File No. 200455 **Committee Item No.** 8
Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

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Prepared by: John Carroll **Date:** June 12, 2020
Prepared by: John Carroll **Date:** _____

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

Emergency Ordinance temporarily creating a right to reemployment for certain employees laid off due to the COVID-19 pandemic if their employer seeks to fill the same position previously held by a laid-off worker, or a substantially similar position, as defined.

NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
Additions to Codes are in *single-underline italics Times New Roman font*.
Deletions to Codes are in ~~*strikethrough italics Times New Roman font*~~.
Board amendment additions are in double-underlined Arial font.
Board amendment deletions are in ~~strikethrough Arial 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. Name of Ordinance.

This emergency ordinance shall be known as the “Back to Work” emergency ordinance.

Section 2. Declaration of Emergency Pursuant to Charter Section 2.107.

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

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

Supervisors concurred with the February 25 Proclamation and the actions taken by the Mayor to meet the emergency.

(c) On March 16, 2020, to mitigate the spread of COVID-19, the Local Health Officer issued Order No. C19-07, subsequently replaced by Order No. C19-07b on March 31, 2020, directing San Franciscans to "shelter in place." These Orders generally require individuals to stay in their homes through May 3, and require businesses to cease all non-essential operations at physical locations in the City. On April 27, 2020, the Public Health Officers for the Counties of Alameda, Contra Costa, Marin, San Francisco, San Mateo, Santa Clara, and the City of Berkeley advised that they will issue a revised shelter-in-place orders that largely keep the current restrictions in place and extend them through May. On May 1, 2020, the Public Health Officers for the same above-referenced counties issued Order No. C19-07c, thereby replacing Order Nos. C19-07 and C19-07b. The most recent Order generally extends the prior Orders' requirements that individuals generally stay in their homes and that businesses cease all non-essential operations at physical locations in the City, with some limited additional exceptions, including that: certain outdoor businesses may resume operations if they can do so safely; individuals may engaged in additional forms of recreation; and construction may resume, provided it can be done safely. The most recent Order is effective until May 31, 2020.

(d) Due to the public health emergency related to COVID-19 and the actions required to respond to the emergency, a growing number of employees across the City are unable to work (including telework) due to illness, exposure to others with the coronavirus, business closures or reductions in force, and family caregiving obligations related to the closure of schools and care facilities including an inability to secure alternate caregiving assistance. These conditions pose a severe and imminent threat to the health, safety, and economic well-being of San Franciscans and those who work in San Francisco.

(e) This emergency ordinance is necessary to mitigate the severe economic harm for individuals unable to work due to the public health emergency.

Section 3. Findings and Purpose.

(a) On March 4, 2020, the Governor for the State of California issued a proclamation, declaring a State of Emergency to exist in California as a result of the threat posed by COVID-19. On March 6, 2020, the Health Officer for the San Francisco Department of Public Health issued a similar declaration of local health emergency regarding the novel coronavirus disease COVID-19.

(b) On March 16, 2020, the Health Officer for the San Francisco Department of Public Health issued Order No. C19-07, directing in part that all individuals living in the City to shelter in their place of residences until April 7, 2020. The order also directed businesses with a facility in the City, except essential businesses as defined in the order, to cease all activities at facilities located within the City except minimum basic operations, as defined in the order. As a result of the order, a substantial number of businesses operating in the City have been required to temporarily or permanently close their physical locations in the City or to permanently close their businesses entirely, or have had to temporarily or permanently lay off employees. On March 31, 2020, the City issued Order No. C19-07b, superseding the March 16, 2020 order and extending the new order until May 3, 2020. On May 1, 2020, the City issued Order No. C19-07c, superseding the March 31, 2020 order and extending the new order until May 31, 2020.

(c) On March 19, 2020, the Governor issued Executive Order N-33-20 to preserve public health and safety and ensure the healthcare delivery system is capable of serving all, and prioritizing those at the highest risk and vulnerability, ordering in part that all residents heed the order from the State Public Health Officer ordering all individuals living in the State of

California to stay home or at their place of residence for an indefinite period of time except, among other terms, to maintain continuity of operations of identified federal critical infrastructure sectors.

(d) As a consequence of the local and State shelter in place and stay at home orders, many employees working in the City have been or likely will be laid off from their jobs. The City has received notice of some of those layoffs, as required under the federal Worker Adjustment and Retraining Notification ("WARN") Act, 29 U.S.C. §§ 2101-2109, and the California Worker Adjustment and Retraining Notification ("Cal-WARN") Act, Cal. Labor Code §§ 1400-1408. The WARN Act requires employers to provide 60 days' notice in advance of a plant closing or mass layoff. The WARN Act applies to employers with 100 or more employees, to the extent such employees have been employed for at least six of the last 12 months and have, on average, worked more than 20 hours per week. The WARN Act defines a mass layoff as a layoff of 50 or more employees at a single site of employment. The Cal-WARN Act requires employers to provide 60 days' notice in advance of a mass layoff, relocation, or termination at a covered establishment. The Cal-WARN Act applies to employers that employ, or have employed in the preceding 12 months, 75 or more full-time or part-time employees, to the extent such employees have been employed for at least six months of the 12 months preceding the date of the required notice. The Cal-WARN Act defines a mass layoff as a layoff during any 30-day period of 50 or more employees at a covered establishment.

(e) Between March 1, 2020 and May 1, 2020, the City has received 293 layoff notices from private employers operating in San Francisco pursuant to the WARN Act and the Cal-WARN Act. The federal WARN Act and the Cal-WARN Act notices, however, only reflect mass layoffs or business closures implemented by employers that are subject these statutes and thus significantly underestimate the actual number of employees in the City experiencing

layoffs as a result of the COVID-19 pandemic. Indeed, an untold number of employees employed by businesses with less than 100 employees or 75 employees at their business facility in San Francisco have been affected by a layoff due to COVID-19. Based on anecdotal evidence being shared with the City, it appears that many City employers have laid-off at least 10 employees during a 30-day period since Mayor Breed declared the public health emergency as a result of COVID-19 on February 25, 2020; as such, it is intent of this emergency ordinance to provide the protections set forth herein to eligible employees affected by a layoff of this size.

(f) The layoffs now occurring in large numbers in San Francisco are quickly pushing unemployment in our community to uncommonly high numbers. Between February 25, 2020 and April 18, 2020, over 83,000 San Franciscans filed claims for unemployment insurance with the State of California. The City anticipates that many more in the San Francisco workforce will seek unemployment insurance in the coming weeks and months as result of a separation from employment, including due to a mass layoff or location closure caused by the COVID-19 pandemic. It is entirely possible—even likely, according to some economists—that the unemployment rate in San Francisco and surrounding areas will reach levels higher than at any time since the Great Depression of the 1930s. Unemployment statistics, even when documenting a massive surge, do not adequately convey the human suffering that attends joblessness on such a large scale. The loss of employment for individuals laid off as a result of the COVID-19 pandemic typically places them and their families in economic peril.

(g) Layoffs caused by the COVID-19 pandemic also pose a substantial risk to public health because layoffs can cause a loss of private health insurance benefits for affected employees and their families. The loss of private health insurance during normal times—let alone in the midst of a pandemic—can put seemingly or actually insurmountable pressure on a family's fiscal, physical, and mental health. While an employee may be entitled to extend

their health insurance benefits temporarily pursuant to the Consolidated Omnibus Budget Reconciliation Act ("COBRA"), 29 U.S.C. §§ 1161-68 (1994), COBRA continuation coverage is often more expensive than the amount that active employees are required to pay for group health coverage. If an employer offers health insurance benefits to its employees, the cost of such benefits are typically shared by the employer and employee. A separated employee, however, typically must pay both the employee's and the employer's share of health insurance benefits in order to receive continuation coverage pursuant to COBRA. As such, COBRA continuation coverage is typically much more expensive than the cost of an employee's health insurance premiums while the employee was employed. In the direst circumstances, a loss of one's job and the related employment benefits can force a family to choose between paying for COBRA continuation coverage, paying rent, or putting food on the table. This emergency ordinance, therefore, is intended to decrease the number of laid-off employees who will be without employer-sponsored health insurance as a result of the COVID-19 pandemic by requiring employers subject to the emergency ordinance to rehire eligible employees if rehiring begins, thereby resuming such employees' access to their prior health insurance benefits.

(h) Layoffs caused by the COVID-19 emergency also pose a substantial risk to public health in the City by potentially forcing laid off employees to seek out the City's public health resources, in event that they are not eligible for COBRA or COBRA continuation benefits are too costly for their family to secure. This emergency ordinance, therefore, is intended to alleviate the burden that layoffs of employees working in the City place on the City's public health system.

(i) The loss of employment for individuals laid off as a result of the COVID-19 pandemic poses a substantial threat to the City's economy and the economic livelihood of affected employees and their families. The COVID-19 pandemic has created a substantial

financial crisis for the City collectively and for individuals living and working in the City, likely causing an economic recession or depression in the City, and likely lasting well after the State and City stay at home and shelter in place orders are lifted. After the emergency ceases, the City will endeavor to support the reemergence of all non-essential businesses operating in the City to the extent it is financially feasible for such business to resume operations. Reemployment of laid off employees also provides economic relief directly to the affected employees and their families, giving them the opportunity for reemployment as soon as practicable, aiding their own personal economic recovery following their previous separation from employment, and strengthening and providing continuity for the communities in which they live. With the benefit of resumed income, such employees will likely frequent local businesses, thereby aiding in the revitalization of the City economy and the greater local economy.

(j) The COVID-19 pandemic has created unique challenges on caretakers, including working parents whose children are no longer able to attend school or childcare facilities, or whose regular care givers are not available as well as those responsible to care for a child, parent, legal guardian or ward, sibling, grandparent, grandchild, spouse, or registered domestic partner when such person is ill, injured, or receiving medical care. Employees who are responsible for the care of children or the others mentioned above may have even more difficulty obtaining reemployment following a layoff.

Section 4. Definitions.

For purposes of this emergency ordinance, the following terms shall have the following meanings:

"Beginning of the Public Health Emergency" means Mayor London Breed's February 25, 2020, proclamation of a state of emergency in response to the spread of the novel coronavirus COVID-19.

"City" means the City and County of San Francisco.

"Conclusion of the Public Health Emergency" means: (1) the date on which the Governor for the State of California terminates or rescinds, without replacement, Emergency Order N-33-20; or (2) the date on which the City terminates or rescinds, without replacement, Order No. C19-07c, or takes similar action to end the current shelter in place and the prohibition on operation of the business activities as set forth in Order No. C19-07c, whichever date is later.

"Employer" means any person who directly or indirectly owns or operates a for-profit business or non-profit in the City that employs 10 or more employees as of the earliest date that an employer Separates one or more employees that subsequently results in a Layoff. "Employer" does not include any federal, state, or local or other public agency.

"Eligible Worker" means a person: (1) employed by the Employer for at least 90 days of the calendar year preceding the date on which an Employer provides written notice to the employee of a layoff caused by the Public Health Emergency; and (2) and who was separated from employment due to a layoff caused by the Public Health Emergency or the SIP Orders.

"Family Care Hardship" means an Eligible Worker who is unable to work due to either: (1) a need to care for their child whose school or place of care has been closed, or whose childcare provider is unavailable, as a result of the Public Health Emergency, and no other suitable person is available to care for the child during the period of such leave; (2) or any

grounds stated in Administrative Code § 12W.4(a) for which a person may use paid sick leave to provide care for someone other than themselves. For the purpose of this definition, "child" means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing *in loco parentis*, who is under 18 years of age, or a child 18 years of age or older who is incapable of self-care because of a mental or physical disability.

"Layoff" means a separation from employment by an Employer of 10 or more employees during any 30-day period, commencing on or after February 25, 2020, and which is caused by the Employer's lack of funds or lack of work for its employees, resulting from the Public Health Emergency and SIP Orders. This definition includes any layoff conducted in conjunction with the closure or cessation of an Employer's business operations in the City.

"Public Health Emergency" means the states of emergency declared by the State of California or the City in response to the novel coronavirus COVID-19.

"Separate" and "Separation" means the termination or end of employment.

"SIP Orders" mean orders issued by the State and City, including without limitation State Executive Order N-33-20 and City Order Nos. C19-07, C19-07b, and C19-07c, directing residents to stay at home and shelter in place and prohibiting operation of all business activities other than those expressly excluded.

Section 5. Records Regarding Layoff.

(a) Written Notice of Layoff and Right to Reemployment for Existing Employees. When an Employer implements a Layoff after the Beginning of the Public Health Emergency, the Employer shall provide all affected employees with written notice of the Layoff at or before the time when the Layoff becomes effective. The Employer shall provide notice to each affected employee in a language understood by the affected employee. The written notice shall include below-listed terms.

(1) A notice of the Layoff and the Layoff's effective date.

(2) A summary of the right to reemployment created by this emergency ordinance.

(3) A telephone number for a hotline, to be operated by the Office of Labor Standards and Enforcement ("OLSE"), which affected employees may call to receive information regarding the right to reemployment created by this emergency ordinance, as well as navigation services and other City resources related to unemployment.

(4) A hyperlink to a website, to be operated by OLSE, where affected employees may complete an online form reflecting their name, Employer, date of Layoff, telephone number, email address, and address of residence, which, with an affected employee's consent, OLSE may use to contact an affected employee regarding navigation services and other resources related to unemployment. The form shall also include an option for an affected employee to withhold their consent from being contacted by OLSE regarding such services. An affected employee's decision to withhold such consent shall not adversely affect any right to reemployment under this emergency ordinance.

(5) A request that an affected employee authorize their Employer to provide their name and contact information to the City. The request must advise an affected employee that: the California Constitution recognizes a right to privacy with respect to personal information, including contact information; the City wishes to obtain such information so that OLSE may contact affected employees in order to provide information about navigation services and other City resources regarding unemployment and so that the City may gather comprehensive data regarding the number of layoffs occurring in San Francisco as a result of the Public Health Emergency; the Employer requests the affected employee's written consent to disclose to the City the employee's full legal name, last known address of residence, last known telephone number(s), and last known email address(es). The consent

form shall also include an attestation from the employee, indicating which of the above-listed categories of personal information they consent for the Employer to disclose to the City and the affected employee's signature authorizing such disclosure. The Employer shall include a pre-addressed and stamped envelope with the written notice required by this Section 5 to facilitate the employee's return of the requested information. The request shall also state that, should an affected employee consent to disclosure of their contact information, the employee is directed to return the written authorization to the Employer within seven days of the affected employee's receipt of the Employer's notice of Layoff.

(b) Written Notice of Layoff and Right to Reemployment for Former Employees. To the extent an Employer has Separated any affected employee before this emergency ordinance becomes effective, the Employer shall provide written notice of the Layoff, consistent with the requirements set forth in subsection (a) of this Section 5, to each affected employee who the Employer Separated due to Layoff within 30 days of the effective date of this emergency ordinance.

(c) Notification to the City Regarding Layoff. An Employer shall provide written notice to OLSE of a Layoff. An Employer shall provide such notice within 30 days of the date it initiates a Layoff. In the event, however, that an Employer did not foresee that Separation of employees would result in a Layoff, as defined in this emergency ordinance, the Employer shall provide such written notice within seven days of its Separation of the tenth employee in a 30-day period as a result of Public Health Emergency and SIP Orders. Written notice to OLSE shall identify: the total number of employees located in San Francisco affected by the Layoff; the job classification at the time of Separation for each affected employee; the original hire date for each affected employee; and the date of Separation from employment for each affected employee. To the extent any Separated employee expressly consents to disclosure of their full legal name, last known address of residence, last known telephone number(s),

and/or last known email address(es), as provided for in subsection (a) of this Section 5, the Employer shall include such information in its notice to OLSE. To the extent an Employer receives written authorization from any Separated employee after the Employers notifies the City of the Layoff in accordance with this subsection (c), the Employer shall provide to OLSE, on a supplemental basis, any information an affected employee authorizes for disclosure to the City.

(d) Retention of Records. Where an Employer initiates a Layoff after the Beginning of the Public Health Emergency, an Employer must retain the following records for at least two years regarding each affected employee: the employee's full legal name; the employee's job classification at the time of Separation from employment; the employee's date of hire; the employee's last known address of residence; the employee's last known email address; the employee's last known telephone number; and a copy of the written notice regarding the Layoff provided to the employee. For the purpose of this Section 5, two years is measured from the date of the written notice provided by the Employer to a laid off employee, as required by subsections (a) and (b) of this Section 5.

Section 6. Employer's Obligation to Make Offer of Reemployment to Eligible Workers Following Layoff.

(a) Offer of Reemployment Following Layoff to Same Position. Where an Employer has initiated a Layoff after the Beginning of the Public Health Emergency and subsequently seeks to hire a person to a position formerly held by an Eligible Worker, the Employer shall first offer the Eligible Worker an opportunity for reemployment to their former position before offering the position to another person.

(b) Offer of Reemployment Following Layoff to Similar Position. Where an Employer has initiated a Layoff after the Beginning of the Public Health Emergency and subsequently

seeks to hire a person to any position that is substantially similar to the Eligible Worker's former position and the position is also located in the City, an Employer shall first offer the Eligible Worker an opportunity for reemployment to the substantially similar position before offering the position to another person. For the purpose of this Section 6, a "substantially similar position" includes any of the following: a position with comparable job duties, pay, benefits, and working conditions to the Eligible Worker's position at the time of Layoff; any position in which the Eligible Worker worked for the Employer in the 12 months preceding the Layoff; and any position for which the Eligible Worker would be qualified, including a position that would necessitate training that an Employer would otherwise make available to a new employee to the particular position upon hire.

(c) Offers of Reemployment Made in Order of Seniority. In the event an Employer intends to offer reemployment to an Eligible Worker, and the Employer Separated more than one Eligible Worker from the same job classification, the Employer shall make offers of reemployment to such Eligible Workers based on their former seniority with the Employer. For the purpose of this subsection (c), seniority with the Employer shall be based upon an Eligible Worker's earliest date of hire with the Employer.

(d) Exception for Hires Made Prior to Effective Date. The right to an offer of reemployment created by this emergency ordinance as stated in this Section 6, and the attendant rights and remedies set forth in Sections 7, 8, 9 and 11 of this emergency ordinance, shall not apply where an Employer initiated a Layoff after the Beginning of the Public Health Emergency and hired a person other than an Eligible Worker to a position formerly held by an Eligible Worker on or before the effective date of this emergency ordinance.

Section 7. Notice of Offer and Acceptance.

(a) Method of Delivery. An Employer shall transmit an offer of reemployment to an Eligible Worker to the Eligible Worker's last known address of residence by reasonable means identified by an Employer, including, without limitation, first class mail or personal delivery. With the Eligible Worker's consent and confirmation of receipt, an Employer may transmit an offer of reemployment to an Eligible Worker by email.

(b) Order of Delivery of Offers. Where more than one Eligible Worker is eligible for an offer of reemployment, as set forth in subsections (a) and (b) in Section 6, an Employer shall transmit offers to Eligible Workers in their order of seniority, as set forth in subsection (c) in Section 6.

(c) Notification by Telephone. In addition to the transmittal requirement of subsection (a) of this Section 7, an Employer shall make a good faith effort to notify the Eligible Worker of the offer by telephone at the Eligible Worker's last known telephone number.

(d) Duration of Offer.

(1) If the Employer makes contact with the Eligible Worker by telephone, and the Eligible Worker consents to receiving the offer by email, the offer shall remain open for two business days following the telephone call, provided that, at the time the Employer makes contact with the Eligible Worker by telephone, the Employer notifies the Eligible Worker of the two business days duration for which the offer shall remain open.

(2) If the Employer is unable to make contact with the Eligible Worker by telephone or the Eligible Worker does not consent to receiving the offer by email, the offer shall remain open for seven calendar days after the date of confirmed receipt by mail or personal delivery. If the Eligible Worker does not confirm receipt by mail or personal delivery, the offer shall remain open for ten calendar days after the date on which the offer is sent by the Employer by mail or personal delivery.

(e) Acceptance. An Eligible Worker shall accept an offer of reemployment by providing a response to the Employer in writing by reasonable means identified by the Employer including, without limitation, returning a signed version of an offer letter by any reasonable method of delivery or, if authorized by an Employer, by applying an electronic signature and transmitting acceptance of the offer to an Employer by email or other reasonable electronic method. If the Eligible Worker notifies the Employer by other means, including but not limited to by telephone or text message, of their intent to accept the offer, the Employer must allow the Eligible Worker two business days from that date to respond in the written reasonable means identified by the Employer. If the Eligible Worker fails to respond to an offer of reemployment within the timeframes prescribed under subsection (d) of this Section 7, then the Eligible Worker shall be deemed to have rejected the offer of reemployment, and then the Employer is permitted to offer the position to the next most senior Eligible Worker, as set forth under subsection (c) of Section 6, or, if there are no alternative Eligible Workers, then to offer the position to alternative job candidate.

(f) Extension by Mutual Agreement. An Employer and Eligible Worker may extend the offer or acceptance periods beyond the timeframes prescribed in this Section 7 by mutual agreement.

Section 8. Terms of Reemployment.

(a) 90-Day Reemployment Period. An Eligible Worker shall be entitled to reemployment for a period of 90 days after the date the Eligible Worker resumes employment. An Employer may, however, based on clear and convincing evidence, Separate an Eligible Worker during the 90-day reemployment period:

(1) based on information learned subsequent to rehiring the Eligible Worker that would disqualify the Eligible Worker from their position, including, without limitation, acts of

dishonesty, violations of law, violations of a policy or rule of the Employer, or other misconduct;

(2) for acts of dishonesty, violations of law, violations of a policy or rule of the Employer, or other misconduct committed by the Eligible Worker after the Eligible Worker has resumed employment; or

(3) if the Employer suffers a demonstrable financial hardship or other event pertaining to the operations of the Employer's business that necessitates Separation of the Eligible Worker.

(b) Minimum Terms of Reemployment. With the exception of the term of employment defined in subsection (a) of this Section 8, an Employer shall offer reemployment based on at least the same terms and conditions that the Employer previously provided to the Eligible Worker at the time of the Eligible Worker's Separation due to Layoff. For the purpose of this subsection, terms and conditions of prior employment include, without limitation, job duties, pay, benefits, and working conditions. An Employer shall comply with this subsection (b) unless, as a result of the economic impact caused by the Public Health Emergency to the Employer's business, offering reemployment to the Eligible Worker at one or more of their former terms of employment would cause the Employer demonstrable financial hardship. Nothing in this subsection shall be interpreted to limit an Eligible Worker's rights to benefits under the Families First Coronavirus Response Act, Public Law 116-127 ("FFCRA"), Coronavirus Aid, Relief, and Economic Security Act, Public Law 116-136 ("CARES Act"), the Public Health Emergency Leave ("PHEL") Ordinance, S.F. Emergency Ordinance No. 59-20, or any other law providing benefits to employees that were not available prior to April 1, 2020.

Section 9. Non-Discrimination and Duty to Reasonably Accommodate Eligible Workers Experiencing a Family Care Hardship.

For the purpose of this emergency ordinance, an Employer shall not discriminate against or take an adverse employment action against an Eligible Worker as a consequence of an Eligible Worker experiencing a Family Care Hardship. An Eligible Worker shall be entitled to reasonable accommodation of a job duty or job requirement if a Family Care Hardship impacts their ability to perform a job duty or to satisfy a job requirement. An Employer shall, in response to a request for accommodation by an Eligible Worker, make good faith efforts to reasonably accommodate an Eligible Worker during the period in which they experience a Family Care Hardship. For the purpose of this Section 9, to "reasonably accommodate" includes, without limitation, modifying an Eligible Worker's schedule, modifying the number of hours to be worked, or permitting telework, to the extent operationally feasible, to accommodate the Eligible Worker's Family Care Hardship.

Section 10. Notification to City of Offers of Reemployment.

An Employer shall notify the Office of Labor Standards Enforcement in writing of all offers of reemployment made under this emergency ordinance, in addition to all acceptances and rejections by Eligible Workers of such offers or reemployment.

Section 11. Remedies for Violations.

(a) An Eligible Worker may bring an action in the Superior Court of the State of California against an Employer for violating this emergency ordinance, and may be awarded the following relief:

(1) Hiring and reinstatement rights, whereupon the 90-day reemployment period referenced in Section 8 of this ordinance shall not commence until the date the Employer rehires an Eligible Worker;

(2) Back pay for each day of the violation and front pay for each day during which the violation will continue. Back pay and front pay shall be calculated at a rate of pay not less than the higher of: (A) if employed for less than three years prior to the Eligible Worker's date of Separation due to Layoff, the average regular rate received by the Eligible Worker during the Eligible Worker's employment; (B) if employed for more than three years prior to the Eligible Worker's date of Separation due to Layoff, the average regular rate received by the Eligible Worker during the last three years of the Eligible Worker's employment; or (C) the most recent regular rate received by the Eligible Worker as of the date of Separation due to Layoff; and

(3) The value of the benefits the Eligible Worker would have received under the Employer's benefit plan had the violation not occurred.

(b) If the Eligible Worker is the prevailing party in any legal action taken pursuant to this Section 10, the court shall also award reasonable attorneys' fees and costs.

Section 12. No Limitation on Other Rights and Remedies.

This emergency ordinance does not in any way limit the rights and remedies that the law otherwise provides to Eligible Workers, including without limitation, the rights to be free from wrongful termination and unlawful discrimination.

Section 13. Waiver Through Collective Bargaining.

This emergency ordinance shall not apply to Eligible Workers covered by a bona fide collective bargaining agreement to the extent that the requirements of this emergency ordinance are expressly waived in the collective bargaining agreement in clear and unambiguous terms.

Section 14. Preemption.

Nothing in this emergency ordinance shall be interpreted or applied so as to create any right, power, or duty in conflict with federal or state law. The term "conflict" as used in this Section 14 means a conflict that is preemptive under federal or state law.

Section 15. Severability.

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

Section 16. Effective Date; Expiration.

Consistent with Charter Section 2.107, this emergency ordinance shall become effective immediately upon enactment, and shall expire upon whichever of the two following occurrences happens first: (a) the 61st day following enactment unless the ordinance is reenacted as provided by Section 2.107; or, (b) the Conclusion of the Public Health Emergency and rescission of the SIP Orders. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the Mayor's veto of the ordinance.

Section 17. Supermajority Vote Required.

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

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

By: /s/
JON GIVNER
Deputy City Attorney

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FILE NO. 200455

LEGISLATIVE DIGEST

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

Emergency Ordinance temporarily creating a right to reemployment for certain employees laid off due to the COVID-19 pandemic if their employer seeks to fill the same position previously held by a laid-off worker, or a substantially similar position, as defined.

Existing Law

Under existing law, there is no right to reemployment for employees working in San Francisco in the event that their employer separates them from employment due to a layoff and subsequently seeks to rehire employees to the same or similar positions.

Amendments to Current Law

The ordinance requires employers operating in San Francisco to offer a right to reemployment to certain employees laid off as a result of the COVID-19 pandemic and the related stay at home and shelter in place orders issued by the City and County of San Francisco and the State of California. The ordinance applies to employers of any size who layoff ten or more employees in a 30-day period as a result of the emergency. The employer must extend offers of reemployment to any employee previously employed for at least 90 days in the preceding calendar year. If the employee accepts the offer, the employer must maintain the employment relationship for 90 days, subject to certain exceptions for misconduct and financial hardship. The ordinance applies to layoffs between February 25, 2020 and the expiration of the ordinance.

The ordinance is an emergency ordinance, so under Charter section 2.107, it will take effect immediately upon enactment and will remain in effect for 60 days, unless reenacted. If not, reenacted, it will expire on the 61st day.

Background Information

On February 25, 2020, Mayor London Breed proclaimed a state of emergency in response to the COVID-19 pandemic, concurred by proclamation of the Board of Supervisors on March 3, 2020. On March 16, 2020, the County Health Officer issued Order No. C19-07 directing San Franciscans to stay in their homes and requiring businesses to cease all non-essential operations at physical locations in the County.

SAN FRANCISCO
OFFICE OF SMALL BUSINESS

CITY AND COUNTY OF SAN FRANCISCO
LONDON BREED, MAYOR

OFFICE OF SMALL BUSINESS
REGINA DICK-ENDRIZZI, DIRECTOR

June 3, 2020

Ms. Angela Calvillo, Clerk of the Board
City Hall Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

RE: BOS File No. 200455 – Emergency Ordinance – Temporary Right to Reemployment Following Layoff Due to COVID-19 Pandemic

Small Business Commission Recommendation to the Board of Supervisors: **Oppose.**

Dear Ms. Calvillo,

On May 27, 2020 the Small Business Commission (SBC or Commission) heard BOS File No. 200455 – Emergency Ordinance – Temporary Right to Reemployment Following Layoff Due to COVID-19 Pandemic. Edward Wright, legislative aide to Supervisor Mar provided the SBC with an overview of the legislation. After reviewing the legislation, the staff legislative review, written public comment, and having heard the testimony and arguments, the Commission concluded that this Emergency Ordinance would not be in the best interest of small businesses and efforts toward recovery and rebuilding. The Commission voted (6-1) to recommend that the Board of Supervisors oppose the legislation.

The Commission engaged in a substantive discussion regarding the legislation with Mr. Wright and were provided with ample opportunity to ask important questions relative to the genesis of the legislation and its expected implementation. Mr. Wright also shared anticipated amendments to the legislation, which he noted, were not yet drafted. These include:

- An exemption for employers with less than 75 employees;
- An exemption for healthcare operators as defined in a local Health Order dated April 29, 2020, this would include public hospitals;
- Employers would not be required to make reemployment offers to eligible workers who made more than 120% of the local AMI;
- Employers would not be required to make reemployment offers to eligible workers who received a severance;
- Section 5(a)(4) which would require the development of a website by the Office of Labor Standards and Enforcement and 5(a)5 which would require that employers collect certain information on behalf of their employees with their consent, to be submitted to the City, would be struck; and,
- Employers would be able to call or send a text message to eligible workers to inform them of the offer for reemployment before sending mail by post.

Concerns expressed by the Commission were grounded in a lack of data to support the need for the Emergency Ordinance and the underlying presumption that businesses won't rehire those that they have been compelled to layoff due to the Public Health Emergency. While Mr. Wright shared that ~100,000 workers in San Francisco had applied for unemployment, he could not share how many of those workers could potentially benefit from this legislation, with or without the amendments. Moreover, he could not share the approximate number of businesses that would be required to comply with the legislation, with or without amendments. Despite these unknowns, the sponsor's office shared that they were confident that thousands of workers would benefit from the legislation.

Relative to the proposed administration of the Emergency Ordinance, the Commission had myriad concerns. Specifically, Mr. Wright could not definitively articulate how misconduct and severance would be defined. Both definitions would directly impact whether an employer would required to rehire a possibly eligible employee. When asked how much it would cost the City to administer the program, Mr. Wright could not provide an estimate and cited that a Budget and Legislative Analyst's estimate was not yet available.

The SBC also asked whether the legislative sponsor had considered the time burden that small businesses would have to bear in order to successfully comply with this Ordinance. Mr. Wright affirmed that that was not a consideration. Mr. Wright also shared that the possible legal defense costs that a small business might be liable for were also not considered as a possible challenge. The Commission also asked how out of state workers may be treated under this Emergency Ordinance. Mr. Wright could not provide a definitive answer at the time of the meeting. Additionally, the Commission expressed that should this legislation pass, it would only exacerbate regulatory challenges already driving many small businesses past the point of closure, including those employing 75-100 employees

While the Commission voted in the overwhelming majority to oppose this legislation responsive to the discussion summarized above, they were nonetheless appreciative for the opportunity to discuss it with the sponsor's office in the public forum. In their closing remarks, they urged the Board of Supervisors to continue to work with the Commission as legislation related to economic recovery is contemplated to ensure that not only are San Francisco's workers protected but that a regulatory environment friendly to small businesses is cultivated.

Thank you for considering the Commission's recommendation. Please find attached an additional note from me public comment submitted to the Small Business Commission. I am available for any questions you have any questions.

Sincerely,

Regina Dick-Endrizzi
Director, Office of Small Business

cc: Gordon Mar, Member, Board of Supervisors
Sophia Kittler, Mayor's Liaison to the Board of Supervisors
Patrick Mulligan, Director, Office of Labor Standards and Enforcement
Lisa Pagan, Office of Economic and Workforce Development
John Carroll, Clerk, Government Audit and Oversight Committee

Director's Note:
For businesses that have received a Payroll Protection Program (PPP) loan there are very specific requirements that a business must follow regarding reemployment to have the loan forgiven. These requirements have made the loan very challenging for businesses to navigate. When the majority of the businesses applied for the loan the announcement of the Shelter In Place Order was a shorter time period.

Some key points with current requirements for the PPP:

- The loan must be spent within 8 weeks of receipt or June 30, whichever comes first.
- Payroll is 75% of loan and 25% for non-payroll expenses.
- For an employer that may have over-projected their ability to rehire back all FTEs there are 4 items the business must provide to have the loan forgiven:
    1. Written offer for same wage/hours,
    2. Rejection of offer,
    3. Employer maintains these records, and
    4. Employer submits report of this rejection to state unemployment office within 30 days.

HR 7010 is making amendments to the loan forgiveness requirements. It is waiting on the President's signature. Following are revised requirements:

- The loan can be spent within 24 weeks of receipt or December 31, 2020
- Non-payroll expenses can now be up to 40%
- The loan forgiveness will not be reduced due to a lower number of FTEs a business needs unless the business is able to document:
    1. An inability to rehire employees who had been employed on February 15, 2020,
    2. An inability to hire similarly qualified employees for unfilled positions by December 31, 2020, or
    3. An inability to return to the same level of business activity at which the borrower was operating before February 15, 2020, due to compliance with federal governmental requirements or guidance set forth between March 1, 2020, and December 31, 2020, relating to standards of sanitation, social distancing, or other worker or customer safety requirements due to COVID-19.

The purpose for me to highlight the above elements of the PPP is that it does provide an incentive to rehire employees. At the same time, the uncertain future of when and how long it will be for a business to open or return to somewhat normal operations also provides a challenge for businesses to meet the requirements to ensure the loan is forgivable. In addition, under the current PPP or under the revised PPP, the type of documentation the business needs to provide essentially prevents a business' ability to account for and use the funds to rehire back any undocumented workers they may have had pre-COVID-19.

I and the SBC share in the concerns of the current high number of individuals unemployed and the impact of the situation on undocumented workers. What we do know is that not every business will survive or return to pre-COVID-19 operations. In my opinion, San Francisco likely will not have a full understanding the unemployment numbers until we have been in San Francisco's Phase III for a couple months. The Economic Recovery Task Force was established

to grapple and solve for the impacts of COVID-19 and is the best place for now to develop recovery and rebuilding plans for both small businesses and the unemployed.

Attached is public comment provide to the Small Business Commission.

Dick-Endrizzi, Regina (ECN)

From: Candace Combs <ccombs@combsbusinessconsulting.com>
Sent: Sunday, May 10, 2020 11:44 AM
To: BOS-Legislative Aides; BOS-Supervisors
Cc: Angela Sinicropi; Dave Combs; Gwen Kaplan; Dick-Endrizzi, Regina (ECN); Sarah Cooper
Subject: Temporary Right to Reemployment Following Layoff Due to COVID19 Pandemic]

Hi everyone,

I am the owner of In-Symmetry Spa, and the president of the Massage Community Council. I am very confused why you guys are introducing this legislation right now when small businesses needs so much support. We definitely would love to hire our teams back but most of us can't because for the next 6-8 months we cannot run at full capacity. I've been on calls all week and one of them with Madam Speaker of the house Nancy Pelosi, talking about the PPP and how it's not helping small businesses. If anyone would like to call me I can explain what the PPP is not doing for small businesses especially ones like mine that are 💯 down.

Small businesses need monetary support right now. We are still paying rent and all of our bills without an income coming in; what we get in temporary loans still will have to be paid back. Even when we are able to open we will not be able to open at full capacity. Furthermore please explain to me how this is good for our employees if we pull them off of unemployment without the ability to sustain them and it will take them weeks to get back on unemployment after we have to pay them off again. At this point many of them/us have burned through any and all reserves.

Can someone please explain how this legislation is helping small businesses who are struggling and most probably will not survive this crisis.

Right now we need to think about grants for small businesses, mortgage and rent moratoriums. This legislation doesn't serve the small businesses nor our employees.

Candace Combs

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Candace Combs, CMT, CEO
https://insymmetryspa.com
https://www.combsbusinessconsulting.com/
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415.531.8232

May 16, 2020

Six Reasons Why Supervisor Mar's Former-employee Rehire Plan Subverts Small-business Recovery

The following points are based on the Busk family's experience in retail on Clement Street for the last 60 years.

1. A small business should be able to make its own decisions on hiring, because each business knows its own needs best. City government should assist the unemployed through unemployment insurance, which is partially funded by small businesses.

2. For a small-business owner, avoiding bankruptcy could well depend on their ability to hire the people who will help their small business the most *at this particular time*; these people are not necessarily former employees (because that was a totally different time).

3. The small-business *reality* is that many owners will need to return to working seven days a week to staff their small business, which means that they very well might not re-hire higher-level former employees, because the owners will be doing that work themselves.

4. City government should be supporting small businesses, not hobbling a small business with additional regulations at the beginning of a recession.

5. If a small business goes out of business because of restrictions on their hiring decisions, *everybody* loses.

6. The last two months have been the most challenging for a small business probably in its history. At this low point in the economy, city government should not restrict a small business's ability to manage their company, which city government is trying to do by insisting that a business rehire former employees.

Dick-Endrizzi, Regina (ECN)

From: Sam Mogannam <Sam@biritemarket.com>
Sent: Tuesday, May 19, 2020 12:59 PM
To: SBC (ECN); BOS-Supervisors; BOS-Legislative Aides
Cc: Calvin Tsay; Brianne Gagnon; Dick-Endrizzi, Regina (ECN); Torres, Joaquin (ECN); DPH-Sam-mff
Subject: Comments on Draft Ordinance: Temporary Right to Re-employment

Categories: Legislation

Dear Board of Supervisors, Legislative Aides and Small Business Commission,

Thank you for your continued efforts to protect and guide San Franciscans during the pandemic. Your leadership and focus on our health and well being has been extraordinary. And thank you as well for the efforts to being open to feedback as we build the infrastructure for rebuilding our economy.

We are writing with constructive feedback regarding the Emergency Ordinance - Temporary Right to Re-employment Following Layoff Due to COVID19 Pandemic.

During the week of March 15, Bi-Rite furloughed 55 staff as the pandemic and shelter-in-place ordinance forced the closure of our Cafe and Creamery and our Catering business evaporated overnight. This was the hardest week of my career. Our staff are the most important thing at Bi-Rite, we are like a family. And, as an owner, you never want to be in a position where you have to take their jobs, their security, and their community away. The cost of living and pressures on families in the Bay Area are significant and we know how serious this situation is for them. We were forced to make that difficult decision, however, or we could have risked losing the entire company and the security of all 350 people working for us. Our owners and leadership team also took sizeable pay cuts to help cash flow and to prevent further furloughs. We opted to furlough as opposed to laying off in order to maintain health care benefits for our team.

In addition to the furloughs, due to closures and reduction in sales, staff at the Market locations began refusing to work and, in an effort to be compassionate during a scary time, we offered them the option to "self-furlough" (24 staff refused to work) because we did not want them to lose their health benefits at a time they needed them most.

During the furlough, Bi-Rite has continued to pay 100% of their health insurance premiums, provided a 40% discount (increased from 25% pre-Covid) at our Markets, and I have personally delivered grocery boxes (at Bi-Rite's cost) to support them and their families while they are on furlough. This is in addition to bi-weekly communications regarding available work, government programs and support resources in two languages. The cost of health insurance premiums for Bi-Rite per month for furloughed staff is approximately $23,000 per month. Bi-Rite has committed to paying premiums for four months of their furlough - April, May, June, and July – equal to approximately $92,000 of additional expenses. Beyond July, Bi-Rite cannot afford to continue incurring that expense at our current business levels.

Bi-Rite's current total furloughed staff is now 41 (17 furloughed staff and 24 self-furloughed staff). Bi-Rite has already re-employed 70% (38 staff) of the original 55 furloughed staff and continues to actively reach out to the remaining 30% in an attempt to re-employ them. The 24 self-furloughed staff continue to refuse to work.

As you can see by our practice, we completely support the idea of re-employment of furloughed or laid off staff. It is smart business to bring back trained staff that have already been invested in. What we don't support, however, is an ordinance that places a significant administrative, bureaucratic and legal burden on businesses during a time when they are struggling to stay open. They should instead stay focused on keeping their staff safe and surviving the adverse economic impact that the pandemic has had on them.

Specifically, this ordinance leads with the importance of healthcare for displaced workers; however, it does not address the issues with healthcare access and cost. This ordinance instead puts the burden on businesses to be the safety net when they are struggling to maintain operations during the pandemic. Why doesn't this ordinance require health insurers to provide discounts or reduced premiums to impacted workers, especially since, at this time, only emergency services are being provided and most care is through telehealth? Why doesn't this ordinance make government funds available to workers for COBRA premiums? Why doesn't this ordinance expand access or reduced premiums to Healthy SF for impacted workers?

We have already re-employed 70% of our furloughed staff and will continue our efforts to re-employ the remainder. Given the unemployment numbers currently, it is also important to remember that *anyone we hire is likely to have been laid off from their prior job*. The few outside hires we have made since March are former staff who lost their jobs due to the pandemic and/or were hires laid off from their prior companies.

Would you prefer Bi-Rite focus on completing paperwork for the City or would you like us to focus on protecting the safety of our staff and guests so that we can continue to serve and feed our community? Do you fully understand the pressures we are under? We would be happy to show you our operations and explain what our daily triage and crisis management looks like in order to stay in business and support our staff, suppliers and guests.

Again, we DO NOT support this ordinance. We are already doing the right thing and trying to bring our staff back. And it frankly is too much of a burden to be bogged down with additional administrative and bureaucratic paperwork to maintain compliance.

In the event you decide against our feedback, and do vote this through, we implore you to simplify the process:

1. City creates a "Required Notice" in multiple languages that must be included in notices from employers regarding layoff that simplifies the steps from the original draft. Remove the burden of the City's data collection efforts from the businesses and allow impacted staff to opt-in directly with the City. Provide impacted staff with the resources, links and information they need directly and in one clear place.
    a. The Required Notice would include information on right to re-employment, resources through OLSE and a link and phone number for the impacted individual to be added to the City's database of impacted workers.
    b. Include resources for job training programs and job boards through the City (e.g. SF OEWD).
    c. Include any privacy information/language.
2. Allow for email and text to be a method of delivery from employers without consent. Paper mail is time consuming to prepare, costly, slow and is difficult to track. Businesses already communicate with their staff via email, text and HR information systems; obtaining consent to email someone is unnecessary and burdensome.
3. Allow businesses to take exceptions with staff who have previously refused to work – Specifically, allow businesses to NOT have to offer re-employment to staff who were able and available to work but refused to do so for personal (non-medical or otherwise protected) reasons.
4. Remove the seniority rule – staff have varying skills, qualifications, language abilities, and interests that are not based on tenure. Allow the business to manage who is best fit for available positions to ensure success for everyone.
5. 10 days is too long to allow an offer of employment to sit. We need to run our operations and cannot burn out current staff while former staff take 10 days to consider their options. This should be no more than 2 days with email, text and phone calls made to ensure they receive the information. No extensions should be permitted. Again, we are running a business and cannot allow this to hinder our hiring.

6. Remove the 90-day entitlement once re-hired. California is an at-will state. Please do not create promises of employment that are in contradiction to at-will employment. No other staff member is guaranteed that when hired – it is inequitable and not in alignment with California employment laws.
7. Remove any reporting to OLSE.
8. Remove the remedies. If businesses can barely afford to operate under these circumstances, how can they afford to litigate and pay back wages for this ordinance? How will the businesses pay for this?

Thank you so much for our thoughtful consideration and continued leadership as we all work together to navigate out of this mess and into a successful period of recovery.

With sincere appreciation
sam

Sam Mogannam
Founding Partner
he, him
Bi-Rite Family of Businesses
3505 20th St, San Francisco, CA 94110
sam@biritemarket.com
Office: 415-241-9760 x8601

Creating Community Through Food™

Dick-Endrizzi, Regina (ECN)

From: Vasu Narayanan <vasu@realfoodco.com>
Sent: Monday, May 25, 2020 1:56 PM
To: BOS-Legislative Aides; BOS-Supervisors; Dick-Endrizzi, Regina (ECN); Torres, Joaquin (ECN); SBC (ECN)
Subject: Emergency Ordinance - Temporary Right to Re-employment Following Layoff Due to COVID-19

Dear Board of Supervisors, Legislative Aides and Small Business Commission,

First of all, a big thank you to all of you in guiding us through these difficult times.

I am writing this to chime in on the Re-employment Ordinance for Laid off Employees due to COVID-19.

I own and operate Real Foods on Polk st in San Francisco as well as three other markets in San Mateo and Sonoma County.

When the pandemic situation worsened and the Shelter in Place order was enacted around mid March, our business, like numerous others, was faced with a situation we had not foreseen or planned for. Customer and Staff behaviour changed more from panic and fear than we have ever seen before.

Some of my stores had to lay off staff due to the massive drop in fresh food sales and some of the willing staff members were reassigned to other departments that experienced increases. In addition, some of our employees decided not to come to work citing personal fear as well as family situations that prevented them from coming back to work.

Over time, we have hired some new employees to cover the emergency shortages and also welcomed back some of the furloughed staff. But there are still a few employees who refuse to come to work due to their fear and other motives.

The new Ordinance, as proposed, seems to be requiring employers to hire back those who are not willing to come back at this time, while we struggle with lack of sufficient staff who are needed immediately.

I request that the Board not put undue burden on our essential businesses who had to go through an extremely nerve wracking 3 months and are staring into an uncertain future where habits, competition and delivery services are all going to affect the dynamic completely.

Please consider this email as a formal OPPOSITION to this ordinance and a request to allow small businesses to conduct our affairs, to survive, in a manner that is needed at this time, while complying with the at will employment spirit and ensuring we do not fail.

Thank you for your consideration.

Regards

Vasu Narayanan
Real Foods, LLC
2140 Polk St.

Dick-Endrizzi, Regina (ECN)

From: Pete Mulvihill <pete@greenapplebooks.com>
Sent: Wednesday, May 27, 2020 9:15 AM
To: SBC (ECN); Dick-Endrizzi, Regina (ECN); cynthiahuie
Subject: BOS File No: 200455

My name is Pete Mulvihill, and I am the co-owner of Green Apple Books, a Legacy Business inthe Richmond, and Green Apple Books on teh Park in the Sunset and Browser Books on Fillmore Street.

I urge the strongest condemnation of Supervisor Mar's Right to Reemployment bill. San Francisco has three options in how it treats small businesses during this unprecentdented pandemic and its economic consequences: the city can SUPPORT small businesses; it can do nothing; or it can make things harder still for small businesses. Supervisor Mar's well-intentioned but ill-conceived bill would do the latter.

Imagine being forced to guarantee employment for 90 days during this pandemic, this time of uncertainty. Imagine having to notify the city when you lay someone off AND when you rehire them. We had to lay off 28 Green Applers in March, and it was hard enough without this bureaucracy--legally, emotionally, professionally. Luckily our PPP came through and everyone is hired back, but if sales don't return to pre-COvid levels, how can I be expected to guarantee employment when I can't even pay my full rent?

If Supervisor Mar can guarantee my business's income for 90 days, I can guarantee employment. If he can guarantee that my expenses won't go up during that period, that the minimum wage won't increase on July 1, that my Kaiser plan won't be more expensive upon renewal, that my sales in December--the only month we turn a profit--will be the same as last year or better, that social distancing and curbside pickup and regulating how many customers are allowed in my stores at once won't lower my sales . . .. If the city can guarantee thaty, Green Apple can guarantee employment.

Imagine the paycut business owners have been taking these last few months, but they cannot change the wages or salaries of those they hire back, even temporarily? What if the "same position" doesn't exist? My used book buyers legally can't buy used books right now, but I could use them to fulfill web orders, so why should the city tell me I can't? What if my longest-serving employee is computer-literate and ALL our business revolves around internet sales right now--I have to hire them back first? Does that make sense for the reality of my business?

One more thing: this bill wouldn't even apply to me, as my employees are represented by UFCW, Local 5. But I stand with other businesses who don't have the time to submit testimony--we rely on other virbatn businesses in our comercial corridors, and this would hurt my neighbors, thus hurting my business, too.

The city should be HELPING small businesses reopen and rehire, easing restrictions, and providing support, not making it risker, more expensive, and more time-consuming to try to survive as a small business. Or at least leaving things the same. This bill should not be amended or changed--it should be dropped.

Sincerely,

Pete Mulvihill

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Green Apple Books
Publishers Weekly's Bookseller of the Year (2014)
506 Clement San Francisco, CA 94118
(415) 387-2272 (then press zero and ask for me)

& **Green Apple Books on the Park**
1231 9th Avenue, SF, CA 94122

& Browser Books
2195 Fllmore Street, SF, CA 94115

our website, Facebook, Twitter, Instagram, LinkedIn

Dick-Endrizzi, Regina (ECN)

From: Janet Tarlov <janet@canyonmarket.com>
Sent: Monday, May 25, 2020 5:06 PM
To: BOS-Legislative Aides; BOS-Supervisors; Dick-Endrizzi, Regina (ECN); Torres, Joaquin (ECN); SBC (ECN); Maryo Mogannam
Cc: Richard Tarlov
Subject: Canyon Market feedback regarding file#200455. Proposed Re-employment Ordinance

The San Francisco Board of Supervisors,

Thank you for your ongoing work to help our city navigate the unprecedented challenges imposed by the Covid19 pandemic.

We read with great concern the proposed emergency ordinance restricting employer discretion in hiring practices following lay-offs resulting from this disastrous event. We strongly believe that it would be wrong-headed to add to the overwhelming burdens most San Francisco businesses are already experiencing.

Our family-owned neighborhood natural foods grocery employs nearly 100 workers and this fact has always been a point of pride for us. We pay competitive wages, offer generous benefits, including 401k with a company match, and strive always to create a compassionate and professionally rewarding workplace. We have never conducted mass layoffs and have so far not found it necessary to lay off a single employee during this crisis. To the contrary, we have diverted more funds than ever to support our hardworking staff who continue to report to work, despite the risk, in order to serve their community. However, as the SIP continues and we vigorously enforce social distancing practices, we are only able to serve a fraction of the number of customers we did previously. Added to this is a precipitous drop in basket size following the initial panic-buying phase of this emergency. These two factors combine to create an unsustainable business model for the future.

We believe that it will be a very long time indeed before the public will be willing to shop in a busy, crowded store and that in the meantime, consumer behavior will trend heavily toward online shopping, an area we have no experience with. Of course, we hope we will not need to lay anyone off, but if this is the only way to save the business, we are prepared to do it. However, we are working tirelessly to create a Canyon Market for the future that will support the same (or more) employees than it did before this crisis hit. This is not an overnight fix. It will take months, if not years, to build an online presence; to reconfigure our physical plant to allow for better throughput of customers; to redesign our menu and packaging for to-go meals, breads and baked goods that meet drastically changed consumer demands; to retrain our workforce to function under more strict guidelines than ever, without compromising safety or our high hospitality standards; to retool our purchasing, receiving and stocking practices so that we can continue to support small and local farmers and producers and to renegotiate nearly every purchasing and service agreement to meet the challenges of the future. We do this work not because it's going to make the owners and shareholders rich, but because it is our mission and passion to serve our people and our customers to the best of our ability.

This emergency ordinance would unnecessarily add to the already enormous burdens presented by this difficult time. To require that we hire back laid off employees following a time consuming and overly-complicated process, impedes our ability to do the work that may literally save our business. Simply sitting down to read the 20 page proposed ordinance, even as we try to care for our own health and families and the health and safety of our employees during this chaotic time, feels like too much. Unfortunately, we have learned from experience that the Board is inclined to mandate

changes to our business practices that adversely affect us without consultation and we know that we must pay close attention. When we have more time, we would genuinely welcome the opportunity to partner with the board to craft legislation that would both protect employees and allow for our business and others to operate in an environment that allows us to be financially sustainable.

Thank you for your consideration,

-Janet and Richard Tarlov
Owners, Canyon Market in Glen Park

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Janet Tarlov
Canyon Market
2815 Diamond Street
San Francisco, CA 94131
Tel 415-586-9999

Dick-Endrizzi, Regina (ECN)

From: Peter Hood <peterhood@sbcglobal.net>
Sent: Wednesday, May 27, 2020 10:34 AM
To: SBC (ECN)
Subject: Public Comment

On proposed Legislation being addressed in today's meeting at 11am.

Keep shooting holes in the life boats that we small business owners are trying to keep from sinking. It's what you guys are good at. I'm here to cheer you on. You haven't done anything to benefit small business in the last 30 years I know of, so don't go changing now. We small business owners have learned to love the pain. Bring it on, I am for it. Losing consciousness while being choked out is all we have to look forward to anymore, so, please, don't stop squeezing. We're almost there.

#Dear_SF #KillUsAlready

Peter Hood, St. Francis Fountain

"If my heart was a canon ...."

Dick-Endrizzi, Regina (ECN)

From: mat@theepicureantrader.com
Sent: Wednesday, May 27, 2020 10:23 AM
To: BOS-Legislative Aides; BOS-Supervisors; Dick-Endrizzi, Regina (ECN); Torres, Joaquin (ECN); SBC (ECN)
Subject: The Epicurean Trader's response to "Emergency Ordinance - Temporary Right to Re-employment Following Layoff Due to COVID19 Pandemic"

Dear Board of Supervisors, Legislative Aides and Small Business Commission,

Thank you for your continued efforts to protect and guide San Franciscans during the pandemic. Your leadership and focus on our health and well being has been extraordinary. And thank you as well for the efforts to being open to feedback as we build the infrastructure for rebuilding our economy.

We are writing with constructive feedback regarding the Emergency Ordinance - Temporary Right to Re-employment Following Layoff Due to COVID19 Pandemic.

We completely support the idea of re-employment of furloughed or laid off staff. It is smart business to bring back trained staff that have already been invested in. What we don't support, however, is an ordinance that places a significant administrative, bureaucratic and legal burden on businesses during a time when they are struggling to stay open. They should instead stay focused on keeping their staff safe and surviving the adverse economic impact that the pandemic has had on them.

Specifically, this ordinance leads with the importance of healthcare for displaced workers; however, it does not address the issues with healthcare access and cost. This ordinance instead puts the burden on businesses to be the safety net when they are struggling to maintain operations during the pandemic. Why doesn't this ordinance require health insurers to provide discounts or reduced premiums to impacted workers, especially since, at this time, only emergency services are being provided and most care is through telehealth? Why doesn't this ordinance make government funds available to workers for COBRA premiums? Why doesn't this ordinance expand access or reduced premiums to Healthy SF for impacted workers?

At The Epicurean Trader, have attempted to re-employed any furloughed staff and will continue our efforts to re-employ them. However, given the unemployment numbers currently, it is also important to

remember that *anyone we hire is likely to have been laid off from their prior job*. The few outside hires we have made since March are former staff who lost their jobs due to the pandemic and/or were hires laid off from their prior companies.

Would you prefer The Epicurean Trader focus on completing paperwork for the City or would you like us to focus on protecting the safety of our staff and guests so that we can continue to serve and feed our community? Do you fully understand the pressures we are under? We would be happy to show you our operations and explain what our daily triage and crisis management looks like in order to stay in business and support our staff, suppliers and guests.

Again, we DO NOT support this ordinance. We are already doing the right thing and trying to bring our staff back. And it frankly is too much of a burden to be bogged down with additional administrative and bureaucratic paperwork to maintain compliance.

In the event you decide against our feedback, and do vote this through, we implore you to simplify the process:

1. City creates a "Required Notice" in multiple languages that must be included in notices from employers regarding layoff that simplifies the steps from the original draft. Remove the burden of the City's data collection efforts from the businesses and allow impacted staff to opt-in directly with the City. Provide impacted staff with the resources, links and information they need directly and in one clear place.

    a. The Required Notice would include information on right to re-employment, resources through OLSE and a link and phone number for the impacted individual to be added to the City's database of impacted workers.

    b. Include resources for job training programs and job boards through the City (e.g. SF OEWD).

    c. Include any privacy information/language.

2. Allow for email and text to be a method of delivery from employers without consent. Paper mail is time consuming to prepare, costly, slow and is difficult to track. Businesses already communicate with their staff via email, text and HR information systems; obtaining consent to email someone is unnecessary and burdensome.

3. Allow businesses to take exceptions with staff who have previously refused to work – Specifically, allow businesses to NOT have to offer re-employment to staff who were able and available to work but refused to do so for personal (non-medical or otherwise protected) reasons.

4. Remove the seniority rule – staff have varying skills, qualifications, language abilities, and interests that are not based on tenure. Allow the business to manage who is best fit for available positions to ensure success for everyone.

5. 10 days is too long to allow an offer of employment to sit. We need to run our operations and cannot burn out current staff while former staff take 10 days to consider their options. This should be no more than 2 days with email, text and phone calls made to ensure they receive the information. No extensions should be permitted. Again, we are running a business and cannot allow this to hinder our hiring.

6. Remove the 90-day entitlement once re-hired. California is an at-will state. Please do not create promises of employment that are in contradiction to at-will employment. No other staff member is guaranteed that when hired – it is inequitable and not in alignment with California employment laws.

7. Remove any reporting to OLSE.

8. Remove the remedies. If businesses can barely afford to operate under these circumstances, how can they afford to litigate and pay back wages for this ordinance? How will the businesses pay for this?

Thank you so much for our thoughtful consideration and continued leadership as we all work together to navigate out of this mess and into a successful period of recovery.

Kind regards,

Mat

Owner, The Epicurean Trader

SAN FRANCISCO
OFFICE OF SMALL BUSINESS

CITY AND COUNTY OF SAN FRANCISCO
LONDON N. BREED, MAYOR

OFFICE OF SMALL BUSINESS
REGINA DICK-ENDRIZZI, DIRECTOR

Legislative Review:	BOS File No. 200455
Name:	Emergency Ordinance – Temporary Right to Reemployment
Sponsor(s):	Supervisors Mar, Preston, Safai, Haney, Walton, and Fewer
Date Introduced:	May 5, 2020
Date Referred:	May 13, 2020
Scheduled for BOS Committee:	Government Audit and Oversight

Existing law:
At present, there is no legal requirement, at any governmental level, for employers to rehire formerly employed staff for the same position from which they had been laid off.

Proposed changes:
This Emergency Ordinance requires employers operating in San Francisco to offer a right to reemployment to certain employees laid off as a result of the COVID-19 pandemic and the related stay at home and shelter in place orders issued by the City and County of San Francisco and the State of California.

The Emergency Ordinance applies to employers of any size who layoff ten or more employees in a 30-day period as a result of the emergency. The employer must extend offers of reemployment to any employee previously employed for at least 90 days in the preceding calendar year. If the employee accepts the offer, the employer must maintain the employment relationship for 90 days, subject to certain exceptions for employee misconduct and financial hardship on the part of the business.

The Emergency Ordinance applies to layoffs between February 25, 2020 and its expiration. As this is an Emergency Ordinance, it will take effect immediately upon enactment. It will remain in effect for 60 days, unless reenacted. If not, reenacted, it will expire on the 61st day.

Legislative Intent:
Under the Federal Worker Adjustment and Retraining Notice (WARN) requirements, employers with 100 or more employees must provide a 60 day notice in advance of a business closure or mass layoff (50 or more employees), with certain conditions. The State of California administers a similar notice requirement when there is a mass layoff of 75 or more full and part-time employees. Notices must be sent to the affected employees, and state and local representatives. In San Francisco, notices are sent to the Office of Economic and Workforce Development (OEWD). When notices are received, Rapid Response services are deployed by OEWD in order to provide resources to affected employees which include information about unemployment insurance, COBRA, and other health care options; retraining and employment placement assistance; career counseling; and other workforce services.

Employers with less than 75 full or part-time employees are not required to report layoffs of any size to the federal, state, or local entities. As such, there is a concern that the actual number of layoffs in the City are not being adequately reported. The Emergency Ordinance is thusly designed to provide employee protections to those working for businesses of any size. This includes decreasing the number of laid-off employees who will be without employer-sponsored health insurance as a result of the COVID-19 pandemic by requiring employers subject to the Emergency Ordinance to rehire eligible employees. This would also, theoretically, result in fewer individuals relying on the City's public health system. The Emergency Ordinance also assumes that rehiring employees as soon as practicable would not only aid their own personal economic recovery, but also would support the local economy through increased local spending.

Definitions:

"Employer" means any person who directly or indirectly owns or operates a for-profit business or non-profit in the City that employs 10 or more employees as of the earliest date that an Employer Separates one or more employees that subsequently results in a Layoff. "Employer" does not include any federal, state, or local or other public agency

"Eligible Worker" means a person: (1) employed by the Employer for at least 90 days of the calendar year preceding the date on which an Employer provides written notice to the employee of a layoff caused by the Public Health Emergency; and (2) and who was separated from employment due to a layoff caused by the Public Health Emergency or the SIP Orders.

"Family Care Hardship" means an Eligible Worker who is unable to work due to either: (1) a need to care for their child whose school or place of care has been closed, or whose childcare provider is unavailable, as a result of the Public Health Emergency, and no other suitable person is available to care for the child during the period of such leave; (2) or any grounds stated in Administrative Code § 12W.4(a) for which a person may use paid sick leave to provide care for someone other than themselves. For the purpose of this definition, "child" means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is under 18 years of age, or a child 18 years of age or older who is incapable of self-care because of a mental or physical disability.

"Layoff" means a separation from employment by an Employer of 10 or more employees during any 30-day period, commencing on or after February 25, 2020, and which is caused by the Employer's lack of funds or lack of work for its employees, resulting from the Public Health Emergency and SIP Orders. This definition includes any layoff conducted in conjunction with the closure or cessation of an Employer's business operations in the City.

"Separate" and "Separation" means the termination or end of employment.

"Substantially Similar Position" includes any of the following: a position with comparable job duties, pay, benefits, and working conditions to the Eligible Worker's position at the time of Layoff; any position in which the Eligible Worker worked for the Employer in the 12 months preceding the Layoff; and any position for which the Eligible Worker would be qualified, including a position that would necessitate training that an Employer would otherwise make available to a new employee to the particular position upon hire.

Key Components of the Emergency Ordinance:

Requirements Related to Layoffs

- Employers of any size who lay off with 10 or more employees would be required to provide a written "Notice of Layoff" and "Right to Reemployment for Existing Employees" for the duration of the Public Health Emergency and would apply retroactively to February 25, 2020.
- For employers who laid-off employees between February 25, 2020 and the effective date of the Emergency Ordinance, they would have to provide the Notice of Layoff and Right to Reemployment to those laid-off employees within 30 days of the effective date of the Emergency Ordinance.
- The Notice of Layoff and the Right to Reemployment would have to be provided to the employee in language they understand.
- The Notice of Layoff would have to include:
    1. The layoff's effective date;
    2. A summary of the Right to Reemployment (described below);
    3. The number to a hotline managed by the Office of Labor Standards and Enforcement (OLSE);
    4. A hyperlink to a website, to be operated by OLSE, where affected employees *may* complete an online form, which, OLSE may use to contact the affected employee regarding services and resources related to unemployment; and,
    5. A request that an affected employee authorize their employer to provide their name and contact information to the City in order to provide information services and resources regarding unemployment, and so that the City may gather comprehensive data regarding the number of layoffs occurring in San Francisco as a result of the Public Health Emergency.
       The employer would also request that the affected employee's written consent be provided to disclose to the City the employee's full legal name, last known address of residence, last known telephone number(s), and last known email address(es).
       The consent form would also include an attestation from the employee, indicating which of the above-listed categories of personal information they consent for the employer to disclose to the City and the affected employee's signature authorizing such disclosure.
       The employer would also have to provide pre-addressed and stamped envelope with the written notice to facilitate the employee's return of the requested information.
       The employee would have to return that written authorization within seven days of receipt of the Notice.
- Employers would also have to provide written notice of a layoff to OLSE within 30 days of the date they initiate the layoff. The written notice to OLSE would have to include:
    1. The total number of employees located in San Francisco affected by the Layoff;
       The job classification at the time of Separation for each affected employee;
    2. The original hire date for each affected employee;
       The date of Separation from employment for each affected employee; and,
    3. The extent that any separated employee has consented to disclose personally identifiable Information to OLSE.

- If an employer does not anticipate a layoff of 10 or more employees, the requirement to issue a Notice of Layoff will be triggered once a 10th employee has been laid off;
- Employers will be required to retain records relating to layoffs occurring due to the Public Health Emergency for at least two years beginning from the date of the written Notice of Layoff.

Requirements Related to Rehiring:

- If an employer should seek to rehire after a layoff, the employer will first have to offer the position to a person who had been employed prior to that layoff, if that position is substantially similar to the employee's previous job duties.
- Reemployment offers must be made to employees that had been laid off in order of seniority, meaning to the individual who held the earliest date of hire.
- The employer will have to extend the offer of reemployment via mail, the employer may also submit via email. The employer will also extend the offer via phone call in a good faith effort, and the employee
- The rehire offer will last for two days if made by telephone and the employee consents to receiving the offer via email.
- The rehire offer will last for seven days after the written notice is confirmed to have been received by the employee.
- If the employer does not receive a confirmation that the offer has been received by mail, the offer must remain open for 10 days after it is sent.
- If there is not a response to the offer, the offer can be considered rejected.
- If the eligible worker accepts the offer, they must do so in writing or email.
- The eligible worker is guaranteed at least 90 days of reemployment unless the eligible worker engages in activity that would disqualify them from employment or, if the employer suffers demonstrable financial hardship.
- The employer also must accommodate eligible workers who are experiencing a "Family Care Hardship" by modifying their schedule, hours worked, or permitting telework where feasible.
- Employers must also notify OLSE in writing of all offers of reemployment.

Remedies for Violations

Eligible workers may bring an action against an employer for alleged violations of this Emergency Ordinance to the Superior court of California. The eligible worker, should they be the prevailing party, would receive hiring and reinstatement rights, and back-pay for each day of the violation. The employer would also be responsible for paying reasonable attorney's fees and costs.

Issues and Considerations:

At present, there are approximately 49,727 small businesses with 100 or fewer employees that this legislation could potentially impact, not accounting for those that have temporarily or permanently closed due to the Public Health Emergency. Although, the City Controller has indicated that just ~14,000 businesses have been specifically affected and approximately ~166,000 employees.

The pandemic has created insurmountable challenges for most of our small businesses. In addition to administering layoffs through no fault of their own, they have been unable to pay rents and mortgages and other fixed costs due to lack of revenue. And, while attempting to find the means for paying those fixed costs employers have been applying for federal, state, and local assistance programs, often to no avail. Temporary closures have resulted in permeant closures and permanent layoffs. While this legislation would indeed provide the City with critical information related to layoffs of less than 75 employees, it would present small businesses with significant challenges and would establish a strain on City resources.

During the Public Health Emergency, small businesses must comply with guidance being issued from the state and the local Department of Public Health. Directives from those entities have resulted in temporary closures for most, and significantly modified business operations for others. These directives are also frequently issued with little notice leaving small businesses with little time to prepare. For example, one week's notice was given to allow most retailers to conduct curbside pick-up. And, guidance for conducting curbside pick-up was provided just four days before retailers were permitted to operate in that manner. Should this legislation pass, the timelines outlined in the requirements for rehiring may inadvertently leave small businesses significantly understaffed. As such a business preparing to reopen or open with a limited capacity would be left without the staffing necessary to get themselves open and ready to serve customers in a timely manner. This would thusly subvert the legislation's intent to support the local economy.

The emergency legislation would also require that eligible employees affected by a layoff respond to offers of reemployment. If eligible employees do not respond within the prescribed timelines, the offer would be considered declined. A condition for receiving unemployment insurance is that an individual is actively seeking work. Should there be a record made that an individual has effectively declined an offer of employment, it may jeopardize their receipt of unemployment benefits. Again, this requirement paired with the record retention policy would effectively undermine the legislation's intent to provide employee protections and support an individual's own economic recovery.

Eligible workers are able to bring legal action to the Superior Court of the State of California for alleged violations of the Emergency Ordinance. Standards for bringing legal action to the Superior Court of the State of California are not prescribed. And, options for reconciling alleged violations at the local level are also not addressed. Legal action can be extraordinarily costly. In this fiscal climate, arbitration could quite possibly mean that the business would be forced into permanent closure.

This emergency legislation also indicates that the Office of Labor Standards and Enforcement would be responsible for it's administration. However, OEWD has historically provided services related to layoff assistance and has provided Rapid Response services. OLSE would be thusly required to create a novel program which would include the development of a hotline and an entirely new website, to be administered for just 60 days. At the same time, it is widely understood that City Departments have been advised of a hiring freeze that is likely to last for many months to come. Should this legislation pass, it is likely to create an undue burden on City resources.

From:	BOS Legislation, (BOS)
To:	Carroll, John (BOS)
Cc:	BOS Legislation, (BOS)
Subject:	FW: The Epicurean Trader"s response to "Emergency Ordinance - Temporary Right to Re-employment Following Layoff Due to COVID19 Pandemic"
Date:	Monday, June 1, 2020 8:16:16 AM

Good morning John,

For File No. 200455 [Emergency Ordinance - Temporary Right to Reemployment Following Layoff Due to COVID-19 Pandemic].

Thank you,
Jocelyn Wong
San Francisco Board of Supervisors
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102
T: 415.554.7702 | F: 415.554.5163
jocelyn.wong@sfgov.org | www.sfbos.org

From: Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>
Sent: Monday, June 1, 2020 5:56 AM
To: BOS-Supervisors <bos-supervisors@sfgov.org>; BOS Legislation, (BOS) <bos.legislation@sfgov.org>
Subject: FW: The Epicurean Trader's response to "Emergency Ordinance - Temporary Right to Re-employment Following Layoff Due to COVID19 Pandemic"

From: mat@theepicureantrader.com <mat@theepicureantrader.com>
Sent: Wednesday, May 27, 2020 10:23 AM
To: BOS-Legislative Aides <bos-legislative_aides@sfgov.org>; BOS-Supervisors <bos-supervisors@sfgov.org>; Dick-Endrizzi, Regina (ECN) <regina.dick-endrizzi@sfgov.org>; Torres, Joaquin (ECN) <joaquin.torres@sfgov.org>; SBC (ECN) <sbc@sfgov.org>
Subject: The Epicurean Trader's response to "Emergency Ordinance - Temporary Right to Re-employment Following Layoff Due to COVID19 Pandemic"

Dear Board of Supervisors, Legislative Aides and Small Business Commission,

Thank you for your continued efforts to protect and guide San Franciscans during the pandemic. Your leadership and focus on our health and well being has been extraordinary. And thank you as well for the efforts to being open to feedback as we build the infrastructure for rebuilding our economy.

We are writing with constructive feedback regarding the Emergency Ordinance - Temporary Right to Re-employment Following Layoff Due to COVID19 Pandemic.

We completely support the idea of re-employment of furloughed or laid off staff. It is smart business to bring back trained staff that have already been invested in. What we don't support, however, is an ordinance that places a significant administrative, bureaucratic and legal burden on businesses during a time when they are struggling to stay open. They should instead stay focused on keeping their staff safe and surviving the adverse economic impact that the pandemic has had on them.

Specifically, this ordinance leads with the importance of healthcare for displaced workers; however, it does not address the issues with healthcare access and cost. This ordinance instead puts the burden on businesses to be the safety net when they are struggling to maintain operations during the pandemic. Why doesn't this ordinance require health insurers to provide discounts or reduced premiums to impacted workers, especially since, at this time, only emergency services are being provided and most care is through telehealth? Why doesn't this ordinance make government funds available to workers for COBRA premiums? Why doesn't this ordinance expand access or reduced premiums to Healthy SF for impacted workers?

At The Epicurean Trader, have attempted to re-employed any furloughed staff and will continue our efforts to re-employ them. However, given the unemployment numbers currently, it is also important to remember that *anyone we hire is likely to have been laid off from their prior job*. The few outside hires we have made since March are former staff who lost their jobs due to the pandemic and/or were hires laid off from their prior companies.

Would you prefer The Epicurean Trader focus on completing paperwork for the City or would you like us to focus on protecting the safety of our staff and guests so that we can continue to serve and feed our community? Do you fully understand the pressures we

are under? We would be happy to show you our operations and explain what our daily triage and crisis management looks like in order to stay in business and support our staff, suppliers and guests.

Again, we DO NOT support this ordinance. We are already doing the right thing and trying to bring our staff back. And it frankly is too much of a burden to be bogged down with additional administrative and bureaucratic paperwork to maintain compliance.

In the event you decide against our feedback, and do vote this through, we implore you to simplify the process:

1. City creates a "Required Notice" in multiple languages that must be included in notices from employers regarding layoff that simplifies the steps from the original draft. Remove the burden of the City's data collection efforts from the businesses and allow impacted staff to opt-in directly with the City. Provide impacted staff with the resources, links and information they need directly and in one clear place.

    a. The Required Notice would include information on right to re-employment, resources through OLSE and a link and phone number for the impacted individual to be added to the City's database of impacted workers.

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2. Allow for email and text to be a method of delivery from employers without consent. Paper mail is time consuming to prepare, costly, slow and is difficult to track. Businesses already communicate with their staff via email, text and HR information systems; obtaining consent to email someone is unnecessary and burdensome.

3. Allow businesses to take exceptions with staff who have previously refused to work – Specifically, allow businesses to NOT have to offer re-employment to staff who were able and available to work but refused to do so for personal (non-medical or otherwise protected) reasons.

4. Remove the seniority rule – staff have varying skills, qualifications, language abilities, and interests that are not based on tenure. Allow the business to manage who is best fit for available positions to ensure success for everyone.

5. 10 days is too long to allow an offer of employment to sit. We need to run our operations and cannot burn out current staff while former staff take 10 days to consider their options. This should be no more than 2 days with email, text and phone calls made to ensure they receive the information. No extensions should be permitted. Again, we are running a business and cannot allow this to hinder our hiring.

6. Remove the 90-day entitlement once re-hired. California is an at-will state. Please do not create promises of employment that are in contradiction to at-will employment. No other staff member is guaranteed that when hired – it is inequitable and not in alignment with California employment laws.

7. Remove any reporting to OLSE.

8. Remove the remedies. If businesses can barely afford to operate under these circumstances, how can they afford to litigate and pay back wages for this ordinance? How will the businesses pay for this?

Thank you so much for our thoughtful consideration and continued leadership as we all work together to navigate out of this mess and into a successful period of recovery.

Kind regards,

Mat

Owner, The Epicurean Trader

From:	BOS Legislation, (BOS)
To:	Carroll, John (BOS)
Cc:	BOS Legislation, (BOS)
Subject:	FW: Comments on Draft Ordinance: Temporary Right to Re-employment
Date:	Wednesday, May 20, 2020 8:49:17 AM

For File No. 200455.

Lisa Lew
San Francisco Board of Supervisors
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102
T 415-554-7718 | F 415-554-5163
lisa.lew@sfgov.org | www.sfbos.org

From: Calvillo, Angela (BOS) <angela.calvillo@sfgov.org>
Sent: Tuesday, May 19, 2020 9:18 PM
To: BOS Legislation, (BOS) <bos.legislation@sfgov.org>
Subject: FW: Comments on Draft Ordinance: Temporary Right to Re-employment

From: Sam Mogannam <Sam@biritemarket.com>
Sent: Tuesday, May 19, 2020 12:59 PM
To: SBC (ECN) <sbc@sfgov.org>; BOS-Supervisors <bos-supervisors@sfgov.org>; BOS-Legislative Aides <bos-legislative_aides@sfgov.org>
Cc: Calvin Tsay <calvin@biritemarket.com>; Brianne Gagnon <brianne.gagnon@biritemarket.com>; Dick-Endrizzi, Regina (ECN) <regina.dick-endrizzi@sfgov.org>; Torres, Joaquin (ECN) <joaquin.torres@sfgov.org>; DPH-Sam-mff <SAM@BIRITEMARKET.COM>
Subject: Comments on Draft Ordinance: Temporary Right to Re-employment

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Thank you for your continued efforts to protect and guide San Franciscans during the pandemic. Your leadership and focus on our health and well being has been extraordinary. And thank you as well for the efforts to being open to feedback as we build the infrastructure for rebuilding our economy.

We are writing with constructive feedback regarding the Emergency Ordinance - Temporary Right to Re-employment Following Layoff Due to COVID19 Pandemic.

During the week of March 15, Bi-Rite furloughed 55 staff as the pandemic and shelter-in-place ordinance forced the closure of our Cafe and Creamery and our Catering business evaporated overnight. This was the hardest week of my career. Our staff are the most important thing at Bi-Rite, we are like a family. And, as an owner, you never want to be in a position where you have to take their jobs, their security, and their community away. The cost of living and pressures on families in the Bay Area are significant and we know how serious this situation is for them. We were forced to make that difficult decision, however, or we could have risked losing the entire company and the security of all 350 people working for us. Our owners and leadership team also took sizeable pay cuts to help cash flow and to prevent further furloughs. We opted to furlough as opposed to laying off in order to maintain health care benefits for our team.

In addition to the furloughs, due to closures and reduction in sales, staff at the Market locations began refusing to work and, in an effort to be compassionate during a scary time, we offered them the option to "self-furlough" (24 staff refused to work) because we did not want them to lose their health benefits at a time they needed them most.

During the furlough, Bi-Rite has continued to pay 100% of their health insurance premiums, provided a 40% discount (increased from 25% pre-Covid) at our Markets, and I have personally delivered grocery boxes (at Bi-Rite's cost) to support them and their families while they are on furlough. This is in addition to bi-weekly communications regarding available work, government programs and support resources in two languages. The cost of health insurance premiums for Bi-Rite per month for furloughed staff is approximately $23,000 per month. Bi-Rite has committed to paying premiums for four months of their furlough - April, May, June, and July – equal to approximately $92,000 of additional expenses. Beyond July, Bi-Rite cannot afford to continue incurring that expense at our current business levels.

Bi-Rite's current total furloughed staff is now 41 (17 furloughed staff and 24 self-furloughed staff). Bi-Rite has already re-employed 70% (38 staff) of the original 55 furloughed staff and continues to actively reach out to the remaining 30% in an attempt to re-employ them. The 24 self-furloughed staff continue to refuse to work.

As you can see by our practice, we completely support the idea of re-employment of furloughed or laid off staff. It is smart business to bring back trained staff that have already been invested in. What we don't support, however, is an ordinance that places a significant administrative, bureaucratic and legal burden on businesses during a time when they are struggling to stay open. They should instead stay focused on keeping their staff safe and surviving the adverse economic impact that the pandemic has had on them.

Specifically, this ordinance leads with the importance of healthcare for displaced workers; however, it does not address the issues with healthcare access and cost. This ordinance instead puts the burden on businesses to be the safety net when they are struggling to maintain operations during the pandemic. Why doesn't this ordinance require health insurers to provide discounts or reduced premiums to impacted workers, especially since, at this time, only emergency services are being provided and most care is through telehealth? Why doesn't this ordinance make government funds available to workers for COBRA premiums? Why doesn't this ordinance expand access or reduced

premiums to Healthy SF for impacted workers?

We have already re-employed 70% of our furloughed staff and will continue our efforts to re-employ the remainder. Given the unemployment numbers currently, it is also important to remember that *anyone we hire is likely to have been laid off from their prior job*. The few outside hires we have made since March are former staff who lost their jobs due to the pandemic and/or were hires laid off from their prior companies.

Would you prefer Bi-Rite focus on completing paperwork for the City or would you like us to focus on protecting the safety of our staff and guests so that we can continue to serve and feed our community? Do you fully understand the pressures we are under? We would be happy to show you our operations and explain what our daily triage and crisis management looks like in order to stay in business and support our staff, suppliers and guests.

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With sincere appreciation
sam

Sam Mogannam
Founding Partner
he, him
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sam@biritemarket.com
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May 19, 2020

San Francisco Board of Supervisors
1 Dr. Carlton B. Goodlett Place
City Hall, Room 244
San Francisco, CA 94102-4689

Re: **File No. 200455**—"Emergency Ordinance - Temporary Right to Reemployment Following Layoff Due to COVID-19 Pandemic"

Supervisors:

The California Employment Law Council ("CELC")[1] submits this letter opposing the San Francisco Board of Supervisor's proposal to create recall rights for workers within the city and county terminated due to the COVID-19 pandemic. The proposed ordinance violates core constitutional principles; runs counter to several federal and state laws; and is extremely vulnerable to abuse.[2]

The CELC recognizes these are unprecedented times, and that resolving the problems left in COVID-19's wake requires out-of-the-box thinking. However, the answer is not to further weaken San Francisco's employers—many of which already face an uncertain future—with this type of burdensome, novel, and largely untested law. A law that could drag the City into lengthy, prolonged litigation over the ordinance's enforceability at a time San Francisco should be focusing on recovery. And make no mistake—this law is ripe for legal challenge. Indeed, if passed, the CELC *will* challenge it; and, if successful, *will* seek recoverable attorneys' fees from the City.[3] *See* 42 U.S.C. § 1988; Cal. Code Civ. Proc. § 1021.5.

[1] The California Employment Law Council is a non-profit organization that works to promote a better legal climate for California employers. Our members include many of California's largest and most significant employers. Senior-level in-house counsel and human resources professionals from these companies participate in and guide CELC activities. A select number of leading law firms in the area of management-employment law also participate as associate members.

[2] The CELC wishes to note that the severability provision would not rescue the ordinances absent *proof* the Board would have passed it without the unconstitutional portions. *See Long Beach Lesbian & Gay Pride, Inc. v. City of Long Beach*, 14 Cal. App. 4th 312, 327 (1993).

[3] "An association" like the CELC "has standing to bring suit on behalf of its members when [1] its members would otherwise have standing to sue in their own right, [2] the interests at stake are germane to the organization's purpose, and [3] neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 181 (2000).

I. THE PROPOSED ORDINANCE VIOLATES SAN FRANCISCO'S CHARTER.

While cities "may make and enforce all ordinances and regulations in respect to municipal affairs," that authority is still subject "to restrictions and limitations provided in their several charters." Cal. Const., Art. XI § 5. And, under San Francisco's charter, "[a]n ordinance shall deal with only one subject matter." S.F. Charter, § 2.105. Yet the Board hopes to not only impose novel recall rights on the City's employers—it is attempting to, in abrogation of the constitutional limits on its authority, create a separate "Duty to Reasonably Accommodate Eligible Workers Experiencing a Family Care Hardship." That subject is completely divorced from the rest of the emergency ordinance, which otherwise focuses entirely on creating a temporary right to reemployment. The Board cannot simply tack a reasonable accommodation law onto a different emergency ordinance without overstepping its legal authority.

II. THE PROPOSED ORDINANCE VIOLATES THE UNITED STATES CONSTITUTION.

A. The Proposed Ordinance Completely Upsets A Foundational Understanding That Underlies Nearly Every Employment Agreement In California, Thereby Violating The Contracts Clause.

Any law that—like this ordinance—substantially impairs pre-existing, contractual obligations violates the contract clauses of both the federal and California constitutions. *Teachers' Ret. Bd. v. Genest*, 154 Cal. App. 4th 1012, 1026 (2007); *Local 101 of Am. Fed'n & Mun. Emples. v. Brown*, 2017 U.S. Dist. LEXIS 130988, at *21 (N.D. Cal. Aug. 16, 2017) ("[T]he party asserting a Contract Clause claim must establish" (1) "that a change in law impairs the contractual relationship" and (2) "that the impairment is substantial.").[4]

The proposed ordinance creates a novel, potentially long-lasting, retroactive right. Neither state nor local law recognizes such a broad statutory right of recall, or a cause of action for violating that right. Indeed, it is extraordinarily rare for *any* government to pass this type of legislation. And, when they do, it is often struck down as violating the contracts clause.

In *Garris v. Hanover Ins. Co.*, for example, the Fourth Circuit Court of Appeals struck down a South Carolina statute restricting the reasons why an insurance company can terminate an agent. 630 F.2d 1001 (4th Cir. 1980). The agent and insurance company previously agreed that either party could unilaterally terminate their contract with sixty days' notice. *Id.*, at 1003. But, when the insurance company exercised that right, the agent sued, alleging he was terminated for a statutorily-barred reason. *Id.* The Fourth Circuit concluded the contract clause preempted the agent's claim, explaining "the right of unilateral termination upon sixty days notice for which [the company] bargained must be accounted a critical feature of its total contractual relationships with its agents." *Id.*, at 1006. The statute "severely modified" that right, making "every

[4] The California Supreme Court never considered whether the successorship ordinance at-issue in *Cal. Grocers* violated the contracts clause. *Cal. Grocers Ass'n v. City of L.A.*, 52 Cal. 4th 177 (2011). This is likely because the Grocery Worker Retention law only briefly extended pre-existing agreements between a predecessor employer and the worker; and thus it did not "substantially impair" any contracts. However, as this section discusses, the proposed COVID-19 ordinance is far broader.

termination subject to costly and disruptive legal challenges with no guarantee that even 'rightful' terminations would be so adjudged in the always chancey litigation process." *Id.*

The Fourth Circuit does not stand-alone. When West Virginia made it illegal for insurance companies to terminate agents absent good cause, the state's Supreme Court struck the law down for violating the contracts clause. *Shell v. Metro. Life Ins. Co.*, 181 W. Va. 16 (1989). Noting that, as there "was never any attempt to regulate" a "right to hire and fire" workers in that industry, the court concluded "it [could] hardly be said that the parties here could reasonably have foreseen the creation of a 'good cause' prerequisite to termination . . . at the time the contract was executed." *Id.*, at 23; *see also Birkenwald Distrib. Co. v. Heublein, Inc.*, 55 Wash. App. 1, 6 (1989) (finding a statewide ordinance requiring wine suppliers notify wholesale distributors sixty-days before terminating a contract did not apply to any contracts entered into prior to the law's enactment as, prior to it, suppliers had "an *express*, albeit unwritten, right to terminate [a contract] at will").

The Board's proposed ordinance is just as burdensome and violative as the statutes struck down in *Garris* and *Shell*. Prior to this ordinance, there was no statutory right to recall; nor were there any laws barring companies from terminating workers without case. Quite the opposite—under California law, and absent an agreement otherwise, all "employment may be terminated at the will of either party on notice to the other." Cal. Lab. Code § 2922. California employers thus have a statutory right to terminate an employee for any non-protected reason. And "the declared public policy of this state" favors that right, as evinced by the plain language of the statute. *Hejmadi v. AMFAC, Inc.*, 202 Cal. App. 3d 525, 544-45 (1988).

Accordingly, this is not a minor impairment—it shifts a foundational understanding of the nature of employment in this state. *See Ross v. Berkeley*, 655 F. Supp. 820, 828 (N.D. Cal. 1987) ("[s]ignificant among" the factors bearing on the impairment's substantiality "is whether the state has restricted plaintiffs 'to gains [they] reasonably expected from the contract'") (*quoting Energy Reserves Grp. v. Kan. Power & Light Co.*, 459 U.S. 400, 411 (1983)). Nearly every employment agreement in California either impliedly or expressly recognizes the at-will nature of the relationship.[5] Employers hired assuming that, if the viability of their business was threatened, they could lay off those workers *without* granting them a possible cause of action. But, as in *Garris*, this ordinance severely modifies that contractual right, making "every termination subject to costly and disruptive legal challenges with no guarantee that even 'rightful' terminations would be so adjudged." 630 F.2d at 1006. It is, accordingly, unconstitutional.

[5] This is, of course, not the only contract impaired by the proposed reemployment rights. Unions fought to include specific seniority and recall rights in the agreements they negotiated with companies because no such rights existed—rights that may be expressly at-odds with the bumping, recall, and notice rules in the Ordinance. And, more recently, several businesses have offered severance packages to employees impacted by the pandemic with the understanding they would not be re-hired.

B. The Proposed Ordinance Abrogates A Fundamental Right Of Displaced Workers Outside Of San Francisco In Favor Of Those Within The City, Violating The Equal Protection Clause.

The Board's proposed right of recall does not "simply preserve[], temporarily, the status quo" by returning displaced workers to their prior positions. *Cal. Grocers Ass'n.*, 52 Cal. 4th at 206. Any laid off employee unlucky enough to work outside of San Francisco must take a back seat to all workers subject to recall who are arguably qualified for any job that opens at their prior employer. And that prohibition potentially lasts for *years*—not just the duration of the pandemic. Those who fall outside the City thus have their fundamental right to pursue work abrogated in favor of those inside of San Francisco. *See Lucchesi v. City of San Jose*, 104 Cal. App. 3d 323, 333 n.9 (1980) ("[T]he courts of this state have characterized employment as a fundamental interest under the California Constitution," and as such "the state may not arbitrarily foreclose any person's right to pursue an otherwise lawful occupation."); *see also* Cal. Bus. & Prof. Code § 16600 (voiding any "contract by which anyone is restrained from engaging in a lawful profession").

Since the Board designed this ordinance to benefit workers within San Francisco to the detriment of those outside of the City, it will violate the constitutional guarantee of equal protection under the law unless it survives strict scrutiny.[6] United States Const. Amend. 14; Cal. Const., Art. I § 7; *see also Sanchez v. City of Modesto*, 145 Cal. App. 4th 660, 686 (2006) ("[S]trict scrutiny under the equal protection clause can be triggered by a classification used to burden a fundamental right.").[7]

"Strict scrutiny requires the Government to prove that the restriction on a constitutional right furthers a compelling interest and is narrowly tailored to achieve that interest." *Duncan v. Becerra*, 366 F. Supp. 3d 1131, 1159 (S.D. Cal. 2019). "A restriction is not narrowly tailored if less restrictive alternatives would be at least as effective in achieving the legitimate purpose that the statute was enacted to serve." *In re Nat'l Sec. Letter v. Sessions*, 863 F.3d 1110, 1124 (9th Cir. 2017) (internal quotation omitted).

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[6] While the California Supreme Court in *Cal. Grocers* held the Grocery Worker Retention Ordinance did not violate the equal protection clause, it only examined claims that the ordinance invalidly discriminated based on the *employer's* use of customer memberships, overall size, industry, and the terms of its collective bargaining agreement. 52 Cal. 4th at 209. It never considered an equal protection argument forwarded by *workers* displaced by the ordinance.

[7] Normally, "[r]ational basis review . . . applies to [an] Equal Protection Clause claim based on non-resident status." *Spencer v. Lunada Bay Boys*, 2020 U.S. App. LEXIS 9609, at *7 (9th Cir. Mar. 27, 2020). However, the ordinance does not discriminate based on residence—it turns on where an employee actually performed their work. But, even if rational basis was the appropriate standard, the ordinance would still fail. Rational basis review, while deferential, "is not [] toothless." *Mathews v. Lucas*, 427 U.S. 495, 510 (1976). The challenged "classification must bear some fair relationship to a legitimate public purpose." *Griffiths v. Superior Court*, 96 Cal. App. 4th 757, 776 (2002). And that relationship must "find some footing in the realities of the subject addressed by the legislation." *Heller v. Doe*, 509 U.S. 312, 321 (1993). The right of recall does not meet the ordinance's two goals—to (1) "ensure fair employment practices during the economic upheaval" created by the pandemic and (2) "reduce the demand on government-funded social services." Instead, it effectively forces employers to discriminate against workers outside of the city in favor of workers inside of it, thereby harming the statewide economy and putting pressure on its social welfare system.

The ordinance forwards three goals—reduce the economic upheaval caused by the pandemic, decrease the number of people "without employer-sponsored health insurance," and "alleviate the burden that layoffs of employees working in the City place on the City's public health system." There are a myriad of ways to serve those goals *without* creating a discriminatory right of recall. San Francisco could mimic Congress and create a loan program to help businesses keep workers on payroll. Or it could create a job training and placement program to help workers impacted by the pandemic. But what it cannot do is pass an overly broad, discriminatory ordinance that forces workers outside of San Francisco to forgo gainful employment for the benefit of workers inside the City based on little else but unspecified "anecdotal evidence being shared with the City." *Cf. Adarand Constructors, Inc. v. Slater*, 228 F.3d 1147, 1166 (10th Cir. 2000) ("Both statistical and anecdotal evidence are appropriate in the strict scrutiny calculus, although anecdotal evidence by itself is not."); *Associated Gen. Contractors of Am. v. Cal. DOT*, 713 F.3d 1187, 1196 (9th Cir. 2013) (noting "anecdotal evidence" is "generally not sufficient" for a regulation to survive strict scrutiny, unless it is accompanied by "statistical evidence").

C. The Proposed Ordinance Violates The Constitutional Protections For Intimate, Familial Relationships Enjoyed By All Family-Run Companies In San Francisco By Barring Business Owners From Hiring Members Of Their Own Family.

"Private citizens have a right . . . [to] associate with one another on mutually negotiated terms and conditions." *Hill v. Nat'l Collegiate Athletic Ass'n*, 7 Cal. 4th 1, 39 (1994). A right that is not only "protected by the First Amendment;" but that "extends to all legitimate organizations, whether popular or unpopular." *Id.* This "constitutionally protected 'freedom of association'" protects a person's "choices to enter into and maintain certain intimate human relationships." *Roberts v. United States Jaycees*, 468 U.S. 609, 617-18 (1984).

Though employment relationships will not typically fall within the realm of "intimate human relationships," familial relationships do. *Copp v. Unified Sch. Dist.*, 882 F.2d 1547, 1551 (10th Cir. 1989) ("The right to associate protects an individual's decision to enter into and maintain certain intimate human relationships. In general, those protected relationships have involved familial settings, not employment settings."). Indeed, "some of the most important personal bonds necessary for the protection of individual freedom 'are those that attend the creation and sustenance of a family.'" *Johnson v. City of Cincinnati*, 310 F.3d 484, 499 (6th Cir. 2002) (*quoting Roberts*, 468 U.S. at 619) (invalidating a municipal ordinance that infringed on the right to familial association).

According to the US Census Bureau, one in every three businesses in the country is family owned or controlled.[8] For these companies, a hiring restriction undoubtedly comes closer to infringing on the type of relationships "that attend the creation and sustenance of a family" than on the standard employer/employee relationship seen in a "large business enterprise . . . remote from [such] concerns." *Roberts*, 468 U.S. at 619.

[8] In 2016, the United States Census Bureau surveyed of 3,431,558 nonfarm businesses that filed taxes as individual proprietorships, partnerships, or any type of corporation, and with receipts of $1,000 or more. 1,035,549—roughly 30.2%—reported they were family-owned. *See* U.S. CENSUS BUREAU, ANNUAL SURVEY OF ENTREPRENEURS (ASE) - CHARACTERISTICS OF BUSINESSES (2016), available at https://www.census.gov/data/tables/2016/econ/ase/2016-ase-characteristics-of-businesses.html.

After all, it is axiomatic that a family-owned company would normally rely on familial help to get back up-and-running. But under the emergency ordinance, proprietors of family-run businesses in San Francisco cannot even hire *their own family members* for any role that was once filled by a terminated worker. Thus, as the emergency ordinance violates the constitution's protection of intimate familial relationships, it cannot stand.

D. The Proposed Ordinance Violates The Right To Free Speech Of Every Company In The City Engaged In Artistic Or Creative Pursuits By Mandating Whom Those Companies Can, And Cannot, Hire.

San Francisco is a well-known creative hub—countless television studios, film companies, theaters, publications, and other artistic businesses call the City home. These organizations have the constitutionally protected "autonomy to choose the content of [their] own message" free from government interference. *Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp. of Boston*, 515 U.S. 557, 573 (1995). Such autonomy extends to the hiring and firing of personnel who could affect the content or delivery of its message. *Citizens United v. FEC*, 558 U.S. 310, 342 (2010) ("First Amendment protection extends to corporations.").

Indeed, the Ninth Circuit Court of Appeals in *McDermott* recognized the "rights of employees to organize and engage in collective bargaining" under the National Labor Relations Act yielded a the newspaper's First Amendment rights, as "[t]elling the newspaper that it must hire specified persons, namely the discharged employees, as editors and reporters . . . is bound to affect what gets published." *McDermott ex rel. NLRB v. Ampersand Publ'g, LLC*, 593 F.3d 950, 961–62 (9th Cir. 2010). The Court therefore refused to order reinstatement, as "[t]o the extent [a] publisher's choice of writers affects the expressive content of its newspaper, the First Amendment protects that choice." *Id.* at 962.

And, in *Claybrooks*, the District Court for the Middle District of Tennessee ruled the First Amendment barred the claims of two African-American men who alleged the producers of a reality show refused to cast them on the basis of their race, violating laws banning racial discrimination in contracts. *Claybrooks v. ABC, Inc.*, 898 F. Supp. 2d 986, 990-91 (M.D. Tenn. 2012). Reasoning "the First Amendment protects the right of the producers of . . . [s]hows to craft and control [their] messages, based on whatever considerations the producers wish to take into account," it effectively "prevents [] plaintiffs from effectuating [their own] goals by forcing the defendants to employ race-neutral criteria in their casting decisions." *Id.* at 1000. Thus, regardless of whether race-neutral criteria "would frustrate, enhance, or be entirely consistent with the message that [the show] conveys, the First Amendment protects the producers' right unilaterally to control their own creative content." *Id.*; *see also Hunter v. CBS Broad. Inc.*, 221 Cal. App. 4th 1510, 1521 (2013) ("[C]asting decisions regarding who was to report the news on a local television newscast, 'helped advance or assist' . . . *First Amendment* expression. . . . [and] therefore qualifies as a form of protected activity.").

San Francisco's creative business community—just like *Hurley's* parade organizer, *McDermott's* newspaper, and *Claybrooks's* producers—have a unilateral right to choose the content and speaker of their messages. This emergency ordinance unconstitutionally violates that right by mandating whom these businesses can, and cannot, hire.

E. The Proposed Ordinance Interferes With The Hiring And Firing Decisions Of Religious Organizations Within The City, Violating The Free Exercise Clause.

The emergency ordinance has just one, narrow exemption—companies with fewer than nine employees. Thus, even religious organizations and places of worship—groups whose "selection of its own clergy is . . . [a] core matter of ecclesiastical self-governance with which the state may not constitutionally interfere"—are impacted. *Bollard v. Cal. Province of the Soc'y of Jesus*, 196 F.3d 940, 946 (9th Cir. 1999); *see also Smith v. Raleigh Dist. of the N.C. Conference of the United Methodist Church*, 63 F. Supp. 2d 694, 703 (E.D.N.C. 1999) ("[S]uits in which ministers or those individuals performing ministerial functions challenge the selection, failure to hire, assignment, and/or discharge decisions of religious institutions are barred by the First Amendment.").

The ordinance not only limits these organizations from terminating rehired, ministerial staff outside of one of three enumerated scenarios—as drafted, it arguably requires that these groups offer terminated, lay employees any newly-opened ministerial job for which that lay worker could become qualified with training. That is, facially, an abridgment of the organization's right to freely exercise its religion. *Hobby Lobby Stores, Inc. v. Sebelius*, 723 F.3d 1114, 1133 (10th Cir. 2013) ("[A]ssociations—not just individuals—have Free Exercise rights.").

III. STATE AND FEDERAL LAWS PREEMPT SEVERAL OF THE ORDINANCE'S PROVISIONS.

A. California Labor Code Section 2922 Creates "At-Will" Rights That Preempt The Proposed Ordinance.[9]

California Labor Code section 2922 states "employment, [with] no specified term, may be terminated at the will of either party on notice to the other." California employers thus have a statutory right to terminate an employee for any non-protected reason. And, as noted above, "the declared public policy of this state" favors that right. *Hejmadi*, 202 Cal. App. 3d at 544-45. This ordinance cannot co-exist with section 2922. The pandemic has simply made it economically infeasible to keep workers on payroll. Yet the ordinance forbids businesses from permanently

[9] While the application is slightly limited, the Board's proposed ordinance also directly conflicts with the Uniformed Services Employment and Reemployment Rights Act and National Banking Act. USERRA obligates employers to return service members to a position they would have been in had they not been deployed. An obligation that "supersedes any State law (including any local law or ordinance), contract, agreement, policy, plan, practice, or other matter that reduces, limits, or eliminates in any manner any right or benefit provided by this chapter . . . including the establishment of additional prerequisites to the exercise of any such right or the receipt of any such benefit." 38 U.S.C. § 4302. The Ordinance creates a potential conflict between laid off workers and service members—both of whom would be entitled to reinstatement—because it requires employers offer every laid-off worker *any* position that becomes available for which that worker is qualified, and gives preferential treatment based on seniority. It would thus limit the right to reinstatement created by USERRA for any role that would have gone to a returning service-member but for the ordinance. As for federal banking law, it empowers banks to employ and "dismiss at pleasure" its "officers, employees and agents." *Inglis v. Feinerman*, 701 F.2d 97, 98 (9th Cir. 1983). Employing and dismissing workers "at pleasure" is akin to "at will" employment. *See Mueller v. First Nat'l Bank*, 797 F. Supp. 656, 663 (C.D. Ill. 1992) ("Congress intended the 'at pleasure' language to mean 'at will' as applied in the common law."). This ordinance violates that principle by forcing banks to rehire anyone it terminated because of the economic pressure created by the COVID-19 pandemic.

laying those workers off—which is, otherwise, perfectly legal. And, since cities cannot pass laws that duplicate, contradict, or enter into an area fully occupied by state law, the ordinance is preempted. *Sherwin-Williams Co. v. City of L.A.*, 4 Cal. 4th 893, 898 (1993).

B. The California Consumer Privacy Protection Act Expressly Preempts The Emergency Ordinance's Record Collection, Production, And Retention Provisions.

The California Consumer Privacy Act preempts all laws "adopted by a city, county, city and county, municipality, or local agency regarding the collection . . . [of] personal information by a business." Cal. Civ. Code § 1798.180. And the CCPA includes "employment-related information" in its definition of "personal information." Cal. Civ. Code § 1798.140. Yet the Board wants Companies to collect and retain records of the job classifications, original hire dates, and dates of separation for any worker laid off due to the pandemic—all of which, on their face, constitute "employment-related information"—and then to hand that information over to the City without the employee's consent. But, in making these demands, the emergency ordinance has "enter[ed] an area that is 'fully occupied' by general law;" and is thus, at least partially, preempted. *Sherwin-Williams*, 4 Cal. 4th at 898.

Indeed, if the CCPA *did not* preempt the ordinance's record collection, production, and retention provisions, companies would have to choose with which law to comply. No businesses could have countenanced something like this proposed law when it collected that type of information. Thus, it is extremely likely that *no one* listed complying with an emergency ordinance as one of "the purposes for which . . . personal information shall be used" in the legally required notice "at or before the point of collection." Cal. Civ. Code § 1798.100. Nor could a company feasibly provide terminated employees a supplemental notice listing the "additional purposes . . . consistent with this section" within the tight timeframes the emergency ordinance allots. *Id.*

C. The Ordinance Invalidly Shifts The Burden Of Proving An Essential Fact To The Employer, And Is Thus Preempted By California Evidence Code § 500.

Under California Evidence Code § 500, "a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that he is asserting." As noted above, the ordinance creates a 90-day "safety period" wherein a business cannot terminate a rehired worker without cause. Normally, that means an Eligible Worker must prove that, though (1) they were rehired pursuant to the ordinance and thus (2) protected for 90-days, their employer nevertheless (3) terminated them (4) without "clear and convincing" evidence of misconduct. The worker—not the employer—must bear the burden of proof for each of the four essential facts.

However, as drafted, the ordinance requires the *employer* prove it terminated a worker for a permissible reason—effectively creating a presumption that any worker terminated during the 90-day reemployment period was fired without cause. Thus, it does not simply shift the burden of producing evidence. *See Rental Hous. Ass'n of N. Alameda Cnty. v. City of Oakland*, 171 Cal. App. 4th 741, 758 (2009) (burden-shifting ordinances are only preempted where there is an "invalid presumption affecting the burden of proof rather than a presumption affecting the burden of producing evidence."). It requires the employer prove by "clear and convincing

evidence" that the presumed fact it fired a worker without cause is erroneous; and thus that the fact does not exist. Cal. Evid. Code § 606 ("The effect of a presumption affecting the burden of proof is to impose upon the party against whom it operates the burden of proof as to the nonexistence of the presumed fact."). *Fisher v. City of Berkeley*, 37 Cal. 3d 644, 698 (1984) (noting that, while California Evidence Code § 500 does not apply where "otherwise provided by law . . . the Legislature deliberately excluded [local] ordinances from those sources of law that may change the traditional allocation of the burden of proof."). And "municipal governments have no authority to depart from the common law of evidence." *Fisher v. City of Berkeley*, 37 Cal. 3d 644, 698 (1984).

D. The Labor Management Relations Act Would Preempt Many Claims Brought Under This Ordinance As Proving Cause For Separation During The 90-Day Reemployment Period Could Require Courts To Interpret A Collective Bargaining Agreement.

The emergency ordinance bars employers from terminating rehired workers without cause for 90-days following their reemployment. However, there are exceptions; employers can "based on clear and convincing evidence" terminate a worker during that period for "violations of a policy or rule of the Employer," "acts of dishonesty," and "other misconduct." But the emergency ordinance never defines these phrases. And they are terms-of-art in many collective bargaining agreements because they are inherently vague and amorphous. After all, not everyone agrees as to what constitutes misconduct, or what act violates a company rule. As a result, employers hoping to satisfy the emergency ordinance's "clear and convincing" burden must effectively prove for-cause termination under the collective bargaining agreement—particularly when there are multiple reasons for terminating a worker. That, in turn, requires courts to interpret the collective bargaining agreement. And federal labor law preempts any claim that "is substantially dependent upon analysis of the terms of an agreement made between the parties in a labor contract." *Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202, 220 (1985); *Jones v. Bayer Healthcare LLC*, 2008 U.S. Dist. LEXIS 61737, at *11 (N.D. Cal. Aug. 12, 2008) (dismissing a claim that "require[d] the Court to interpret provisions of the CBA, such as those regarding termination for cause" as "preempted by the LMRA.").

IV. THE PROPOSED ORDINANCE CANNOT BE RESCUED BY *CALIFORNIA GROCERS ASSOCIATION V. CITY OF LOS ANGELES.*

In *Cal. Grocers Ass'n v. City of L.A.*, the California Supreme Court upheld the Grocery Worker Retention Ordinance—a Los Angeles ordinance that similarly impinged an employer's right to hire-and-fire workers at will. But that law never spawned the problems that will inevitably flow from the proposed COVID-19 ordinance.

The Grocery Worker ordinance limited the hiring and firing rights of any company that bought a grocery store over 15,000 square-feet for just ninety-days—not two years. *Cal. Grocers,* 52 Cal. 4th at 187. During that time, the new owner could only hire from a list of workers who had at least six-months of employment with the prior owner; and could only discharge those workers for cause. *Id.* At the end of the 90-days, it had to evaluate each employee's performance and "consider" offering them continued employment. *Id.* But it did "not require that anyone be retained." *Id.* Nor did it continue operating after the initial, three-month transitionary period.

Id. As the Court explained, "it simply preserves, temporarily, the status quo, whatever that might be." *Id.*, at 206.

Because the ordinance was fairly narrow, the Court's review was limited to just three arguments: whether the ordinance (1) was preempted by a statewide food-safety law; (2) violated the equal protection clause by discriminating based on a grocery store's use of customer memberships, overall size, industry, and the terms of its collective bargaining agreement; and (3) "impermissibly intrude[s] on successorship determinations that Congress intended to leave free of local regulation," which would trigger preemption under the National Labor Relations Act. *Id.*, at 188–208. And its answer to each of those questions was "no."

The emergency ordinance, in contrast, does not "simply preserve" the status quo for ninety days. It imposes obligations that will last as long as there are Eligible Workers that the Employer has not re-hired. As noted above, it upends an understanding of at-will employment that forms the foundation of nearly every pre-existing employment agreement in California. And it does much more than require employers re-hire laid-off workers—they get preferential treatment, to the detriment of workers outside of San Francisco, for *any* job that opens up for which they could become qualified with training.

Moreover, it forwards an enforcement provision that is unlike anything the Grocery Worker Retention Ordinance put forth. It does not just recognize a private enforcement right. It creates a yet-untested—and, in the CELC's opinion, invalid—procedure that will likely force courts to interpret the for-cause termination provisions in collective bargaining agreements and improperly shifts the burden of proving essential facts onto the employer. *Cal. Grocers* would thus stand inapposite in any litigation challenging the emergency ordinance.

V. THE PROPOSED ORDINANCE VIOLATES PUBLIC POLICY.

A. The Ordinance Unnecessarily Complicates Company Operations At A Time When Employers Should Be Trying To Return To Normal.

The ordinance covers every employer within the City with ten or more employees. And its provisions are incredibly onerous, requiring companies review entire personnel files and determine whether any worker laid-off during the pandemic could fill an open-role before it hires a single person. A primary purpose behind this ordinance is, supposedly, to smooth the economic turmoil this pandemic created. Yet much of it does the opposite—complicating operations while San Francisco employers try to get back to business-as-normal. Worse yet, it does so indiscriminately, without any concern as to the employer's size, industry, or profitability.

B. There Is No Need To "Protect" The Jobs Of Essential Workers—They Are Still Working During The Pandemic.

The Board wrote this ordinance to protect workers impacted by the pandemic. However, "essential" workers are typically not impacted—they are, in fact, still working. Thus, there is no reason to include businesses offering essential services. Those companies are not laying-off workers. But they would still have to fight and defend against baseless lawsuits anytime they lay-off an employee during the pandemic until they can prove that layoff was not caused by the

pandemic, SIP orders, or "conducted in conjunction with the closure or cessation of . . . operations in the City."

C. The Ordinance Would Clog A Court System That Is Already Expecting An Onslaught Of New Cases.

San Francisco's court system already faces a heavy backlog of cases. And that caseload is only set to worsen, as COVID-19 forced many courts to postpone hearings, conferences, and trials. This ordinance only adds to the problem by incentivizing attorneys and laid-off workers to sue nearly ever San Francisco employer anytime an open position comes up. A better approach to private enforcement is to grant the City Attorney power to take complaints, investigate violations, and levy fines. Companies would then be able to take corrective action. If they refuse to comply, the City Attorney can bring an action to enforce the fines assessed.

D. The Ordinance Violates California's Strong Public Policy Favoring Settlement.

California recognizes a strong public policy favoring settlements, and thus a "settlement agreement is considered presumptively valid." *Vill. Northridge Homeowners Ass'n v. State Farm Fire & Cas. Co.*, 50 Cal. 4th 913, 930, (2010). However, the ordinance only allows workers to waive the ordinance's protections through a collective bargaining agreement. It is not clear whether this provision impliedly bars a waiver of claims through settlement, which is otherwise presumptively valid. If it did, though, it would violate California policy favoring settlement.

VI. CONCLUSION

While well-meaning, this emergency ordinance does more harm than good. San Francisco's employers are already reeling from losses caused by a pandemic. Many companies are wondering if they will ever open again. And, if they disappear, so too will thousands of jobs. The answer to the City's problems is not to make matters worse with an overly broad, burdensome ordinance that violates core constitutional protections, conflicts with federal and state law, and contravenes public policy. An ordinance that, if passed, the CELC—and other industry groups—will unquestionably challenge. The CELC thus urges you to vote against the emergency ordinance.

Thank you for your time and consideration.

/s/ Raymond W. Bertrand
Raymond W. Bertrand
PAUL HASTINGS LLP
On Behalf of the California Employment Law Council

/s/ James P. de Haan
James P. de Haan
PAUL HASTINGS LLP
On Behalf of the California Employment Law Council

From: Nicole Krasinski
To: BOS-Supervisors
Subject: Don"t Let This Pass!!! Temporary Right to Reemployment Following Layoff Due to COVID19 Pandemic
Date: Thursday, May 14, 2020 10:58:38 AM

To Whom It May Concern,

As a restaurant owner of two formerly very busy restaurants, and one more slated to open this summer, in the Western Addition, we would like nothing more than to bring back our amazing team of employees that we worked side by side with before the SIP. But we cannot do this due to the new restrictions put on us through social distancing & SIP laws. We will certainly have to close permanently if **Temporary Right to Reemployment Following Layoff Due to COVID19 Pandemic** passes and then instead of relief our staff will be left unemployed. Restaurants are a vital part of what brings people to San Francisco & not just the local workforce, but the local economy as a whole will suffer if the hospitality industry breaks under this ruling. Please Please Please help us all get back to what we love to do when it is safe, but our business model is no where near what it was when we closed & forcing us to employ people in similar positions is an unreasonable ruling.

Thank you for your time & consideration,

Nicole Krasinski
Pastry Chef/Owner
State Bird Provisions/The Progress/The Anchovy Bar

--
Nicole Krasinski
Pastry Chef | Owner
painperdu.nicole@gmail.com

From: valenciacyclery@aol.com
To: BOS-Supervisors
Subject: re: Supervisor Mar"s Proposed Emergency Ordanance
Date: Thursday, May 14, 2020 10:58:54 AM

The the SF Supervisors:

Please do not enact Supervisor Mar's Emergency Ordinance "Temporary Right to Reemployment Following Layoff due to the Covid-19 Pandemic. I shudder to think of the bureaucratic nightmare it would impose on small businesses such as mine, Valencia Cyclery. We are a legacy business, having been here in SF for 35 years under the same ownership.

The labor shortage for low and mid level jobs in SF is acute. I find it impossible to find even semi-qualified employees. Of course I want all employees back as soon as it is possible. If i were not to recall someone (not the case now) they would have to be a terrible employee, deserving of not being reinstated. Your ordinance greatly adds to the burden of being in business in San Francisco. Like so many attempts to protect the public, the conscientious employers will be the ones to suffer and the unscrupulous ones will ignore it.

Sincerely,

Paul Olszewski
Owner of Valencia Cyclery
415-722-7408

From: Nicole Krasinski
To: BOS-Legislative Aides
Subject: Don"t Let This Pass - Temporary Right to Reemployment Following Layoff Due to COVID19 Pandemic
Date: Thursday, May 14, 2020 10:59:10 AM

To Whom It May Concern,

As a restaurant owner of two formerly very busy restaurants, and one more slated to open this summer, in the Western Addition, we would like nothing more than to bring back our amazing team of employees that we worked side by side with before the SIP. But we cannot do this due to the new restrictions put on us through social distancing & SIP laws. We will certainly have to close permanently if **Temporary Right to Reemployment Following Layoff Due to COVID19 Pandemic** passes and then instead of relief our staff will be left unemployed. Restaurants are a vital part of what brings people to San Francisco & not just the local workforce, but the local economy as a whole will suffer if the hospitality industry breaks under this ruling. Please Please Please help us all get back to what we love to do when it is safe, but our business model is no where near what it was when we closed & forcing us to employ people in similar positions is an unreasonable ruling.

Thank you for your time & consideration,

Nicole Krasinski
Pastry Chef/Owner
State Bird Provisions/The Progress/The Anchovy Bar

--

Nicole Krasinski
Pastry Chef | Owner
painperdu.nicole@gmail.com

From: Alissa Anderson
To: Fewer, Sandra (BOS); BOS-Supervisors
Subject: Sup. Mar Emergency Re-Employment Ordinance
Date: Tuesday, May 12, 2020 9:31:11 PM

Dear Supervisors,

I am disturbed and disappointed by the legislation recently proposed by Supervisor Mar.
As a small retail business owner in the Richmond District whose business was forced to close to the public due to COVID-19 SIP, I had to lay off more than half of my beloved part-time employees. Most of them have moved on - literally. Either moving back in with their parents to save money, deciding that caring for their family is more important than risking their health, or having physical and mental health setbacks that prevent them from working. All of these are reasons not to come back to my business that I respect and understand, especially while my business remains closed.
Legislation that forces small businesses to offer jobs back to former employees in a specified way is time-consuming, costly, and unfair. Making multiple job offers and city notifications alone is an immense amount of work! We value our employees a lot. Being "pro-worker" does not have to be anti-small business. This legislation would undoubtedly make it harder for small businesses to get back to business and contribute to the growth of our local economy, which continues to suffer immensely.
I am a VERY small business with not even half of the 10-employee minimum suggested in this legislation, and I am concerned for ALL local businesses that would be impacted by this. I believe this legislation would absolutely prevent some businesses from reopening.
Thank you for allowing me to contribute my feedback.

Alissa Anderson
Foggy Notion
124 Clement St.
San Francisco, CA 94118
(415) 683-5654
www.foggy-notion.com

From: Laurine Wickett
To: BOS-Supervisors; BOS-Legislative Aides
Subject: Temporary Right to Reemployment Following Layoff Due to COVID19
Date: Monday, May 11, 2020 10:34:42 PM

Dear City Supervisors,
Please reconsider this order, it is not a one size fits all solution for all businesses affected by Covid 19. I understand the need to protect the employee, but this does not serve small businesses as they look to reorganize and create a new plan for the future.

My catering business was one of the first industries affected in early March and I quickly saw all of our events cancel before the Shelter in Place went into effect. I have pivoted my business and changed our model. I am uncertain when we will be able to gather people for events and cater again. While I would like to bring some of my former employee's back, not all of them are suited for this new business model. It's also an opportunity to clean house. Given the lack of business, those that remain on my team will need to have a certain skill set and be willing to take on new roles and jobs in order to stay lean so that we can survive as a business. This is not the time for the government to get involved in the restructuring and create mandates around bringing former employee's back.

Regards,
Laurine
--

Laurine Wickett
Chef / Owner
p: 415.934.0600
a: 1400 Yosemite Ave.,
San Francisco, CA 94124
visit website | *send email*

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

M E M O R A N D U M

TO: Joaquin Torres, Director, Office of Economic and Workforce Development
Patrick Mulligan, Director, Office of Labor Standards Enforcement

FROM: John Carroll, Assistant Clerk,
Government Audit and Oversight Committee, Board of Supervisors

DATE: May 13, 2020

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Government Audit and Oversight Committee has received the following proposed legislation, introduced by Supervisor Mar on May 5, 2020:

File No. 200455

Emergency Ordinance temporarily creating a right to reemployment for certain employees laid off due to the COVID-19 pandemic if their employer seeks to fill the same position previously held by a laid-off worker, or a substantially similar position, as defined.

If you have any 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.

c: J'Wel Vaughan, Office of Economic and Workforce Development
Anne Taupier, Office of Economic and Workforce Development
Lisa Pagan, Office of Economic and Workforce Development

BOARD of SUPERVISORS

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

M E M O R A N D U M

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

FROM: John Carroll, Assistant Clerk, Government Audit and Oversight Committee, Board of Supervisors

DATE: May 13, 2020

SUBJECT: REFERRAL FROM BOARD OF SUPERVISORS
Government Audit and Oversight Committee

The Board of Supervisors' Government Audit and Oversight 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. 200455

Emergency Ordinance temporarily creating a right to reemployment for certain employees laid off due to the COVID-19 pandemic if their employer seeks to fill the same position previously held by a laid-off worker, or a substantially similar position, as defined.

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, California 94102.

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RESPONSE FROM SMALL BUSINESS COMMISSION - Date: _____

____ **No Comment**

____ **Recommendation Attached**

_____
Chairperson, Small Business Commission

Print Form

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):

- [x] 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):

Mar; Preston, Safai, Haney, Walton, Fewer

Subject:

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

The text is listed:

Emergency Ordinance temporarily creating a right to reemployment for certain employees laid off due to the COVID-19 pandemic if their employer seeks to fill the same position previously held by a laid-off worker, or a substantially similar position, as defined.

Signature of Sponsoring Supervisor: /s/

For Clerk's Use Only