

File No. 220099

Committee Item No. _____

Board Item No. 44

COMMITTEE/BOARD OF SUPERVISORS

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Date: _____

Board of Supervisors Meeting

Date: February 1, 2022

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Prepared by: Jocelyn Wong

Date: January 28, 2022

Prepared by: _____

Date: _____

1 [Concurring in Actions to Meet Local Emergency - Coronavirus Response - Forty-Third
2 Supplement]

3 **Motion concurring in actions taken by the Mayor in the Forty-Third Supplement to the**
4 **Proclamation of Emergency to meet the ongoing local emergency related to the novel**
5 **coronavirus COVID-19 pandemic by authorizing the issuance by the City of notices of**
6 **violation and penalties for failing to comply with the Health Officer’s January 13, 2022,**
7 **order requiring that certain healthcare facilities offer and conduct SARS-CoV-2 testing.**

8
9 WHEREAS, On February 25, 2020, Mayor London N. Breed declared a local
10 emergency to exist in connection with the spread of the novel coronavirus COVID-19; and

11 WHEREAS, The Mayor transmitted a copy of that Proclamation Declaring the
12 Existence of a Local Emergency to the Board of Supervisors (the “Proclamation”), and on
13 March 3, 2020, the Board of Supervisors concurred in the Proclamation and in the actions
14 taken by the Mayor to meet the emergency; the Proclamation and the Board’s concurring
15 Motion are on file with the Clerk of the Board of Supervisors in File No. 200228; and

16 WHEREAS, On March 6, 2020, the Health Officer declared a local health emergency
17 under Section 101080 of the California Health and Safety Code, and the Board of Supervisors
18 concurred in that declaration on March 10, 2020; and

19 WHEREAS, On August 19, 2021, the Health Officer issued Order No. C19-15d,
20 requiring, among other things, that certain healthcare facilities within the City offer and
21 conduct COVID-19 testing within 24 hours of a patient’s request to be tested; and

22 WHEREAS, In the past several weeks, the City has seen exponential growth in the
23 number of confirmed COVID-19 cases due to the arrival of the highly transmissible Omicron
24 variant, which has sharply increased the demand for testing at City-run testing sites as well as
25 at healthcare facilities in the City; and

1 WHEREAS, In response to the Omicron surge, on January 13, 2022, the Health Officer
2 issued Order No. C19-15e, requiring acute care hospitals and other hospital-affiliated
3 healthcare facilities in the City to 1) provide testing to people seeking tests who are
4 symptomatic or have been in close contact with a person with COVID-19 within one day of the
5 person's request for a test or in some instances within one business day (with limited
6 exceptions); 2) provide testing results by the end of the second day after the test is taken; and
7 3) achieve 90% compliance with the one-day testing requirement and the requirement to
8 report test results by the end of the second day after the test, and to report compliance with
9 these requirements to DPH twice per week; and

10 WHEREAS, Due to the overwhelming strain on the City's testing facilities and the
11 disproportionate burden that has been placed on those facilities, it is in the public interest to
12 create an enforcement mechanism to ensure that private hospitals and other hospital affiliated
13 healthcare facilities in the City are complying with the Health Officer's updated order and that
14 they are doing their share to meet the very high and urgent demand for testing from City
15 residents; and

16 WHEREAS, On January 14, 2022, the Mayor took an additional step to meet the
17 emergency by issuing the Forty-Third Supplement to the Proclamation, ordering one action to
18 meet the emergency; the Forty-Third Supplement is on file with the Clerk of the Board of
19 Supervisors in Board File No. 220099; and

20 WHEREAS, Government Code, Sections 8550 et seq. and Charter, Section 3.100
21 provide for the concurrence by members of the Board of Supervisors in such emergency
22 declaration and in action taken by the Mayor to meet the emergency; and now, therefore, be it

23 MOVED, That the Board of Supervisors concurs with the following action taken by the
24 Mayor to meet the local emergency included in the Mayor's Forty-Third Supplement to the
25

1 Proclamation, dated January 14, 2022, as such action is described in full in the Forty-Third
2 Supplement and summarized as follows:

3 Action 1: Authorizing the issuance by the City of notices of violation and
4 penalties for failing to comply with the Health Officer's January 13, 2022 SARS-CoV-2 testing
5 order, including as that order may be revised or amended in the future.

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**FORTY-THIRD SUPPLEMENT TO MAYORAL PROCLAMATION DECLARING
THE EXISTENCE OF A LOCAL EMERGENCY DATED FEBRUARY 25, 2020**

*Penalties for Failure by Hospital-Affiliated Healthcare Facilities to Comply with
COVID-19 Testing Requirements*

WHEREAS, California Government Code Sections 8550 et seq., San Francisco Charter Section 3.100(14) and Chapter 7 of the San Francisco Administrative Code empower the Mayor to proclaim the existence of a local emergency, subject to concurrence by the Board of Supervisors as provided in the Charter, in the case of an emergency threatening the lives, property or welfare of the City and County or its citizens; and

WHEREAS, On February 25, 2020, the Mayor issued a Proclamation (the “Proclamation”) declaring a local emergency to exist in connection with the imminent spread within the City of a novel (new) coronavirus (“COVID-19”); and

WHEREAS, On March 3, 2020, the Board of Supervisors concurred in the Proclamation and in the actions taken by the Mayor to meet the emergency; and

WHEREAS, On March 4, 2020, Governor Gavin Newsom proclaimed a state of emergency to exist within the State due to the threat posed by COVID-19; and

WHEREAS, On March 6, 2020, the Health Officer declared a local health emergency under Section 101080 of the California Health and Safety Code, and the Board of Supervisors concurred in that declaration on March 10, 2020; and

WHEREAS, On August 19, 2021, the Health Officer issued Order No. C19-15d, requiring, among other things, that certain healthcare facilities within the City offer and conduct COVID-19 testing within 24 hours of a patient’s request to be tested; and

WHEREAS, In the past several weeks, the City has seen exponential growth in the number of confirmed COVID-19 cases due to the arrival of the highly transmissible Omicron variant. The Omicron surge has sharply increased the demand for testing at City-run testing sites as well as at healthcare facilities in the City; and

WHEREAS, In response to the Omicron surge, on January 13, 2022, the Health Officer issued Order No. C19-15e, an update to the order requiring certain healthcare facilities to



offer testing to patients within designated timeframes and to provide reports to the Department of Public Health (“DPH”) upon request. The updated order requires acute care hospitals and other hospital-affiliated healthcare facilities in the City to provide testing to people seeking tests who are symptomatic or have been in close contact with a person with COVID-19 within one day of the person’s request for a test or in some instances within one business day (with limited exceptions). The order also requires such facilities to provide testing results by the end of the second day after the test is taken. The updated order further requires those hospitals and other hospital-affiliated healthcare facilities to achieve 90% compliance with the one-day testing requirement and the requirement to report test results by the end of the second day after the test, and to report compliance with these requirements to DPH twice per week; and

WHEREAS, Due to the overwhelming strain on the City’s testing facilities and the disproportionate burden that has been placed on those facilities, it is in the public interest to create an enforcement mechanism to ensure that private hospitals and other hospital-affiliated healthcare facilities in the City are complying with the Health Officer’s updated order and that they are doing their share to meet the very high and urgent demand for testing from City residents. Accordingly, this Order authorizes the issuance by the City of notices of violation and penalties for failing to comply with the Health Officer’s January 13, 2022 testing order, including as that order may be revised or amended in the future;

NOW, THEREFORE,

I, London N. Breed, Mayor of the City and County of San Francisco, proclaim that there continues to exist an emergency within the City and County threatening the lives, property or welfare of the City and County and its citizens;

In addition to the measures outlined in the Proclamation and in the Supplements to the Proclamation issued on various dates, it is further ordered that:

This Order authorizes the City to issue notices of violation and penalties for violations of the Health Officer’s Order No. C19-15e entitled “Requiring Certain Healthcare Facilities Within the City to Offer and Conduct SARS-CoV-2 Testing,” or any successor to this order (the “Testing Order”) as follows:



(a) The City Administrator or designee, in consultation with the Health Officer or designee, is authorized to issue notices of violation and penalties for violations of the Testing Order as follows:

(1) Definition of Healthcare Facilities Subject to this Order. For purposes of this Order a “Healthcare Facility” has the same meaning as a “Hospital-Affiliated Healthcare Facility,” as defined in the Testing Order.

(2) Notice of Violation. Upon receiving written notice from the Department of Public Health that a Healthcare Facility has not complied with the Testing Order, the City Administrator or designee may issue a notice of violation and penalty to the Healthcare Facility for the violation. This authority includes but is not limited to issuing a notice of violation and penalty when a Healthcare Facility reports to the Department of Public Health under the Testing Order that it has failed to perform tests within one day, or in some instances within one business day, for at least 90% of the people who qualify for testing under the Testing Order, and for similar violations of the requirement in the Testing Order that a Healthcare Facility provide testing results by the end of the second day after the test is taken.

(3) Penalty Amount. The City Administrator or designee is authorized to impose a penalty of up to \$10,000 per day for each violation of this Order. In determining the penalty amount, the City Administrator or designee shall consider the factors identified in Section 100.5(a)(4) of the Administrative Code and any other additional criteria that the City Administrator or designee deems appropriate. Any penalties collected under this Order shall be deposited in the City’s general fund.

(4) Abeyance Period. Upon issuance of a notice of violation, the City Administrator or designee may hold the notice of violation in abeyance for a period of up to 30 days and request a written response from the Healthcare Facility explaining the steps it is taking to meet the requirements of the Testing Order. At the end of the abeyance period, the City Administrator or designee may waive the penalty amount in whole or in part based upon a finding that the Healthcare Facility is engaging in good faith efforts to comply with the Testing Order and has taken appropriate steps to ensure compliance with the Testing Order going forward.

(5) Notice of Violation Deemed Final; Penalties Due. Any notice of violation that the City Administrator or designee has not held in abeyance shall become final on the



date provided in the notice, which shall generally be the date of service. A notice of violation that the City Administrator or designee has held in abeyance shall become final 30 days after issuance of the notice, unless extended in writing by the City Administrator or designee. Any penalties due must be paid within 30 days of the date the notice of violation becomes final, unless the Healthcare Facility has filed a timely appeal in compliance with subsection (c) of this Order.

(6) Unpaid Penalties. Penalties that remain unpaid 30 days after the due date are subject to a late payment penalty of 10% plus interest at a rate of 1% per month on the outstanding balance, which shall be added to the penalty amount from the date that payment is due. The City Administrator or designee shall provide a notice in substantial compliance with Section 100.6(e) of the Administrative Code of any unpaid penalties.

(7) Remedies. Without limiting any of the remedies set forth in this Order, the City may invoke any of the remedies identified in Section 100.7 of the Administrative Code for unpaid penalties accrued under this Order.

(8) Delegation Authority. The City Administrator is authorized to designate an employee of the City Administrator's Office or an employee or official of another City department, with the approval of the employee's or official's department head, to perform any of the duties under this Order assigned to the City Administrator. Any such designation shall be in writing.

(b) Contents of the Notice of Violation. Each notice of violation issued under this Order shall contain at least the following information:

- (1) The date(s) of the violation;
- (2) The name and location of the Healthcare Facility subject to the violation;
- (3) A brief explanation of the violation;
- (4) The amount of the penalty for the violation(s);

(5) When the City Administrator or designee has authorized an abeyance period, an explanation of the purpose and length of the abeyance period, an explanation of the



information the Healthcare Facility must provide and deadline for submittal, and the date on which the notice will become final;

(6) When the City Administrator or designee has not authorized an abeyance period, the date by which the notice of violation is final;

(7) The date by which the penalty must be paid, the procedure for making payment (including to whom payment must be made and acceptable forms of payment), and the consequences of failure to pay;

(8) The right to seek administrative review of the notice of violation with the Controller within 30 days of the date upon which the notice of violation is final, that failure to appeal will make issuance of the notice of violation a final action by the City for which there is no further administrative review and no judicial review, and an explanation of the process for filing an appeal; and

(9) The date the notice of violation is issued and the name and signature of the City Administrator or designee who issued it.

(c) Right to Appeal; Procedures for Appeal. Any Healthcare Facility that has been served with a notice of violation under this Order may seek administrative review by filing an appeal with the Controller as provided in Section 100.9 of the Administrative Code within 30 days of the date on which the notice of violation becomes final. The procedures of Sections 100.9 through 100.15 of the Administrative Code shall apply to any appeal of a notice of violation issued under this Order.

(d) Rules, Regulations, Guidance. The City Administrator or designee is authorized but not required to issue rules, regulations, and guidance necessary or appropriate to further the purpose of this Order.



(e) This Order shall remain in effect during the local emergency unless terminated earlier by the Mayor or the Board of Supervisors.

DATED: January 14, 2022

A handwritten signature in blue ink, reading "London Breed", written over a horizontal line.

London N. Breed
Mayor of San Francisco

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):

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):

Subject:

The text is listed:

Motion concurring in actions taken by the Mayor in the Forty-Fourth Supplement to the Proclamation of Emergency to meet the ongoing local emergency related to the novel coronavirus COVID-19 pandemic by authorizing the Controller to develop and issue a policy to allow the City to continue to provide funding under existing agreements to non-profit organizations that are unable to provide services under contracts or grant agreements with the City due to disruptions related to COVID-19 during the local emergency, and authorizing a program to provide additional paid sick leave to City employees and "as needed" employees to be used for COVID-19 infection, COVID-19 exposure, or direct impacts of COVID-19 on employees and their families.

Signature of Sponsoring Supervisor: