essential operations at
7 physical locations in the City.

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9 Section 2. Findings and Purpose.

10 (a) Following major disasters and emergencies declared by the President, the Federal
11 Emergency Management Agency (“FEMA”) provides supplemental assistance to states,
12 territories, tribes, and local governmental entities, as well as certain private non-profit
13 organizations. Additionally, the California Governor’s Office of Emergency Services (“OES”)
14 may provide matching fund assistance for cost-sharing required under FEMA’s public
15 assistance programs. Through these assistance programs of FEMA and OES, the City may
16 be eligible to receive reimbursement for certain expenditures made in response to the COVID-
17 19 emergency, including payments made by departments under City contracts.

18 (b) Federal law and regulations require local agencies such as the City to implement
19 certain procurement procedures and use certain contract clauses to qualify for FEMA
20 reimbursement in some circumstances. These requirements are set forth in part at 2 Code of
21 Federal Regulations sections 200.318 et seq. Since the COVID-19 emergency began, City
22 departments have entered into several contracts necessitated by the emergency, and have
23 endeavored to comply with all FEMA requirements and recommendations to maximize
24 potential federal and state reimbursement. City departments may also seek to amend some

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1 existing contracts to modify, remove, or add terms to comply with these requirements and
2 recommendations.

3 (c) Charter Section 9.118 requires the Board of Supervisors by resolution to review
4 and approve certain types of significant contracts and some amendments to those contracts.
5 With some limitations, the Board may delegate authority to departments in certain specific
6 circumstances to enter into contracts or amendments that would otherwise require approval
7 under Section 9.118.

8 (d) This emergency ordinance is necessary to enable departments to amend existing
9 contracts immediately to ensure compliance with FEMA requirements as soon as possible,
10 without the potential delay that could be caused by seeking Board of Supervisors approval for
11 individual amendments. In this respect, the emergency ordinance will ensure the
12 uninterrupted and effective operation of City departments and maximize the City's ability to
13 protect the life, health, and property of residents and workers in San Francisco.

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15 Section 3. Delegation of Authority to Amend Existing Agreements.

16 Notwithstanding the requirements of Charter Section 9.118, City departments may
17 amend existing agreements without seeking approval by the Board of Supervisors for the
18 amendment, provided that all the following conditions are met:

19 (a) The agreement that the department intends to amend has already been approved
20 by the Board of Supervisors under Section 9.118;

21 (b) The department head, or the department head's designee, determines that the City
22 may be eligible for financial reimbursement from the federal or state government for funds
23 expended under the agreement to address the COVID-19 emergency;

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1 (c) The department head, or the department head’s designee, in consultation with the
2 City Attorney, determines that the existing agreement may not fully comply with the
3 requirements and recommendations to obtain federal or state reimbursement;

4 (d) The amendment modifies the agreement solely to add, change, or remove terms to
5 maximize the ability of the City to obtain federal or state reimbursement; and

6 (e) The amendment does not increase the cost to the City under the agreement,
7 change the duration of the contract, or impose any obligations on the City other than those
8 required or recommended to obtain federal or state reimbursement.

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10 Section 4. Transmittal to the Clerk of the Board.

11 The department shall submit a copy of any agreement executed under the delegated
12 authority of Section 3 of this ordinance to the Clerk of the Board of Supervisors within 30 days
13 of execution of the agreement.

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15 Section 5. Effective Date; Expiration.

16 Consistent with Charter Section 2.107, this emergency ordinance shall become
17 effective immediately upon enactment, and shall expire on the 61st day following enactment
18 unless reenacted as provided by Section 2.107. Enactment occurs when the Mayor signs the
19 ordinance, the Mayor returns the ordinance unsigned or does not sign the ordinance within
20 ten days of receiving it, or the Board of Supervisors overrides the Mayor’s veto of the
21 ordinance.

1 Section 6. Supermajority Vote Required.

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

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

7 By: /s/
8 JON GIVNER
9 Deputy City Attorney

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LEGISLATIVE DIGEST

[Emergency Ordinance - Delegation of Authority to Amend Certain Agreements]

Emergency ordinance to delegate Board of Supervisors approval authority under Charter, Section 9.118, to City departments to amend certain existing agreements to comply with recommendations and requirements for potential reimbursement of funds from the Federal Emergency Management Agency or the California Governor’s Office of Emergency Services for expenditures in response to the public health emergency related to COVID-19.

Existing Law

Following major disasters and emergencies declared by the President, the Federal Emergency Management Agency (“FEMA”) provides supplemental assistance to state and local governments. Additionally, the California Governor’s Office of Emergency Services (“OES”) may provide matching fund assistance to local governments in California. Through these assistance programs of FEMA and OES, the City may be eligible to receive reimbursement for certain expenditures made in response to the COVID-19 emergency, including payments made by departments under City contracts.

Federal law and regulations require local agencies such as the City to implement specific procurement procedures and use certain contract clauses to qualify for FEMA reimbursement in some circumstances.

Charter Section 9.118 requires the Board of Supervisors to review and approve certain types of significant contracts and some amendments to those contracts. With some limitations, the Board may delegate authority to departments in certain specific circumstances to enter into contracts or amendments that would otherwise require approval under Section 9.118.

Amendments to Current Law

The proposed emergency ordinance would authorize City departments to amend existing agreements without seeking approval by the Board of Supervisors for the amendment under Section 9.118, as long as the Board has previously approved the contract; the amendments only add, change, or remove terms to maximize the ability of the City to obtain federal or state reimbursement; the amendments don’t increase the cost or duration of the contract; and the amendments meet other conditions in the ordinance.