



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.

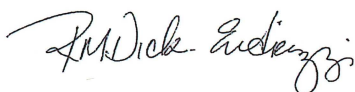
Relative to the proposed administration of the Emergency Ordinance, the Commission had myriad concerns. Specifically, Mr. Wright could not definitively articulate how misconduct and severance would be defined. Both definitions would directly impact whether an employer would be required to rehire a possibly 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]

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

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 ~~100~~ 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/>

<https://calendly.com/combsbusinessconsulting/60min>

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

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

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

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

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

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

My name is Pete Mulvihill, and I am the co-owner of Green Apple Books, a Legacy Business in the Richmond, and Green Apple Books on the 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 unprecedented 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 Apples 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 that, 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 vibrant businesses in our commercial 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 riskier, 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

--
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

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

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

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

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"

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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

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 permanent 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 its 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.