

1 [Police Code - Grocery Store, Drug Store, Restaurant, and On-Demand Delivery Service  
2 Employee Protections]

3 **Ordinance amending the Police Code to require grocery store, drug store, restaurant,  
4 and on-demand delivery service employers to provide health and scheduling  
5 protections related to COVID-19 to employees; and to sunset an emergency ordinance  
6 with similar requirements.**

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

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

13  
14 Section 1. The Police Code is hereby amended by adding Article 33M, consisting of  
15 Sections 3300M.1-3300M.13, to read as follows:

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17 **ARTICLE 33M: GROCERY STORE, DRUG STORE, RESTAURANT, AND ON-**  
18 **DEMAND DELIVERY SERVICE EMPLOYEE PROTECTIONS**

19  
20 **SEC. 3300M.1. FINDINGS AND PURPOSE.**

21 (a) In response to the threat of the novel coronavirus “COVID-19” global pandemic, the City  
22 intends, through a proactive, comprehensive, science-based approach, to mitigate the spread of  
23 COVID-19 in our community, protect the most vulnerable among us, and gradually reopen all sectors  
24 of the local economy as it is safe to do so.

1           (b) On February 25, 2020, Mayor London Breed proclaimed a state of emergency, with which  
2 the Board of Supervisors concurred on March 3, 2020. To mitigate the spread of COVID-19, on March  
3 16, 2020, the Local Health Officer issued Health Order No. C19-07 directing San Franciscans to  
4 “shelter in place,” or stay at home, except for certain essential businesses, services, and activities.  
5 That Order has been amended several times to allow additional businesses and activities to resume,  
6 and it remains in effect without an end date as Order No. C19-07j, as of October 20, 2020.

7           (c) Under this Health Order, essential businesses, including grocery stores, drug stores, and on-  
8 demand delivery services for food, medicines, and other essential items, have continued to operate.  
9 Restaurants initially were permitted to operate for carry out and delivery service, subsequently for  
10 outdoor dining, and then for limited indoor dining. Grocery stores, drug stores, restaurants, and on-  
11 demand delivery services have provided and will continue to provide critical access to essential items  
12 during the public health emergency. Many San Franciscans, especially residents who are particularly  
13 vulnerable to COVID-19 due to age or underlying health conditions, use on-demand delivery services  
14 to receive food and other essential items while staying safe at home.

15           (d) Grocery store, drug store, and restaurant employees, and on-demand delivery drivers and  
16 shoppers are an essential population of workers who cannot perform their work remotely, making them  
17 particularly vulnerable to COVID-19 exposure. These workers must be provided the necessary  
18 supplies, tools, and equipment to protect themselves from infection and to prevent the spread of  
19 COVID-19 to other employees or to the members of the public to whom they supply essential goods.  
20 This need is particularly pressing for on-demand delivery drivers and shoppers. Many delivery services  
21 incorrectly classify their delivery shoppers and drivers as independent contractors, so they are unlikely  
22 to be provided health insurance, sick leave, other paid leave, unemployment insurance, or workers’  
23 compensation; they may not be provided or reimbursed for the necessary supplies, tools, and  
24 equipment to protect themselves from COVID-19; and they may not be provided guidance on COVID-  
25 19 health and safety.

1 (e) Order No. C19-07j, Appendix A, includes extensive health and safety requirements for  
2 businesses operating during the pandemic. In addition, the Local Health Officer has issued several  
3 health Directives applicable to specific industries and activities. These include Directive No. 2020-05,  
4 for restaurants and other facilities that prepare food for carry out and delivery; Directive No. 2020-06,  
5 for delivery and shipping businesses; Directive No. 2020-16c, for indoor and outdoor dining; and  
6 Directive No. 2020-17, for indoor retail. Each of these Directives applies certain protections and  
7 requirements to defined “Personnel” who provide services at the applicable businesses, including both  
8 employees and independent contractors.

9 (f) Although the Local Health Officer’s Orders and Directives have the force of law, and their  
10 violation can be punished by fines and misdemeanor criminal prosecution, employees whose health  
11 may be jeopardized by violations of Health Orders and Directives may have no effective remedy. This  
12 Article 33M is required to provide effective remedies to employees whose rights are violated, and in  
13 turn to reduce the likelihood of COVID-19 infection among employees of grocery stores, drug stores,  
14 restaurants, and on-demand delivery services and the members of the public with whom they interact.

15 (g) Further, by providing additional scheduling flexibility and hours protections, this Article  
16 33M provides grocery store, drug store, restaurant, and on-demand delivery employees additional tools  
17 to protect themselves and others from infection and thereby protect public health.

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19 **SEC. 3300M.2. DEFINITIONS.**

20 For purposes of this Article 33M, the following definitions apply.

21 “Agency” means the Office of Labor Standards Enforcement.

22 “City” means the City and County of San Francisco.

23 “Covered Employer” means any person, as defined in Section 18 of the California Labor Code,  
24 including corporate officers or executives, who directly or indirectly or through an agent or any other  
25 person, including through the services of a temporary services or staffing agency or similar entity.

1 employs, suffers or permits to work, or exercises control over the wages, hours, or working conditions  
2 of an Employee for any of the following: (a) a grocery store, supermarket, convenience store,  
3 restaurant, cafe, or other establishment primarily engaged in the retail sale of food; or (b) a drug store,  
4 pharmacy, or other establishment primarily engaged in the retail sale of medication, pharmaceuticals,  
5 or medical supplies; or (c) an On-Demand Delivery Service.

6 “Employee” means any person who in a particular week performs at least two hours of work  
7 for a Covered Employer within the geographical boundaries of the City, without regard to whether the  
8 Covered Employer classifies the person as an employee for any other purpose. “Employee” includes,  
9 without limitation, shoppers and drivers for an On-Demand Delivery Service.

10 “On-Demand Delivery Service” means a third-party online or mobile application or other  
11 internet service that offers or arranges for the consumer purchase and same-day or scheduled delivery  
12 of food products, medications, or other goods directly from no fewer than 20 businesses that are  
13 restaurants, cafes, grocery stores, supermarkets, convenience stores, drug stores, pharmacies, or other  
14 establishments primarily engaged in the retail sale of food, medication, pharmaceuticals, or medical  
15 supplies.

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17 **SEC. 3300M.3. EMPLOYEE HEALTH AND SAFETY PROTECTIONS.**

18 (a) A Covered Employer must comply with all requirements issued by the Local Health Officer,  
19 including but not limited to those in Order No. C19-07j, Appendix A; Directive No. 2020-05; Directive  
20 No. 2020-06; Directive No. 2020-16c; and Directive No. 2020-17; and any successor Orders and  
21 Directives.

22 (b) The following requirements of such Order and Directives under subsection (a) are  
23 independently required by this Article 33M:

24 (1) Covered Employers must provide all Employees items such as face coverings;  
25 gloves; hand sanitizer or handwashing stations, or both; and disinfectant and related supplies.

1           (2) Covered Employers must provide all Employees with a Social Distancing Protocol  
2 and must educate all Employees on such Social Distancing Protocol. g

3           (3) Covered Employers must instruct all Employees and customers to maintain at least  
4 six-feet distance from others, except if momentarily necessary to facilitate or accept payment and hand  
5 off items or deliver goods; provide for contactless payment systems or, if not feasible, sanitize payment  
6 systems after each use; and provide for no-contact delivery or pick up if feasible.

7           (4) Covered Employers must require Employees to regularly disinfect high-touch  
8 surfaces during their shifts.

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10 **SEC. 3300M.4. RIGHT TO SCHEDULE CHANGES.**

11           A Covered Employer shall where reasonably feasible approve an Employee's request to cancel  
12 scheduled work for any reason for which an Employee may use leave under the City's Paid Sick Leave  
13 Ordinance (Administrative Code Chapter 12W), and the Agency's rules and guidance implementing  
14 those provisions, or emergency paid sick leave under the Families First Coronavirus Response Act,  
15 Public Law No. 116-127, Section 5102(a) and implementing regulations, 29 CFR § 826.20, as may be  
16 amended from time to time, without regard to whether such Employee has paid leave available for use.  
17 If such Employee has no paid leave available or chooses not to use paid leave, the Employer shall  
18 where reasonably feasible allow the Employee to reschedule the work.

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20 **SEC. 3300M.5. EXERCISE OF RIGHTS PROTECTED; RETALIATION PROHIBITED.**

21           (a) It shall be unlawful for a Covered Employer or any other person to interfere with, restrain,  
22 or deny the exercise of, or the attempt to exercise, any right protected under this Article 33M.

23           (b) It shall be unlawful for a Covered Employer or any other person to discharge, threaten to  
24 discharge, demote, suspend, or in any manner discriminate or take adverse action against any person  
25 in retaliation for exercising rights protected under this Article 33M, including the right to file a

1 complaint or inform any person about any Covered Employer’s alleged violation of this Article; the  
2 right to cooperate with the Agency in its investigations of alleged violations of this Article; and the  
3 right to inform any person of that person’s possible rights under this Article.

4 (c) Protections of this Article 33M shall apply to any person who mistakenly but in good faith  
5 alleges violations of this Article.

6 (d) Taking adverse action against a person within 90 days of the person’s filing a complaint  
7 with the Agency or a court alleging a violation of any provision of this Article 33M; of informing any  
8 person about a Covered Employer’s alleged violation of this Article; of cooperating with the Agency or  
9 other persons in the investigation or prosecution of any alleged violation of this Article; of opposing  
10 any policy, practice, or act that is unlawful under this Article; or of informing any person of that  
11 person’s rights under this Article, shall raise a rebuttable presumption that such adverse action was  
12 taken in retaliation for the exercise of one or more of the aforementioned rights. Unless the Covered  
13 Employer rebuts the presumption with clear and convincing evidence that the adverse action was solely  
14 for a reason other than retaliation, the Covered Employer shall be deemed to have violated this Section  
15 3300M.5.

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17 **SEC. 3300M.6. IMPLEMENTATION AND ENFORCEMENT.**

18 (a) The Agency is authorized to implement and enforce this Article 33M and may promulgate  
19 regulations and guidelines for such purposes

20 (b) An individual who has reason to believe that a violation of this Article 33M has occurred  
21 may report the suspected violation to the Agency or to the City’s 311 Customer Service Center online  
22 or by telephone.

23 (c) The Agency may investigate potential violations and may coordinate investigation by other  
24 City officials as appropriate. Where the Agency has reason to believe that a violation has occurred, it  
25 may order any appropriate temporary or interim relief to mitigate the violation or maintain the status

1 quo pending completion of a full investigation or hearing. Where the Agency determines that a  
2 violation has occurred following an investigation, the Agency may issue a determination of violation  
3 and order any appropriate relief, including the reinstatement of an Employee, and payment of lost  
4 wages to an Employee. Further, the Agency may order the payment of an additional sum as an  
5 administrative penalty that does not exceed \$1,000 for the Covered Employer's first violation, \$5,000  
6 for the second violation, and \$10,000 for the third and subsequent violations. For the purpose of this  
7 calculation, if multiple Employees are impacted by the same violation at the same time, the Agency  
8 shall treat the violation as a single violation rather than multiple violations. To compensate the City for  
9 the costs of investigating and remedying the violation, the Agency may also order the violating Covered  
10 Employer to pay to the City an amount that does not exceed the Agency's enforcement costs. Subject to  
11 the budgetary and fiscal provisions of the Charter, such funds shall be allocated to the Agency and  
12 used to offset the costs of implementing and enforcing this Article 33M and other ordinances the  
13 Agency enforces.

14 (d) The determination of violation shall provide notice to the Covered Employer of the right to  
15 appeal the determination to the Controller and that failure to do so within 15 days shall result in the  
16 determination becoming a final administrative decision enforceable as a judgment by the Superior  
17 Court.

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

22 (f) The remedies and penalties provided under subsection (c) are cumulative and are  
23 independent of any remedies or penalties that may be imposed under other City laws or Local Health  
24 Officer Orders or Directives.

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1           (g) The Agency may require that remedies and penalties due and owing to Employees be paid  
2 directly to the City for disbursement to the Employees. The Controller shall hold these funds in escrow  
3 for the Employees. The Agency shall make best efforts to distribute such funds to Employees. In the  
4 event such funds are unclaimed for a period of three years, the Controller may undertake  
5 administrative procedures for escheat of unclaimed funds under California Government Code Sections  
6 50050 et seq., as may be amended from time to time. Subject to the budgetary and fiscal provisions of  
7 the Charter, such escheated funds shall be dedicated to the enforcement of this Article 33M or other  
8 laws the Agency enforces.

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10 **SEC. 3300M.7. APPEAL PROCEDURE.**

11           (a) A Covered Employer may file an appeal from a determination of violation (“Appeal”) in  
12 accordance with the following procedures:

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

22           (2) Following the filing of the Appeal and service of a copy on the Agency, the Agency  
23 shall promptly afford the Covered Employer an opportunity to meet and confer in good faith regarding  
24 possible resolution of the determination of violation.



1 (3) Within 30 days of receiving an Appeal, the Controller shall appoint an impartial  
2 hearing officer who is not part of the Agency and immediately notify the Agency and Covered  
3 Employer.

4 (4) The hearing officer shall promptly set a date for a hearing. The hearing must  
5 commence within 45 days of the date of the Controller's notice of appointment of the hearing officer,  
6 and conclude within 75 days of such notice, provided, however, that the hearing officer may extend  
7 these time limits for good cause.

8 (5) The hearing officer shall conduct a fair and impartial evidentiary hearing. The  
9 Covered Employer shall have the burden of proving by a preponderance of the evidence that the  
10 Agency erred in its determination of violation, and/or the relief ordered therein.

11 (6) Within 30 days of the conclusion of the hearing, the hearing officer shall issue a  
12 written decision affirming, modifying, or dismissing the determination of violation. The hearing  
13 officer's decision shall be the final administrative decision. The decision shall consist of findings, a  
14 determination, any relief ordered, a reasonable time period for payment of any relief ordered, and  
15 notice to the Covered Employer of the right to appeal by filing a petition for a writ of mandate as  
16 described in subsection (7), and that failure to file a timely appeal shall result in the final  
17 administrative decision becoming enforceable as a judgment by the Superior Court.

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

21 (b) The final administrative decision is enforceable as a judgment in Superior Court. Where an  
22 Covered Employer fails to comply with a final administrative decision within the time period required  
23 therein, the Agency may take any appropriate enforcement action to secure compliance, including  
24 referring the action to the City Attorney to enforce the final administrative decision as a judgment and,  
25 except where prohibited by State or Federal law, requesting that City agencies or departments revoke

1 or suspend any registration certificates, permits, or licenses held or requested by the Covered  
2 Employer until such time as the violation is remedied.

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4 **SEC. 3300M.8. SUNSET OF EMERGENCY ORDINANCE.**

5 If the emergency ordinance (Ordinance No. 74-20) is reenacted and thereby remains in effect  
6 as of the effective date of this Article 33M, that emergency ordinance shall sunset on the effective date  
7 of this Article; provided, however, that any alleged violations of that emergency ordinance remains  
8 subject to investigation, resolution, and remedy under this Article, regardless of whether a complaint of  
9 violation of the emergency ordinance was filed before or after the sunset of the emergency ordinance,  
10 or an Agency investigation was commenced before or after that sunset date, or an appeal or other  
11 process regarding the complaint was commenced before or after that sunset date.

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13 **SEC. 3300M.9. OTHER CITY LAWS.**

14 This Article 33M is not intended to limit the operation of any other City law or any Local  
15 Health Officer Order or Directive. Should there be any overlap in application between this Article 33M  
16 and another City law, Order, or Directive, both shall be followed, except if there is a conflict between  
17 the two that cannot be reconciled, the City law, Order, or Directive providing greater protection to the  
18 Employee shall take precedence.

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20 **SEC. 3300M.10. PREEMPTION.**

21 Nothing in this Article 33M shall be interpreted or applied so as to create any right,  
22 requirement, power, or duty in conflict with federal or state law. The term “conflict,” as used in this  
23 Section 3300M.10 means a conflict that is preemptive under federal or state law.

1 **SEC. 3300M.11. UNDERTAKING FOR THE GENERAL WELFARE.**

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

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8 **SEC. 3300M.12. SEVERABILITY.**

9 *If any section, subsection, sentence, clause, phrase, or word of this Article 33M, or any*  
10 *application thereof to any person or circumstance, is held to be invalid or unconstitutional by a*  
11 *decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining*  
12 *portions or applications of this Article. The Board of Supervisors hereby declares that it would have*  
13 *passed this Article and every section, subsection, sentence, clause, phrase, and word not declared*  
14 *invalid and unconstitutional without regard to whether any other portion of this Article or application*  
15 *thereof would be subsequently declared invalid or unconstitutional.*

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17 **SEC, 3300M.13. SUNSET DATE.**

18 *This Article 33M shall expire by operation of law two years from its effective date. Upon*  
19 *expiration of this Article, the City Attorney shall cause the ordinance to be removed from the Police*  
20 *Code.*

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22 **Section 2. Effective Date.**

23 This ordinance shall become effective 30 days after enactment. Enactment occurs  
24 when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not  
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1 sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the  
2 Mayor's veto of the ordinance.

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

6 By: /s/ \_\_\_\_\_  
7 LISA POWELL  
8 Deputy City Attorney

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