

BOARD of SUPERVISORS



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MEMORANDUM

TO: Regina Dick-Endrizzi, Director
Small Business Commission, City Hall, Room 448

FROM: *ell*
for Alisa Somera, Legislative Deputy Director
Land Use and Transportation Committee

DATE: March 13, 2017

SUBJECT: REFERRAL FROM BOARD OF SUPERVISORS
Land Use and Transportation Committee

The Board of Supervisors' Land Use and Transportation Committee has received the following legislation, which is being referred to the Small Business Commission for comment and recommendation. The Commission may provide any response it deems appropriate within 12 days from the date of this referral.

File No. 170240

Ordinance amending the Police Code to require employers to provide employees breaks and a location for lactation and to have a policy regarding lactation in the workplace that specifies a process by which an employee will make a request for accommodation, defines minimum standards for lactation accommodation spaces, requires that newly constructed or renovated buildings designated for certain uses include lactation rooms, and outlines lactation accommodation best practices; amending the Building Code to specify the technical specifications of lactation rooms for new or renovated buildings designated for certain use; making findings, including environmental findings and findings regarding the California Health and Safety Code; and directing the Clerk of the Board of Supervisors to forward this Ordinance to the California Building Standards Commission upon final passage.

Please return this cover sheet with the Commission's response to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

RESPONSE FROM SMALL BUSINESS COMMISSION - Date: _____

No Comment

Recommendation Attached

Chairperson, Small Business Commission

c: Menaka Mahajan, Small Business Commission

1 [Police, Building Codes - Lactation in the Workplace]

2
3 **Ordinance amending the Police Code to require employers to provide employees**
4 **breaks and a location for lactation and to have a policy regarding lactation in the**
5 **workplace that specifies a process by which an employee will make a request for**
6 **accommodation, defines minimum standards for lactation accommodation spaces,**
7 **requires that newly constructed or renovated buildings designated for certain uses**
8 **include lactation rooms, and outlines lactation accommodation best practices;**
9 **amending the Building Code to specify the technical specifications of lactation rooms**
10 **for new or renovated buildings designated for certain use; making findings, including**
11 **environmental findings and findings regarding the California Health and Safety Code;**
12 **and directing the Clerk of the Board of Supervisors to forward this Ordinance to the**
13 **California Building Standards Commission upon final passage.**

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

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

22 Section 1. Environmental Finding. The Planning Department has determined that the
23 actions contemplated in this ordinance comply with the California Environmental Quality Act
24 (California Public Resources Code Sections 21000 et seq.). Said determination is on file with
25 the Clerk of the Board of Supervisors in File No. _____ and is incorporated herein by
reference. The Board affirms this determination.

1 Section 2. Finding Regarding California Health and Safety Code. The proposed
2 Building Code modification implements the minimum physical requirements for lactation
3 rooms set forth in Section 1031 of the California Labor Code and 29 U.S.C. Section 207(r).
4 The Board of Supervisors therefore finds that the proposed modification is not a building
5 standard within the meaning of Section 18909 of the California Health and Safety Code and
6 the finding required by Health and Safety Code Section 18941.5 is not applicable.

7
8 Section 3. The Police Code is hereby amended by adding Article 33I, entitled
9 “Lactation in the Workplace,” and consisting of Sections 3300I.1, 3300I.2, 3300I.3, 3300I.4,
10 3300I.5, 3300I.6, 3300I.7, 3300I.8, 3300I.9, and 3300I.10, to read as follows:

11
12 **ARTICLE 33I: LACTATION IN THE WORKPLACE**

13
14 **SEC. 3300I.1. TITLE.**

15 *This Article 33I shall be known as the “Lactation in the Workplace Ordinance.”*

16
17 **SEC. 3300I.2. FINDINGS AND PURPOSE.**

18 *(a) Breastfeeding provides health benefits to babies, as breast milk contains antibodies that*
19 *protect babies from childhood illnesses including ear infections, respiratory infections, dermatitis,*
20 *gastrointestinal disorders, asthma, obesity, diabetes, and a reduced risk of Sudden Infant Death*
21 *Syndrome. The American Academy of Pediatrics recommends that babies be fed exclusively breast*
22 *milk for the first six months of life and that breastfeeding continue at least until the end of the baby’s*
23 *first year. For some parents, breast milk is readily available and affordable.*

1 **(b) Breastfeeding also provides many health benefits for mothers, including earlier return to**
2 **pre-pregnancy weight and reduced risk of maternal postpartum depression, and reduced risk later in**
3 **life of several cancers, type II diabetes, and osteoporosis.**

4 **(c) If a mother does not regularly express milk, the mother's breasts can become full and**
5 **uncomfortable, which may lead to a decrease in milk supply or infection. Most nursing mothers who**
6 **return to work are able to sustain their milk supply and avoid discomfort by simply expressing milk at**
7 **intervals and for lengths of time that suit their bodies.**

8 **(d) According to the Centers for Disease Control and Prevention, approximately 79% of new**
9 **mothers in the United States breastfeed their babies at some point. Despite the benefits to mother and**
10 **child of breastfeeding, only about 42% of babies are exclusively fed breast milk at three months of age.**
11 **At six months of age, only about 19% of babies are exclusively fed with breast milk, and only about**
12 **49% of babies, in total, are fed some amount of breast milk.**

13 **(e) According to the San Francisco Department of Public Health (DPH), the majority of**
14 **women in San Francisco do not exclusively breastfeed their child during the first six months. Of**
15 **women who have a live birth, 97% initiate breastfeeding in the hospital, and 80% of mothers**
16 **exclusively breastfeed in the hospital. Between birth and one month postpartum, 23% of women begin**
17 **supplementing with infant formula, and 23% who had intended to exclusively breastfeed do so.**
18 **Between one and three months postpartum, 10% of mothers stop breastfeeding altogether.**

19 **(f) There are noticeable disparities in breastfeeding rates in San Francisco among**
20 **socioeconomic and ethnic groups. Mothers who use Women, Infants, and Children (WIC) services, a**
21 **federally funded program that provides supplemental foods, health care referrals, and nutrition**
22 **education to low-income women, experience much lower breastfeeding rates. Between birth and one**
23 **month postpartum, 27% of mothers participating in WIC are exclusively breastfeeding. And only 16%**
24 **of mothers participating in WIC are exclusively breastfeeding at six months of age. Caucasian infants**
25 **whose mothers utilize WIC services are 3.5 times more likely than Asian infants, and 2 times more**

1 likely than African American infants, to be exclusively breastfed at one month of age. Hospitals that
2 serve the largest number of low-income women have the lowest rates of breastfeeding initiation.

3 (g) In the United States, more than one-third of mothers with children under the age of two
4 work full-time outside the home. Employment of mothers outside the home, especially full-time
5 employment, has a negative influence on the period of time mothers breastfeed. Only 25% of employed
6 women who are breastfeeding a child under age one continue to breastfeed the child for at least one
7 month after returning to work. In 2000, only 11% of mothers with a one-year-old child and who
8 worked full-time were still breastfeeding the child, in comparison to 19% of mothers who worked part-
9 time while having a one-year-old child, and 22% of such mothers who were not in the labor force.

10 (h) There are several barriers to breastfeeding associated with employment. Women may not
11 be aware of their rights to lactation accommodation in the workplace. Many women have fear of
12 discussing breastfeeding with employers, which for San Francisco WIC participants, is one factor
13 associated with early supplementation of formula for breastmilk. In San Francisco, 50% of women
14 who have given birth report back to work within 12 months postpartum, with only 13% reporting leave
15 from their job and only 13% working less than 40 hours per week.

16 (i) Under the Healthy People 2020 initiative, the U.S. Department of Health and Human
17 Services' Office of Disease Prevention and Health Promotion developed a set of national objectives,
18 which include a goal to increase the proportion of mothers who breastfeed their babies in the early
19 postpartum period to 81.9% by 2020.

20 (j) An employer with a breastfeeding-friendly environment may have an advantage when
21 recruiting and retaining employees. Breastfeeding may decrease employee absenteeism due to illness
22 of a child, to the extent breastfeeding reduces childhood illnesses. The fewer the childhood illnesses,
23 the fewer sick days mothers and fathers have to take in order to care for sick children.

24 (k) Federal law requires certain employers to provide nursing mothers with reasonable break
25 time to express milk for one year after the child's birth and a private space other than a bathroom, that

1 is shielded from view and free from intrusion, to express breast milk. (29 U.S.C. § 207(r).) Similarly,
2 California law requires all employers to provide a reasonable amount of break time and to make a
3 reasonable effort to provide a private space, other than a toilet stall, close to the employee's work area,
4 to accommodate an employee desiring to express breast milk at work. (Cal. Labor Code § 1030.)
5 Twenty-seven states, the District of Columbia, and Puerto Rico have laws that are supportive of
6 breastfeeding in the workplace. Women employees who have adequate break time and private space to
7 pump milk are more likely to exclusively breastfeed. At six months, employed women who receive
8 breastfeeding accommodations are 2.3 times as likely to exclusively breastfeed and 1.5 times as likely
9 to exclusively breastfeed with each passing month in comparison to women who do not have adequate
10 accommodations.

11 (l) A work environment that is supportive of a mother's efforts to breastfeed her child will likely
12 increase the period of the child's life during which breastfeeding will occur. By creating requirements
13 on employers to facilitate lactation for mothers returning to work, the City will enhance employed
14 mothers' ability to continue breastfeeding through their child's first year and beyond.

15 (m) In recognition of the well-documented health advantages for mother and child of
16 breastfeeding, the purpose of this Article 33I is to provide a supportive work environment to enable
17 employees in the City who are nursing mothers to breastfeed or express milk during working hours.
18 Providing a supportive work environment to these employees will greatly benefit the health and welfare
19 of employees and their families, while reducing burdens on the health care system associated with
20 medical problems in children and mothers caused in part by an absence of or reduction in
21 breastfeeding.

22
23 **SEC. 3300I.3. DEFINITIONS.**

24 For purposes of this Article 33I, the following definitions shall apply:
25

1 “Agency” shall mean the Office of Labor Standards Enforcement or any successor department
2 or office.

3 “Employee” shall mean any person who is employed within the geographic boundaries of the
4 City by an Employer, including part-time Employees.

5 “Employer” shall mean any person as defined in Section 18 of the California Labor Code who
6 employs an Employee working in the City. Notwithstanding the previous sentence, Employer shall not
7 include the City or any governmental entity.

8 “Lactation Accommodation” shall mean Lactation Breaks and Lactation Location.

9 “Lactation Break” shall mean the break time an Employer is required to provide an Employee
10 for purposes of expressing breast milk.

11 “Lactation Location” shall mean the space, room, or location an Employer must provide an
12 Employee for purposes of expressing breast milk.

13 “Lactation Room” shall mean a room designated for use by mothers for purposes of expressing
14 milk.

15
16 **SEC. 3300I.4. LACTATION ACCOMMODATION.**

17 (a) Lactation Break. An Employer shall provide a reasonable amount of break time to
18 accommodate an Employee desiring to express breast milk for the Employee’s child. The break time
19 shall, if possible, run concurrently with any break time already provided to the Employee. Break time
20 for an Employee that does not run concurrently with the rest time authorized for the Employee by the
21 applicable wage order of the Industrial Welfare Commission shall be unpaid.

22 (b) Lactation Location.

23 (1) An Employer shall provide a Lactation Location, other than a bathroom, in close
24 proximity to the Employee’s work area that is shielded from view and free from intrusion from co-
25 workers and the public. The room or other location may include the place where the Employee

1 normally works if it otherwise meets the requirements of this Section 3300I.4. The Lactation Location
2 shall also:

3 (A) Be safe, clean, and free of toxic or hazardous materials;

4 (B) Contain a surface (e.g., a table or shelf) to place a breast pump and other
5 personal items;

6 (C) Contain a place to sit; and

7 (D) Have access to electricity.

8 (2) The Employer shall provide, in close proximity to the Employee's work area, access
9 to a refrigerator where the Employee can store breast milk and access to a sink with running water.

10 (3) Multi-Purpose Lactation Location. The Employer may satisfy the requirements of
11 this Section 3300I.4 by designating a room as a Lactation Location that is also used for other purposes,
12 provided, however, that if the Employer uses this method to provide the accommodation, the primary
13 function of the room shall be a designated Lactation Location during the duration of an Employee's
14 need to express milk. During the period when the room is being used as a Lactation Location and also
15 for other purposes, the Employer shall provide notice to other Employees that the primary use of the
16 room is a Lactation Location, which takes precedence over other uses.

17 (4) Multi-Tenant Buildings. Where more than one Employer is located in the same
18 building, and the Employer cannot satisfy the requirements of this Section 3300I.4 by providing a
19 Lactation Location within the Employer's workspace, the Employer may fulfill the obligations under
20 this Section 3300I.4 by providing a Lactation Location meeting the requirements of subsection (b) that
21 is shared among multiple Employers, provided that the Lactation Location is sufficient to accommodate
22 the number of Employees who desire to use it at any given time.

23 (c) Exemption. An Employer may establish an exemption from any requirement of this Section
24 3300I.4 if the Employer can show that such requirement would impose an undue hardship by causing
25

1 the Employer significant expense or operational difficulty when considered in relation to the size,
2 financial resources, nature, or structure of the Employer's business.

3
4 **SEC. 3300I.5. REQUIRED POLICY AND PROCESS FOR REQUESTING LACTATION**
5 **ACCOMMODATION.**

6 (a) Lactation Accommodation Policy. Each Employer shall develop and implement a policy
7 regarding Lactation Accommodation. The policy shall:

8 (1) Include a statement that Employees have a right to request Lactation
9 Accommodation.

10 (2) Identify a process by which an Employee may request Lactation Accommodation.

11 The process shall:

12 (A) specify the means by which an Employee may submit a request for Lactation
13 Accommodation;

14 (B) require the Employer to respond to a request for Lactation Accommodation
15 within five business days; and

16 (C) require the Employer and Employee to engage in an interactive process to
17 determine the appropriate Lactation Break period(s) and the Lactation Location for the Employee.

18 (3) State that if in response to a request for Lactation Accommodation, the Employer
19 does not provide Lactation Breaks or a Lactation Location, or provides a Lactation Location that does
20 not comply with Section 3300I.4(b), on the basis of the exception available under Section 3300I.4(c),
21 the Employer must provide the Employee a written response that identifies the basis upon which the
22 Employer has denied the request. Copies of the responses required by this subsection (a)(3) shall be
23 retained in accordance with Section 3300I.6.

24 (b) The Employer's Lactation Accommodation policy shall be distributed to all Employees upon
25 hiring. The Employer shall also offer a copy of the policy to any Employee who inquires about or

1 requests parental leave. If the Employer has an employee handbook or set of policies that the
2 Employer makes available to Employees, the Lactation Accommodation policy shall be included
3 therein.

4
5 **SEC. 3300I.6. EMPLOYER RECORDS.**

6 An Employer shall maintain a written record of the initial written request or any update to the
7 initial request for Lactation Accommodation made pursuant to the policy required by Section
8 3300I.5(a)(2). The record shall include the name of the Employee, the date of the request, and a
9 description of how the Employer resolved the request. Employers shall retain documentation required
10 under this Article 3300I for a period of three years from the date of the request for Lactation
11 Accommodation, and shall allow the Agency access to such records, with appropriate notice and at a
12 mutually agreeable time, to monitor compliance with the requirements of this Article 3300I. When an
13 issue arises as to an alleged violation of this Article 3300I, if the Employer has failed to maintain or
14 retain documentation required under this Article 3300I, or does not allow the Agency reasonable
15 access to such records, it shall be presumed that the Employer has violated this Article 3300I, absent
16 clear and convincing evidence otherwise.

17
18 **SEC. 3300I.7. IMPLEMENTATION AND ENFORCEMENT.**

19 **(a) Administrative Enforcement.**

20 (1) The Agency is authorized to take appropriate steps to enforce this Article 33I and
21 coordinate enforcement of this Article. The Agency may investigate possible violations of this Article.
22 Where the Agency has reason to believe that a violation has occurred, it may order any appropriate
23 temporary or interim relief to mitigate the violation or maintain the status quo pending completion of a
24 full investigation or hearing.

1 (2) The Agency shall not enforce and shall not impose penalties for any violation of
2 Sections 1030-1032 of the Labor Code or violations of federal law.

3 (3) Where the Agency determines that a violation of this Article has occurred, it may
4 issue a determination and order any appropriate relief, provided, however, that during the first 12
5 months following the operative date of this Article, the Agency must issue warnings and notices to
6 correct. After the initial 12 month period following the operative date of this Article, the Agency may
7 impose an administrative penalty up to \$500 for each violation of this Article.

8 (4) Where prompt compliance is not forthcoming, the Agency may take any appropriate
9 enforcement action to secure compliance. In order to compensate the City for the costs of investigating
10 and remedying the violation, the Agency may also order the violating Employer or person to pay to the
11 City a sum of not more than \$50 for each day or portion thereof and for each Employee or person as to
12 whom the violation occurred or continued. Such funds shall be allocated to the Agency and used to
13 offset the costs of implementing and enforcing this Article.

14 (5) An Employee or other person acting on behalf of an Employee may report to the
15 Agency any suspected violation of this Article. The Agency shall encourage reporting pursuant to this
16 subsection (a)(5) by keeping confidential, to the maximum extent permitted by applicable laws, the
17 name and other identifying information of the Employee or person reporting the violation; provided
18 however, that with the authorization of such person, the Agency may disclose his or her name and
19 identifying information as necessary to enforce this Article or for other appropriate purposes. The
20 filing of a report of a suspected violation by an Employee does not create any right of appeal to the
21 Agency by the Employee; based on its sole discretion, the Agency may decide whether to investigate or
22 pursue a violation of this Article.

23 (6) Rulemaking. The Director of the Agency may issue rules, regulations, or guidance
24 consistent with this Article to further the purpose of the Article. The Director of the Agency may also
25

1 establish rules and policies governing the administrative process for determining and appealing
2 violations of this Article. The rules shall include but not necessarily be limited to procedures for:

3 (A) providing the Employer with notice that it may have violated this Article;

4 (B) providing the Employer with a right to respond to the notice;

5 (C) providing the Employer with notice of the Agency's determination of a
6 violation; and

7 (D) providing the Employer with an opportunity to appeal the Agency's
8 determination to a hearing officer, not employed by the Agency, who is appointed by the City
9 Controller or his or her designee.

10 (7) If there is no appeal of the Agency's determination of a violation, that determination
11 shall constitute the City's final decision. An Employer's failure to appeal the Agency's determination of
12 a violation shall constitute a failure to exhaust administrative remedies, which shall serve as a
13 complete defense to any petition or claim brought by the Employer against the City regarding the
14 Agency's determination of a violation.

15 (8) If there is an appeal of the Agency's determination of a violation, the hearing before
16 the hearing officer shall be conducted in a manner that satisfies the requirements of due process. In any
17 such hearing, the Agency's determination of a violation shall be considered prima facie evidence of a
18 violation, and the Employer shall have the burden of proving, by a preponderance of the evidence, that
19 the Agency's determination of a violation is incorrect. The hearing officer's decision of the appeal shall
20 constitute the City's final decision. The sole means of review of the City's final decision, rendered by
21 the hearing officer, shall be by filing in the San Francisco Superior Court a petition for writ of mandate
22 under Section 1094.5 of the California Code of Civil Procedure. The Agency shall notify the Employer
23 of this right of review after issuance of the City's final decision by the hearing officer.

1 **(b) Interest.** *In any administrative action brought under this Article, the Agency or court, as the*
2 *case may be, shall award interest on all amounts due and unpaid at the rate of interest specified in*
3 *subdivision (b) of Section 3289 of the California Civil Code.*

4 **(c) Remedies Cumulative.** *The remedies, penalties, and procedures provided under this Article*
5 *are cumulative.*

6
7 **SEC. 3300I.8. LACTATION ROOMS IN NEW CONSTRUCTION AND REMODELED**
8 **BUILDINGS.**

9 **(a) New Construction of Buildings Designated for Certain Uses.** *New buildings designated for*
10 *Group A, B, E, F, I, or M use as defined by Section 304 of the Building Code that will have at least*
11 *10,000 gross square feet of interior space designated for Employee only use (i.e., space not designated*
12 *for use by members of the public), shall include a Lactation Room(s), as defined by Section 1210.5 of*
13 *the Building Code, as follows:*

<u>Employee Occupancy Load of Building</u>	<u>Number of Lactation Rooms</u>
<u>50-90</u>	<u>1</u>
<u>91-180</u>	<u>2</u>
<u>181-300</u>	<u>3</u>
<u>301-600</u>	<u>4</u>
<u>601-1200</u>	<u>8</u>
<u>1201-2400</u>	<u>11</u>
<u>For each additional 900 Employees</u> <u>in excess of 2400</u>	<u>1</u>

1 **(b) Renovated Buildings Designated for Certain Uses.** Lactation Room(s) shall be added to
2 existing buildings designated for Group A, B, E, F, I, or M use as defined by Section 304 of the
3 Building Code as follows:

4 **(1) when there is a project to renovate the interior of the building.**

5 **(2) the gross square footage of the interior space designated for Employee only use (i.e.**
6 **space not designated for public use) and included in the renovation project is at least 10,000 square**
7 **feet, and**

8 **(3) the estimated cost of the renovation project is over \$500,000.**

9 If these three requirements are met, the project shall include a Lactation Room(s), as follows:

<u>Employee Occupancy Load of Area of</u> <u>Building Subject to Renovation Project</u>	<u>Number of Lactation Rooms</u>
<u>50-90</u>	<u>1</u>
<u>91-180</u>	<u>2</u>
<u>181-300</u>	<u>3</u>
<u>301-600</u>	<u>4</u>
<u>601-1200</u>	<u>8</u>
<u>1201-2400</u>	<u>11</u>
<u>For each additional 900 Employees in</u> <u>excess of 2400</u>	<u>1</u>

21 **The dimensions and other specifications for such rooms are contained in Section 1210.5 of the**
22 **Building Code. The requirement for a Lactation Room to have a sink, as specified by Section 1210.5 of**
23 **the Building Code shall not apply where the renovation project does not involve plumbing work.**

24 **The requirement of this subsection (b) shall not apply to a project where the space subject to the**
25 **renovation project already complies with subsection (a) of this Section 3300I.8.**

1 (c) Lactation Stations. Where multiple Lactation Rooms are required for a project under
2 subsections (a) or (b) of this Section 3300I.8, the project sponsor may fulfill the requirement by
3 merging the required rooms and the square footage specified under Section 1210.5 of the Building
4 Code and providing one room with multiple lactation stations or multiple rooms with multiple lactation
5 stations. The total square footage provided must meet the minimum for the number of rooms required
6 by subsections (a) or (b) of this Section. The room(s) must otherwise satisfy the requirements of this
7 Section and Section 1210.5 of the Building Code, except that only one sink and one refrigerator are
8 required in a room with multiple lactation stations. Each lactation station must meet the requirements
9 of Section 3300I.4(b)(1)(A)-(D) of this Section.

10 (d) Department of Building Inspection Responsibilities. In evaluating permit applications, the
11 Department of Building Inspection shall ensure that plans for any project meeting the requirements of
12 subsections (a) and (b) of this Section 3300I.8 contain the required Lactation Room(s).

13 (e) Other Requirements of Lactation Rooms. Any Lactation Room required by subsections (a)
14 or (b) of this Section 3300I.8 shall be designated for purposes of lactation and shall not be converted
15 for any other use. Each room shall have a sign outside the door indicating that it is a Lactation Room.
16 The room may be temporarily used for purposes other than lactation only when the room is not being
17 used by any Employee to accommodate the Employee's request for Lactation Accommodation. Each
18 room shall have a refrigerator for purposes of storing breastmilk.

19 (f) Enforcement. The Director of the Agency, or his or her designee, shall receive and
20 investigate any complaint that a Lactation Room designated on the plans approved by the Department
21 of Building Inspection pursuant to subsections (a) or (b) of this Section 3300I.8 has been converted to a
22 use other than a Lactation Room, or does not have a sign or refrigerator, as required by subsection (e)
23 of this Section. Such complaints shall be handled pursuant to Section 3300I.7 of this Article 33I. The
24 Director of the Agency shall have no enforcement authority regarding the requirements of this Section
25 3300I.8, where the permit and plans approved by the Department of Building Inspection do not include

1 a Lactation Room or where the plans do include a Lactation Room but the room was not constructed.
2 If the Director receives a complaint regarding such a building, the Director of the Agency shall refer
3 the complaint to the Department of Building Inspection.

4
5 **SEC. 3300I.9. CREATION OF EMPLOYER BEST PRACTICES, MODEL POLICY, AND**
6 **MODEL REQUEST FORM.**

7 (a) The Director of Public Health, or his or her designee, shall create and distribute through
8 the Department of Public Health website and through other means, as appropriate, guidance for
9 Employers regarding best practices for Lactation Accommodation. The guidance shall include the
10 following recommendations:

11 (1) Permanent Lactation Location. The ideal situation is for an Employer to designate
12 a permanent room within the workplace solely for purposes of lactation or nursing at all times. It
13 should be a private room with: (A) a door that can be locked from the inside, (B) at least one electrical
14 outlet, (C) a washable, comfortable chair, (D) a surface on which to place a pump or personal
15 belongings such as a table or shelf, (E) adequate lighting, (F) the ability to add a partition to the room
16 to accommodate multiple Employees simultaneously, (G) a refrigerator for storage of breast milk, (H)
17 a sink with running water, (I) a hospital-grade electric breast pump or pumps, (J) a full length mirror,
18 (K) a microwave, (L) lockers or a place to store belongings, and (M) the hygiene standards of the room
19 shall be on par with a location suitable for the preparation or storage of food . There should be a
20 permanent sign outside the room or on the door indicating that it is a Lactation Room.

21 (2) Temporary Lactation Spaces. If, due to space, operational, or financial limitations,
22 the Employer cannot provide a room as a dedicated Lactation Location or a room that is a multi-
23 purpose Lactation Location, the Employer should designate a space within a room as a temporary
24 Lactation Location. A temporary Lactation Location could, for example, be created using screening or
25 curtains. The means by which the temporary Lactation Location is created (e.g., the curtain), and the

1 items contained therein (i.e., the chair, table, etc.) should not be modified during the duration of the
2 Employee's need to express milk. While an Employee expresses milk, the Lactation Location should be
3 free from intrusion by other persons by means of a latch or other closure mechanism. The temporary
4 lactation space should have signage visible to other Employees designating the area as a Lactation
5 Location for the duration of the Employee's need to express milk. The Employer should provide notice
6 to Employees of the existence and purpose of the temporary Lactation Location and that it should not
7 be disturbed.

8 (3) Employers should consider flexible break times, given that an Employee's need to
9 express milk may change over time.

10 (b) The Agency, in consultation with the Director of Public Health, or his or her designee, shall
11 create a model Lactation Accommodation policy that conforms to the requirements of Section 3300I.5,
12 and a model Lactation Accommodation request form. The Agency shall make these materials available
13 on its website.

14
15 **SEC. 3300I.10. NO CONFLICT WITH FEDERAL OR STATE LAW.**

16 Nothing in this Article 3300I shall be interpreted or applied so as to create any requirement,
17 power, or duty in conflict with any federal or state law.

18
19 Section 4. The Building Code is amended by modifying Sections 106A and 1210:

20
21 **SECTION 106A – PERMITS**

22 * * * *

23 **106A.3.3 Information on plans and specifications.** Plans and specifications shall be
24 drawn to scale on substantial paper of a size not less than 11-inch by 17-inch (279.4 mm ×
25 431.8 mm) and shall be of sufficient clarity to indicate the location, nature and extent of the

1 work proposed and show in detail that it will conform to the provisions of this code and all
2 relevant laws, ordinances, rules and regulations. Specific plans and information required shall
3 include any of the following that is appropriate for the work being proposed:

4 * * * *

5 23. For a building that is an unsafe structure as defined in Section 102A, sufficient
6 information to show how all unsafe conditions will be corrected.

7 24. Information on plans demonstrating compliance with the lactation room requirements of
8 Section 3300I.8 of the Police Code and Section 1210.5 of the Building Code.

9 25. All other information necessary for determining compliance with applicable
10 codes and regulations.

11 * * * *

12 **SEC. 1210. TOILET, ~~AND~~ BATHROOM, AND LACTATION ROOM REQUIREMENTS**

13 1210. Amend the title and add the following section:

14 **SEC. 1210.5. LACTATION ROOMS.**

15 A Lactation Room required under Section 3300I.8 of the Police Code shall meet the following
16 requirements. The room shall be at least 50 square feet. It shall include at least one electrical outlet, a
17 sink with running water, and a door that can be locked from the inside. The room shall be located no
18 more than 500 feet from the farthest employee workspace that it is designated to serve. The room shall
19 meet all applicable local, state, and federal accessibility requirements, including requirements under
20 the Americans with Disabilities Act and Chapter 11B of the California Building Code.

21
22 Section 5. Effective Date and Operative Date.

23 (a) This ordinance shall become effective 30 days after enactment. Enactment occurs
24 when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not
25

1 sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the
2 Mayor's veto of the ordinance.

3 (b) This ordinance shall become operative 90 days after enactment.
4

5 Section 6. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
6 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
7 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
8 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
9 additions, and Board amendment deletions in accordance with the "Note" that appears under
10 the official title of the ordinance.
11


12 Section 7. Undertaking for the General Welfare. In enacting and implementing this
13 ordinance, the City is assuming an undertaking only to promote the general welfare. It is not
14 assuming, nor is it imposing on its officers and employees, an obligation for breach of which it
15 is liable in money damages to any person who claims that such breach proximately caused
16 injury.
17

18 Section 8. Severability. If any section, subsection, sentence, clause, phrase, or word of
19 this ordinance, or any application thereof to any person or circumstance, is held to be invalid
20 or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not
21 affect the validity of the remaining portions or applications of this ordinance. The Board of
22 Supervisors hereby declares that it would have passed this ordinance and each and every
23 section, subsection, sentence, clause, phrase, and word not declared invalid or
24 unconstitutional without regard to whether any other portion of this ordinance or application
25 thereof would be subsequently declared invalid or unconstitutional.

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Section 9. Directions to Clerk. The Clerk of the Board of Supervisors is hereby directed to forward a copy of this ordinance to the California Building Standards Commission upon final passage.

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

By: 
BRADLEY A. RUSSI
Deputy City Attorney

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LEGISLATIVE DIGEST

[Police, Building Codes - Lactation in the Workplace]

Ordinance amending the Police Code to require employers to provide employees breaks and a location for lactation and to have a policy regarding lactation in the workplace that specifies a process by which an employee will make a request for accommodation, defines minimum standards for lactation accommodation spaces, requires that newly constructed or renovated buildings designated for certain uses include lactation rooms, and outlines lactation accommodation best practices; amending the Building Code to specify the technical specifications of lactation rooms for new or renovated buildings designated for certain use; making findings, including environmental findings and findings regarding the California Health and Safety Code; and directing the Clerk of the Board of Supervisors to forward this Ordinance to the California Building Standards Commission upon final passage.

Existing Law

The California Labor Code and the federal Fair Labor Standards Act require employers to provide breaks and a location to employees who desire to express milk in the workplace. The City does not currently impose lactation accommodation requirements on private employers.

Amendments to Current Law

The proposed ordinance amends the Police Code to impose a local requirement that an employer provide breaks and a location for an employee who desires to express milk in the workplace for the employee's child. Breaks may run concurrently with the employee's normal paid breaks, and any additional break time would be unpaid.

The employer must provide a location for lactation that is not a bathroom, that is free of intrusion, and that is safe, clean and free of toxic or hazardous materials, contains a surface, such as a table or counter, a chair, and has access to electricity. The employer may meet the obligation to provide the lactation location by designating a room or space to provide the accommodation that is also used for other purposes, provided that the employee's lactation breaks take precedence over other uses during the accommodation period. An employer in a multi-tenant building that cannot accommodate the employee within the employer's workspace may meet the lactation location requirement by designating a room or space that is shared with other tenants in the building. Employers who can show that providing the lactation break or location accommodations would impose an undue hardship may be entitled to an exemption from these requirements.

The proposed ordinance also requires employers to have a lactation accommodation policy. The policy must provide a process for an employee to request lactation accommodation,

which specifies the means to request the accommodation, that the employer respond to the request within five business days, and that the employer and employee engage in an interactive process to determine how the employee can be accommodated. The employer must retain documents regarding each lactation accommodation request.

The proposed ordinance requires that new construction and renovations of buildings in certain use categories include the addition of lactation rooms. The ordinance specifies when the addition of lactation rooms is triggered based on the size and employee occupancy of the building or space being renovated. The proposed ordinance amends the Building Code to identify the specifications of the rooms, including square footage. A room must be at least 50 square feet, and have a sink, refrigerator, and a door that can be locked from the inside. Where the size and occupancy of a project require multiple rooms, the project sponsor may combine the required square footage and provide a larger room or rooms that contain multiple lactation stations with one sink and refrigerator for the room, provided the room otherwise meets the requirements of the ordinance.

The Office of Labor Standards Enforcement ("OLSE") enforces the lactation accommodation requirements of the ordinance through administrative penalties. Where the code requires installation of lactation rooms in connection with a new or renovated building, the Department of Building Inspection is responsible for ensuring that the rooms are contained on the building plans and are built to code specifications. Where such rooms are later improperly converted for other uses or do not contain a refrigerator or appropriate signage, OLSE may investigate and impose penalties.

Finally, the proposed ordinance tasks the Department of Public Health with creating and disseminating best practices for lactation accommodation in the workplace. Among other things, the best practices must include guidelines for employers to provide temporary lactation spaces that will fulfill the requirements of the ordinance through the use of screening or curtains.

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