

File No. 200830

Committee Item No. 1

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

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Comm: Public Safety & Neighborhood Services

Date: March 18, 2021

Board of Supervisors Meeting:

Date: _____

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Prepared by: John Carroll

Date: March 12, 2021

Prepared by: John Carroll

Date: _____

1 [Right to Reemployment Following Layoff Due to COVID-19 Pandemic]

2

3 **Ordinance amending the Police Code to create a right to reemployment for certain**
4 **employees laid-off due to the COVID-19 pandemic if their employer seeks to fill the**
5 **same position previously held by the laid-off employee, or a substantially similar**
6 **position, and to reasonably accommodate employees who cannot work because of a**
7 **family care hardship.**

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

12

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

14

15 Section 1. Findings.

16 (a) The novel coronavirus and the resulting disease COVID-19 (collectively “COVID-
17 19”) has had unprecedented detrimental effects on employees in the City and County of San
18 Francisco (“the City”), nationwide, and worldwide. To ameliorate the local effects of this
19 global pandemic, this ordinance extends and codifies, with minor amendments, a right to
20 reemployment created by an emergency ordinance (Ordinance No. 104-20) for eligible laid-off
21 employees if their prior employers seek to rehire staff. By facilitating reemployment, this
22 ordinance aims to curb the long-term, adverse effects that job loss can cause on the financial,
23 physical, and mental health of employees and their families and thus our greater community.

24

25

1 (b) On February 25, 2020, Mayor London Breed proclaimed a state of emergency in
2 response to the spread and threat of further spread of COVID-19, with which the Board of
3 Supervisors concurred on March 3, 2020. On March 6, 2020, the Health Officer the City and
4 County of San Francisco (“Health Officer”), acting in coordination with the health officers in
5 other counties in the San Francisco Bay Area, issued a declaration of local health emergency
6 regarding COVID-19. On March 16, 2020, to mitigate the spread of COVID-19, the Health
7 Officer issued Order No. C-19-07, directing that individuals living in the City shelter in their
8 places of residence until April 7, 2020, and that businesses, except essential businesses as
9 defined in the order, cease all activities at facilities located within the City except minimum
10 basic operations, as defined in the order. The order has been extended and amended several
11 times to allow certain additional activities and businesses to resume. It remains in effect with
12 no expiration date as Order No. C-19-07ft.

13 (c) Due to the public health emergency related to COVID-19 and the actions required to
14 respond to it, an unprecedented number of individuals who work for employers operating in
15 the City are unable to work (including telework) due to illness, exposure to others with the
16 coronavirus, business closures or reductions in force, and family caregiving obligations related
17 to the closure of schools and childcare facilities, including an inability to secure alternative
18 caregiving assistance. Tens of thousands of employees working in the City have been or
19 likely will be laid off from their jobs. The City has received notice of some of those layoffs, as
20 required under the federal Worker Adjustment and Retraining Notification (“WARN”) Act, 29
21 U.S.C. §§ 2101-2109, and the California Worker Adjustment and Retraining Notification (“Cal-
22 WARN”) Act, Cal. Labor Code §§ 1400-1408. The WARN Act applies to employers with 100
23 or more employees, who were employed for six of the preceding 12 months and who worked
24 more than 20 hours per week. The WARN Act’s notice requirement is generally triggered by a
25 plant closing or mass layoff affecting 50 or more employees at a single site of employment.

1 The Cal-WARN Act applies to employers that currently employ or have employed in the last
2 12 months, 75 or more full-time or part-time employees for six of the last 12 months. The Cal-
3 WARN Act's notice requirement is triggered by a layoff in any 30-day period of 50 or more
4 employees at a covered establishment. In the span of less than three months, between
5 March 16, 2020 and June 5, 2020, pursuant to the WARN Act and Cal-WARN Act, the City
6 has received 352 notices of layoffs that have occurred during that period by San Francisco
7 employers and that have affected 38,994 employees. An unknown number of employees of
8 San Francisco businesses that are not subject to the WARN Act of the Cal-WARN Act have
9 also been affected by layoffs due to COVID-19. This ordinance is necessary to mitigate the
10 severe, long-term economic harm for these individuals unable to work due to the public health
11 emergency.

12 (d) The COVID-19 pandemic has caused an unprecedented spike in unemployment at
13 national, state, and local levels, the likes of which the country has not seen since the Great
14 Depression of the 1930s. Nationally, in April 2020, the unemployment rate rose to 14.7%, as
15 compared to a rate of approximately 4% during the prior quarter. While the national
16 unemployment rate declined in May and June to 13.3% and 11.1%, respectively, those rates
17 are still staggering. As of July 23, 2020, workers nationwide have filed approximately 53
18 million claims for unemployment insurance at some point during the pandemic. The impact in
19 California has been especially acute. Statewide, unemployment rate was above 16% for both
20 the months of April and May 2020, and it improved slightly to 15.1% for June 2020. Between
21 March 14 and July 18, 2020, Californians filed approximately 8.7 million claims for
22 unemployment insurance.

23 The City is similarly experiencing dramatic rates of unemployment. For April 2020, the
24 State of California preliminarily estimated that 69,400 San Franciscans were unemployed,
25 resulting in an unemployment rate of 12.6%. Between February 25, 2020 and May 30, 2020,

1 approximately 141,000 San Franciscans filed claims for unemployment insurance with the
2 State of California. As of June 18, 2020, the San Francisco Bay Area had lost over 3% of its
3 4.1 million jobs over the prior three months, resulting in more than 136,000 layoffs through the
4 region.

5 These numbers—while staggering—unfortunately fail to reflect the total impact of the
6 COVID-19 pandemic on the labor market. Traditional unemployment estimates have long
7 been critiqued for applying overly restrictive criteria to track unemployment, including the
8 requirement that the unemployed person be actively seeking work. According to the U.S.
9 Department of Labor, individuals are classified as unemployed if they do not have a job, have
10 actively looked for work in the prior four weeks, and are currently available for work.
11 Estimates, therefore, do not account for a large pool of “missing workers,” also known as
12 “marginally attached” workers, defined as potential workers who, because of weak job
13 opportunities, are neither employed nor actively seeking a job. Traditional unemployment
14 metrics also fail to account for the underemployed—those who may prefer to work full-time,
15 but can only acquire part-time work. Accounting for those marginally attached and the
16 underemployed, the U.S. Department of Labor estimates the unemployment rate to be 18.0%
17 nationwide and 14.9% in California (seasonally adjusted) for June 2020. In short, the COVID-
18 19 pandemic is likely having an even more detrimental effect on the job market in San
19 Francisco than estimated with traditional metrics.

20 Moreover, unemployment statistics, even when documenting a massive surge in
21 joblessness, do not adequately convey the human suffering that attends joblessness on such
22 a large scale. The loss of employment for individuals laid off as a result of the COVID-19
23 pandemic typically places them and their families in great economic peril. This is especially
24 so because job losses due to the pandemic are disproportionately affecting low-wage
25 workers, since many white-collar workers are able to continue working from home.

1 (e) Layoffs caused by the COVID-19 pandemic also pose a substantial risk to public
2 health because layoffs can cause a loss of private health insurance benefits for affected
3 employees and their families. The loss of private health insurance during normal times—let
4 alone during a pandemic—can put insurmountable pressure on a family’s fiscal, physical, and
5 mental health. While an employee may be entitled to extend health insurance benefits
6 temporarily under the Consolidated Omnibus Budget Reconciliation Act (“COBRA”), 29 U.S.C.
7 §§ 1161-68, COBRA continuation coverage is often more expensive than what the employee
8 paid for coverage while employed. A loss of one’s job and the related employment benefits
9 can force a family to choose between paying for COBRA continuation coverage, paying rent,
10 or putting food on the table. This ordinance, therefore, is intended to decrease the number of
11 laid-off employees who will be without employer-sponsored health insurance as a result of the
12 COVID-19 pandemic by requiring employers subject to the ordinance to rehire eligible
13 employees if rehiring begins, thereby resuming such employees’ access to their prior health
14 insurance benefits.

15 Layoffs caused by the COVID-19 emergency also pose a substantial risk to public
16 health in the City by potentially forcing laid-off employees to seek out the City’s public health
17 resources, if they are not eligible for COBRA or if COBRA continuation benefits are too costly
18 for them to secure. This ordinance, therefore, is intended to alleviate the burden that layoffs
19 of employees covered by the ordinance are likely to have on the City’s public health system.

20 (f) The COVID-19 pandemic has created unique challenges for caretakers, including
21 working parents whose children are unable to attend school, summer camp, or childcare
22 facilities, or whose regular caretakers are not available. The pandemic is also putting
23 substantial pressure on workers who must care for a family member who becomes ill due to
24 the novel coronavirus. These workers will have even more difficulty obtaining reemployment
25 following a layoff.

1 (g) The COVID-19 pandemic has created a substantial financial crisis for the City
2 collectively and for individuals living or working in the City. The pandemic has caused a
3 severe nationwide recession, which may evolve into an economic depression; but regardless,
4 the pandemic's economic effects are likely to last well after the State and City shelter in place
5 orders are lifted. The loss of employment for individuals laid off as a result of the COVID-19
6 pandemic poses a substantial threat to the City's economy and the economic livelihood of
7 affected employees and their families.

8 After the Great Recession of 2007-2009, California's unemployment rate increased to
9 12% and remained above 10% for 43 consecutive months between February 2009 and
10 August 2012. California's long-term unemployment percentages remained significantly higher
11 than pre-recession rates for a decade, at 24.9% in 2017 from 16.8% in 2007.

12 For individuals and families, the loss of a job results not only in lost wages in the short
13 term, but can permanently suppress an employee's wages and earning potential for the
14 duration of the employee's working life. A National Bureau of Economic Research study of
15 workers displaced during the Great Recession of 2008-2009 found that, five years after
16 displacement, workers' earnings averaged more than \$2,000 less per quarter than the
17 earnings of comparable non-displaced workers, translating to approximately 15% lost
18 earnings. An analysis of Congressional Budget Office estimates of the U.S. Gross Domestic
19 Product over time suggests that long-term wage losses for displaced workers who previously
20 had the same job for more than three years will total more than \$1 trillion over a 20-year
21 period (or roughly \$50 billion on average annually).

22 Job loss also increases an individual's risk of physical and mental health problems,
23 suicide, and homelessness, and it correlates with higher mortality rates. Finally, job loss for a
24 parent has been shown to hamper the educational progress of the parent's children and, as a
25 result, to suppress the future wages of those children.

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

2 “Eligible Worker” means a person: 1) who was employed by an Employer for at least 90 days
3 preceding the date on which their Employer provided written notice to the employee of a Layoff; 2) who
4 was or is Separated due to a Layoff; and 3) who provided an Employer with labor or services for
5 remuneration as an employee, as defined under California Labor Code section ~~2750.3~~2775, as may
6 be amended from time to time, including persons employed on a part-time or temporary basis,
7 within the geographic boundaries of the City.

8 “Employer” means any “Contractor” as defined by Police Code Section 3300C.1(b), any
9 “Grocery Establishment” as defined by Police Code Section 3300D.2(e), any “Hospitality
10 Establishment” (“Large Food Service Operation,” “Large Hotel,” or “Large Restaurant”) as
11 defined by Police Code Section 3300E.2, or any “Employer” (a “Formula Retail
12 Establishment”) as defined by Police Code Section 3300F.2. These terms are alternatives;
13 so, by way of example but not limitation, if one does not qualify as a “Grocery Establishment”
14 under Police Code Section 3300D.2(e) but does qualify as an “Employer” under Police Code
15 Section 3300F.2, one would qualify as an “Employer” within the meaning of this Article 33K. If
16 any of the above definitions are amended, the definitions as amended shall apply.

17 In addition, subject to the limitations stated in the remaining paragraphs of this
18 definition, “Employer” also means any person as defined in Section 18 of the California Labor
19 Code who directly or indirectly , on or after February 25, 2020, employed or employs 100 or more
20 employees worldwide, as of the earliest date that an employer Separated or Separates one or more
21 Eligible Worker that resulted or results in a Layoff.

22 If one does not qualify as an “Employer” within the meaning of this Article 33K under
23 any of the four terms specified in the first paragraph of this definition solely because of not
24 satisfying the threshold element or elements required to qualify for the term, one shall not be
25 deemed an “Employer” under the second paragraph of this definition. The threshold elements

1 for the respective terms are stated in the referenced Police Code sections and are as follows:
2 for “Contractor” as defined by Police Code Section 3300C.1(b), employing 25 or more
3 persons; for “Grocery Establishment” as defined by Police Code Section 3300D.2(e), being
4 over 15,000 square feet in size; for “Hospitality Establishment” as defined by Police Code
5 Section 3300E.2, for “Large Food Service Operation,” a seating capacity of 5,000 or more at
6 which 100 or more persons have been employed, for “Large Hotel,” having 100 or more guest
7 rooms or suites of rooms, and for “Large Restaurant,” employing 200 or more persons at a
8 single establishment under the specified conditions; and for “Employer” (“Formula Retail
9 Establishment”) as defined by Police Code Section 3300F.2, having 20 or more employees in
10 the City and at least 40 retail sales establishments worldwide. By way of example but not
11 limitation, one who otherwise qualifies as a “Grocery Establishment” under Police Code
12 Section 3300D.2(e), but is only 14,000 square feet in size, and does not otherwise qualify as
13 an “Employer” for purposes of this Article 33K under one of the other terms specified in the
14 first paragraph of this definition, shall not be considered an “Employer” under the second
15 paragraph of this definition. If any of the threshold elements are amended, the amended
16 thresholds shall apply.

17 Further, “Employer” does not under any circumstances include any federal, state, local, or
18 other public agency.

19 Further, “Employer” does not under any circumstances include any employer that provided
20 or provides services that qualify as healthcare operations, which include, without limitation, hospitals,
21 medical clinics, diagnostic testing locations, dentists, pharmacies, blood banks and blood drives,
22 pharmaceutical and biotechnology companies, other healthcare facilities, healthcare suppliers, home
23 healthcare service providers, mental health providers, or any related and/or ancillary healthcare
24 services, as well as veterinary care and all healthcare service providers to animals.

1 “Family Care Hardship” means a circumstance in which an Eligible Worker is unable to work
2 due to any reason for which an employee may use paid sick leave under Administrative Code §
3 12W.4(a) to provide care for another person, including but not limited to a need to care for a child
4 whose school or place of care has been closed or whose childcare provider is unavailable as a result of
5 the Public Health Emergency and no other suitable person is available to care for the child during the
6 period of such leave. For the purpose of this definition, “child” means a biological, adopted, or foster
7 child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is under 18 years
8 of age or who is incapable of self-care because of a mental or physical disability.

9 “Layoff” means the Separation by an Employer of 10 or more Eligible Workers within a 30-day
10 period, starting on or after the Beginning of the Public Health Emergency, that is caused by an
11 Employer’s lack of funds, lack of work, closure, or cessation of operations resulting from the Public
12 Health Emergency, including, without limitation, health orders to mitigate the spread of COVID-19.

13 “OEWD” means the Office of Economic and Workforce Development for the City.

14 “Public Health Emergency” means the state of emergency declared by the Mayor in response
15 to the novel coronavirus COVID-19.

16 “Separate” and “Separation” mean to terminate, or the termination or end of, employment,
17 respectively, by an Employer.

18
19 **SEC. 3300K.3. RECORDS REGARDING LAYOFF.**

20 (a) Written Notice of Layoff and Right to Reemployment for Current Employees who are
21 Eligible Workers. When an Employer implements a Layoff on or after the effective date of this Article
22 33K, the Employer shall provide all Eligible Workers with written notice of the Layoff at or before the
23 time when the Layoff becomes effective. The Employer shall provide notice to each Eligible Worker in
24 a language understood by the Eligible Worker. The written notice shall include: a notice of the Layoff
25 and the Layoff’s effective date; a summary of the right to reemployment created by this Article 33K;

1 and a telephone number for a hotline, operated by OEWD, which Eligible Workers may call to receive
2 information regarding the right to reemployment created by Ordinance No. 104-20, as extended and
3 codified by this Article 33K, as well as navigation services and other City resources related to
4 unemployment.

5 (b) Written Notice of Layoff and Right to Reemployment for Former Employees who are
6 Eligible Workers. If an Employer implemented a Layoff after the Beginning of the Public Health
7 Emergency, but before the effective date of this Article 33K, the Employer shall within 30 days of the
8 effective date of this Article 33K provide written notice of the Layoff, consistent with the requirements
9 for notices set forth in Section 3300K.3(a), to each Eligible Worker who the Employer Separated due to
10 Layoff, unless the Employer otherwise provided notice to each Eligible Worker pursuant to Section 5 of
11 Ordinance No. 104-20.

12 (c) Notification to the City Regarding Layoff. An Employer shall provide written notice to
13 OEWD regarding any Layoff. The written notice shall include: the total number of Eligible Workers
14 affected by the Layoff; the job classification at the time of Separation for each Eligible Worker; the
15 original hire date for each Eligible Worker; and the date of Separation from employment for each
16 Eligible Worker.

17 (1) When an Employer implements a Layoff on or after the effective date of this Article
18 33K, the Employer shall provide the City with the notice within 30 days of the latest date on which it
19 Separated an Eligible Worker due to a Layoff.

20 (2) If an Employer implemented a Layoff after the Beginning of the Public Health
21 Emergency, but before the effective date of this Article 33K, unless the Employer otherwise provided
22 notice to the City pursuant to Section 5 of Ordinance No. 104-20, the Employer shall provide the City
23 with the notice within 30 days of the effective date of this Article 33K.

24 (d) Retention of Records. An Employer must retain the following records regarding each
25 Eligible Worker it Separated due to a Layoff for at least two years: full legal name; job classification at

1 the time of Separation; date of hire; last known address of residence; last known email address; last
2 known telephone number; and a copy of the written notice regarding the Layoff provided to the Eligible
3 Worker. For the purpose of this Section 3300K.3, two years is measured from the date of the written
4 notice provided by the Employer to the Eligible Worker, as required by subsections (a) or (b) of this
5 Section 3300K.3 or Section 5 of Ordinance No. 104-20.

6
7 **SEC. 3300K.4. EMPLOYER’S OBLIGATION TO MAKE OFFER OF REEMPLOYMENT TO**
8 **ELIGIBLE WORKERS FOLLOWING LAYOFF.**

9 (a) Offer of Reemployment Following Layoff to Same Position. Where an Employer initiated a
10 Layoff after the Beginning of the Public Health Emergency, and subsequently after the effective
11 date of this Article 33K seeks to hire a person to a position located in the City that was formerly held
12 by an Eligible Worker, the Employer shall first offer the Eligible Worker an opportunity for
13 reemployment to the Eligible Worker’s former position before offering the position to another person.

14 (b) Offer of Reemployment Following Layoff to Similar Position. Where an Employer initiated
15 a Layoff after the Beginning of the Public Health Emergency, and subsequently after the effective
16 date of this Article 33k seeks to hire a person to any position located in the City that is substantially
17 similar to the Eligible Worker’s former position, the Employer shall first offer the Eligible Worker an
18 opportunity for reemployment to the substantially similar position before offering the position to
19 another person. For the purpose of this Section 3300K.4(b), a “substantially similar position” includes
20 anyeither of the following: a position with comparable job duties, pay, benefits, and working
21 conditions to the Eligible Worker’s position at the time of Layoff; or any position in which the Eligible
22 Worker worked for the Employer in the 12 months preceding the Layoff; or any position for which the
23 Eligible Worker would be qualified, including a position that would necessitate training that an
24 Employer would otherwise make available to a new employee to the particular position upon
25 hire.

1 (c) Offers of Reemployment Made in Order of Seniority. An Employer shall first make an offer
2 of reemployment under this Article 33K to the most senior Eligible Worker who formerly held that same
3 position. If the most senior Eligible Worker who formerly held the same position declines the offer of
4 reemployment, an Employer shall make subsequent offers of reemployment to any other Eligible
5 Workers who previously held the same position or any substantially similar position in order of
6 seniority. If all Eligible Workers decline the offer of reemployment, then an Employer may make such
7 offer to any person. For the purpose of this Section 3300K.4(c), the seniority of an Eligible Worker is
8 measured from their earliest date of hire by an Employer.

9 (d) Exceptions. An Employer may withhold an offer of reemployment under the following
10 circumstances.

11 (1) Misconduct. An Employer may withhold an offer of reemployment under this Article
12 33K if, based on information learned subsequent to the Layoff of an Eligible Worker, the Employer
13 learns that an Eligible Worker engaged in any act of dishonesty, violation of law, violation of policy or
14 rule of the Employer, or other misconduct during the Eligible Worker’s employment with the Employer.

15 (2) Severance Agreement. An Employer may withhold an offer of reemployment under
16 this Article 33K if the Employer and an Eligible Worker executed a severance agreement before the
17 effective date Ordinance No. 104-20 in which, in exchange for adequate consideration, the Eligible
18 Worker agreed to a general release of claims against the Employer.

19 (3) Rehiring. An Employer may withhold an offer of reemployment under this Article
20 33K if, prior to the effective date of Ordinance No. 104-20 or after the expiration of Ordinance No.
21 104-20 and prior to the effective date of this Article 33K, the Employer hired a person other than
22 the Eligible Worker to the Eligible Worker’s former position or to a substantially similar position, as
23 defined in Section 3300K.4(b).

1 **SEC. 3300K.5. NOTICE OF OFFER AND ACCEPTANCE.**

2 (a) Making an Offer of Reemployment. An Employer shall engage in good faith efforts to extend
3 offers of reemployment to all Eligible Workers, consistent with the terms set forth in this Section
4 3300K.5.

5 (1) Electronic Delivery. An Employer shall attempt to notify ~~an~~ the Eligible Worker of
6 an offer of reemployment by contacting the Eligible Worker by telephone at the Eligible Worker's last
7 known telephone number and by email at the Eligible Worker's last known email address. If the
8 Employer confirms that the Eligible Worker has access to receive an offer via email, text message,
9 facsimile, or some other mode of electronic transmission, the Employer may transmit the offer
10 electronically.

11 (2) Hard Copy Delivery.
12 (A) If an Employer makes initial contact with an Eligible Worker under Section
13 3300K.5(a)(1), but the Eligible Worker is unable to receive the offer electronically, the Employer shall
14 confirm the Eligible Worker's current address of residence. The Employer shall transmit a written
15 offer of reemployment to the Eligible Worker's current address of residence by certified mail or courier
16 delivery.

17 (B) If an Employer is unable to make initial contact with the Eligible Worker
18 under Section 3300K.5(a)(1), the Employer shall transmit a written offer of reemployment to the
19 Eligible Worker's last known address of residence by certified mail or courier delivery. In such
20 circumstances, a courier is authorized to deliver the offer to the address of residence without obtaining
21 proof of receipt by the Eligible Worker.

22 (3) The offer shall remain open for at least two business days following delivery,
23 although the Employer may extend the acceptance period.

1 **(b) Order of Delivery of Offer.** *Where more than one Eligible Worker is eligible for an offer of*
2 *reemployment, an Employer shall transmit offers to Eligible Workers in the order set forth in Section*
3 *3300K.4(c).*

4 **(c) Acceptance.** *An Eligible Worker may accept an offer of reemployment by providing a*
5 *response to the Employer in writing by reasonable means of delivery identified by the Employer*
6 *including, without limitation, returning a signed version of an offer letter or, if authorized by an*
7 *Employer, by applying an electronic signature and transmitting acceptance of the offer to an Employer*
8 *by email or other mode of electronic communication. If the Eligible Worker notifies the Employer by*
9 *other means, including but not limited to by telephone or text message, of the Eligible Worker's*
10 *acceptance of the offer, the Employer must move forward with the reemployment but may require the*
11 *Employee to provide additional written documentation of the acceptance by reasonable means*
12 *identified by the Employer within not less than two business days from the acceptance.*

13 **(d) Rejection.** *If the Eligible Worker rejects an offer of reemployment or fails to respond to an*
14 *offer of reemployment within the time prescribed under Section 3300K.5(a)(3), which shall be deemed*
15 *to be a rejection of the offer of reemployment, the Employer may offer the position to another*
16 *individual in accordance with Section 3300K.4(c).*

17
18 **SEC. 3300K.6. NON-DISCRIMINATION AND DUTY TO REASONABLY ACCOMMODATE**
19 **ELIGIBLE WORKERS EXPERIENCING A FAMILY CARE HARDSHIP.**

20 *An Employer shall not discriminate against or take an adverse employment action against an*
21 *Eligible Worker as a consequence of an Eligible Worker experiencing a Family Care Hardship. An*
22 *Eligible Worker shall be entitled to reasonable accommodation of a job duty or job requirement if a*
23 *Family Care Hardship impacts the Eligible Worker's ability to perform a job duty or to satisfy a job*
24 *requirement. An Employer shall, in response to a request for accommodation by an Eligible Worker,*
25 *make good faith efforts to reasonably accommodate an Eligible Worker during the period in which an*

1 Eligible Worker experiences a Family Care Hardship. For the purpose of this Section 3300K.6, to
2 “reasonably accommodate” includes, without limitation, modifying an Eligible Worker’s schedule,
3 delaying the start date of reemployment, modifying the number of hours to be worked, or permitting
4 telework, to the extent operationally feasible, to accommodate the Eligible Worker’s Family Care
5 Hardship.

6
7 **SEC. 3300K.7. NOTIFICATION TO CITY OF OFFERS OF REEMPLOYMENT.**

8 An Employer shall, without disclosing the identities of any individual job candidates, notify the
9 OEWD in writing of all offers of reemployment made under this Article 33K, in addition to all
10 acceptances and rejections by Eligible Workers of such offers or reemployment.

11
12 **SEC. 3300K.8. REGULATIONS.**

13 OEWD may issue regulations regarding, and consistent with, this Article 33K.

14
15 **SEC. 3300K.9. REMEDIES FOR VIOLATIONS.**

16 (a) An Eligible Worker may bring an action in the Superior Court of the State of California
17 against an Employer for violating this Article 33K, and may be awarded the following relief:

18 _____ (1) Hiring and reinstatement rights;

19 _____ (2) Back pay for each day of the violation and front pay for each day during which the
20 violation will continue. Back pay and front pay shall be calculated at a rate of pay not less than the
21 highest of: (A) if employed for less than three years prior to the Eligible Worker’s date of Separation
22 due to Layoff, the average regular rate received by the Eligible Worker during the Eligible Worker’s
23 employment; (B) if employed for three or more years prior to the Eligible Worker’s date of Separation
24 due to Layoff, the average regular rate received by the Eligible Worker during the last three years of

1 the Eligible Worker's employment; or (C) the most recent regular rate received by the Eligible Worker
2 as of the date of Separation due to Layoff; and

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

5 (b) If the Eligible Worker is the prevailing party in any legal action taken pursuant to this
6 Section 3300K.9, the court shall also award reasonable attorneys' fees and costs.

7
8 **SEC. 3300K.10. NO LIMITATION ON THE OTHER RIGHTS AND REMEDIES.**

9 This Article 33K does not in any way limit the rights and remedies that the law otherwise
10 provides to Eligible Workers, including without limitation, the rights to be free from wrongful
11 termination and unlawful discrimination.

12
13 **SEC. 3300K.11. WAIVER THROUGH COLLECTIVE BARGAINING.**

14 This Article 33K shall not apply to Eligible Workers covered by a bona fide collective
15 bargaining agreement to the extent that the requirements of this Article are expressly waived in the
16 collective bargaining agreement in clear and unambiguous terms.

17
18 **SEC. 3300K.12. PREEMPTION.**

19 Nothing in this Article 33K shall be interpreted or applied so as to create any right, power, or
20 duty in conflict with federal or state law. The term "conflict" as used in this Section 3300K.12 means a
21 conflict that is preemptive under federal or state law.

22
23 **SEC. 3300K.13. SUNSET.**

24 This Article 33K shall expire by operation of law one year from the effective date of Ordinance
25 No. 104-20, or the date on which the state of emergency proclaimed on February 25, 2020, terminates,

1 whichever date occurs latest. Upon expiration, the City Attorney shall cause Article 33K to be removed
2 from the Police Code.

3
4 Section 3. Severability.

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

13
14 Section 4. Effective Date.

15 This ordinance shall become effective 30 days after enactment ~~or upon expiration of~~
16 ~~Emergency Ordinance No. 104-20, whichever date is later.~~ Enactment occurs when the
17 Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not sign the
18 ordinance within ten days of receiving it, or the Board of Supervisors overrides the Mayor's
19 veto of the ordinance.

20
21 APPROVED AS TO FORM:
22 DENNIS J. HERRERA, City Attorney

23 By: /s/
24 LISA POWELL
Deputy City Attorney

25 n:\legana\as2020\2000454\01519033.docx

REVISED LEGISLATIVE DIGEST
(Amended in Committee – March 11, 2021)

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

Ordinance amending the Police Code to create a right to reemployment for certain employees laid-off due to the COVID-19 pandemic if their employer seeks to fill the same position previously held by the laid-off employee, or a substantially similar position, and to reasonably accommodate employees who cannot work because of a family care hardship.

Existing Law

In general, under existing law, there is no right to reemployment for employees working in San Francisco in the event that their employer separates them from employment.

Prior Emergency Ordinance

An emergency ordinance (Ordinance No. 104-20) temporarily required certain employers operating in San Francisco to offer reemployment to eligible employees laid off as a result of the COVID-19 public health emergency. It applied to employers that operate in San Francisco and employ 100 or more employees, except healthcare operations. The emergency ordinance applied to employees who were employed for at least 90 days of the calendar year preceding the notice of a layoff and who suffered layoff due to the emergency. A layoff is a separation from employment of 10 or more eligible employees within a 30-day period, starting on or after February 25, 2020, due to the emergency. If an employer seeks to rehire employees to the same or similar positions previously held by laid-off eligible employees, an employer shall offer reemployment to such eligible employees in order of seniority.

Under the emergency ordinance, the Office of Economic and Workforce Development (OEWD) received notices of layoffs and offers of reemployment and operated a hotline for workers. The Office of Labor Standards Enforcement (OLSE) was authorized to issue regulations but did not do so.

Additionally, the emergency ordinance requires employers to reasonably accommodate employees who cannot work because of a family care hardship. A family care hardship is a circumstance in which the employee is unable to work due to any reason for which a person may use paid sick leave under Administrative Code § 12W.4(a) to provide care for someone other than themselves, including but not limited to a need to care for a 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.

The emergency ordinance was enacted on July 3, 2020, and reenacted by Ordinance Nos. 159-20, 231-20 and 009-21. It expired on March 2, under Charter section 2.107, which provides that emergency ordinances remain in effect for 60 days, unless reenacted.

Background

This ordinance is substantially the same as the emergency ordinance, with clarifications and minor amendments. The ordinance streamlines the process for making and accepting offers of reemployment, corrects an error in the definition of eligible worker to clarify that the worker must have been employed for at least 90 days prior to the notice of layoff without regard to the calendar year, and transfers the authority to issue regulations from OLSE to OEWD. It sunsets one year from the effective date of the emergency ordinance, or on the date on which the public health emergency terminates, whichever date occurs latest.

An amendment adopted in Committee changes the definition of employer to incorporate definitions in various provisions of the municipal code. Under the amended definition, an “employer” covered by the ordinance includes any:

- “Contractor” as defined by Police Code Section 3300C.1(b). This definition includes certain contractors for security, janitorial, or building maintenance services that employ 25 or more persons.
- “Grocery Establishment” as defined by Police Code Section 3300D.2(e). This definition includes retail grocery stores that are over 15,000 square feet in size, without regard to how many people are employed.
- “Hospitality Establishment” as defined by Police Code Section 3300E.2. This definition includes any:
 - “Large Hotel,” which is a “Hotel” as defined in Planning Code Section 102 that has 100 or more guest rooms and/or suites of rooms, without regard to how many people are employed. “Large Hotel” does not include a Residential Hotel as defined in Section 102 of the Planning Code.
 - “Large Food Service Operation,” which is a food and/or beverage concession within or on the grounds of a stadium, arena, theater, auditorium, convention center, or similar facility located in the City with a seating capacity of 5,000 or more at which 100 or more persons have been employed at food and/or beverage concessions. For purposes of the 100-employee threshold in the preceding sentence, the number of employees of separately-owned food and/or beverage concessions shall be aggregated if operated in the same venue.
 - “Large Restaurant,” which is a “restaurant” as defined in Section 471.3 of the Health Code that has employs 200 or more persons at a single establishment in the City
- “Employer” as defined by Police Code Section 3300F.2, which is an any Person that owns or operates a Formula Retail Establishment with 20 or more Employees in the City. For the purpose of calculating the 20-employee threshold referenced herein, Employees performing work in other Formula Retail Establishments in the City that are

- owned or operated under the same trade name by the same Employer shall be counted. "Employer" does not include a Nonprofit Corporation or governmental entity.
- "Employer" additionally includes employers that do not fit into these cross-referenced definitions without considering the threshold size or employee count requirements in the definitions (employers that are not a grocery store, hotel, food service operation, restaurant, or Formula Retail Establishment) that employ 100 or more employees.

As an example of how this applies, a grocery store that is 14,000 square feet in size and that is part of a business with 30 retail sales establishments is not an employer subject to the ordinance even if it employs more than 100 employees, because it is not a "Grocery Establishment" due to its location size and it is not a Formula Retail Employer. Because it would be a "Grocery Establishment" but for not meeting the threshold size requirement, it is not subject to the alternative definition of employer that employees 100 or more employees.

Additional amendments clarify that the requirements to make offers of reemployment apply prospectively from the effective date of the ordinance, remove positions for which the eligible worker would be qualified from the definition of "substantially similar" position, and makes a few other non-substantive updates.

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Right to Reemployment

Overview of Notices Received to Date

Presented by Joshua Arce, Workforce Director

January 28, 2020

RIGHT TO REEMPLOYMENT NOTICES RECEIVED (JULY 3, 2020-JANUARY 27, 2021)

Summary of Right to Reemployment Layoff Notices as of 1/27

Total Notices Received 124

Total Affected Employees 9901

Summary of Right to Reemployment Rehire Notices as of 1/27

Total Notices Received 45

Number of Employees have been Laid Off in Rehire Notices 3489

Number of Employees who have been Offered Reemployment 1652

Number of Employees who have Accepted Reemployment 991

Number of Employees who have Declined Reemployment 637

RIGHT TO REEMPLOYMENT NOTICES RECEIVED BY MONTH

	# of All Notices	# of Layoff Notices	# of Rehire Notices
July	19	18	1
August	52	45	7
September	62	40	22
October	16	4	12
November	13	12	1
December	4	3	1
January	3	2	1

WARN NOTICES

Summary of WARN Notices from July 2020 – January 15, 2021

Total Notices Received	95
Total Affected Employees	5,419

WARN Notices by Month

July	25
August	26
September	11
October	8
November	7
December	9
January	9



CITY AND COUNTY OF SAN FRANCISCO
LONDON BREED, MAYOR

OFFICE OF SMALL BUSINESS
REGINA DICK-ENDRIZZI, DIRECTOR

September 21, 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. 200830 – Police Code - Right to Reemployment Following Layoff Due to COVID-19 Pandemic

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

Dear Ms. Calvillo,

On September 14, 2020 the Small Business Commission (SBC or Commission) heard BOS File No. 200830 – Police Code - 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 Office of Small Business staff legislative review, written public comment, and engaging with Mr. Wright on the matter, the Commission concluded that this legislation would not be in the best interest of workers, employers, or the City's efforts toward recovery and rebuilding. The Commission voted (6-0) 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. One concern expressed by the Commission addressed potential unintended consequences relative to an affected worker's receipt of and eligibility for Unemployment Insurance. Per the California Employment Development Department, an employer must affirm an affected worker's eligibility for Unemployment Insurance and must affirm whether the affected worker has refused employment. While records of an affected worker's rejection of the offer of reemployment are not required to be retained by the proposed legislation, it is in the best interest of the employer to do so, especially if an affected worker seeks a remedy for an alleged violation of the legislation in the Superior Court of California, per Section 3300K.9. As such, an employer may be compelled to report that an affected worker had refused an employment offer that the City required them to make. Mr. Wright could not guarantee that an affected worker's receipt of and eligibility for Unemployment Insurance would *not* be compromised by the legislation. Additionally, Mr. Wright expressed that since this issue has not yet been raised relative to the administration of related [Ordinance 104-20](#), it was not concern for the sponsor's office. But, if it became an issue it would be addressed accordingly. The Commission countered that, it may not yet be an issue due to the fact that many San Francisco businesses still remained closed due to local Shelter in Place

orders.

The Commission also addressed equity as it relates to the rehiring requirements outlined in Section 3300K.4. Specifically, that offers of reemployment must be made in order of seniority within a job classification. The Commission noted that those who hold seniority within a job classification are not likely to be workers of color and women, and that the rehiring requirements this legislation seeks to codify may exacerbate racial and gender disparities in the workforce. Mr. Wright asserted that while discrimination exists across different sectors with respect to promotion tracks and hiring practices, this legislation would not exacerbate those racial and gender disparities. The Commission disagreed. The Commission also highlighted that there is likely to be higher turnover in lower wage positions, which Mr. Wright agreed was likely true. The Commission noted that this may also adversely impact affected workers from more vulnerable populations who are more likely to be employed in low-wage positions.

Lastly, the Commission also expressed concerns regarding the cost to the City for administering this legislation relative to the potential outcomes. While a summary of data points collected by the Office of Economic and Workforce Development (OEWD) relative to the administration of [Emergency Ordinance 104-20](#) was provided in the staff review of the proposed legislation, OEWD submitted a correction to that data after the review was published. Please note, although it was reported that 1,347 re-employment offers were made, **this number was actually 466**. The 1,347 figure represents the number of workers laid off from the companies who submitted the 16 rehire notices. Among the 466 re-employment offers made 328 were accepted, 113 were declined, and 25 have an unknown outcome.

Small Business (OSB) staff also reported that the OEWD currently dedicates a .7 full time equivalent (FTE) to administer [Emergency Ordinance 104-20](#). They have estimated that that 2.5 FTEs would be needed to adequately implement this proposed legislation. Mr. Wright asserted that the sponsor's office considers this to be a good use of City resources. The Commission countered that they are still not sure as to who this legislation will help, how much it will help, and whether the cost of its administration could be justified.

While the Commission voted 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.

Thank you for considering the Commission's recommendation.

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
Tyra Fennel, Mayor's Liaison to Boards and Commissions
Patrick Mulligan, Director, Office of Labor Standards and Enforcement
Lisa Pagan, Office of Economic and Workforce Development
John Carroll, Clerk, Public Safety and Neighborhood Services Committee

Legislative Review:	BOS File No. 200830
Name:	Police Code - Right to Reemployment Following Layoff Due to COVID-19 Pandemic
Sponsor(s):	Supervisor Mar
Date Introduced:	July 28, 2020
Date Referred:	August 5, 2020
BOS Committee:	Public Safety & Neighborhood Services Committee
Committee Date:	TBD

EXISTING LAW

Layoff and Rehiring Requirements for Employers

At present there is not a legal requirement, at any governmental level, for employers to rehire workers for the same position from which they had been laid off. Additionally, under Federal law, employers with less than 100 workers are not required to provide layoff notices under the Worker Adjustment and Retraining Act¹. Employers with less than 75 full or part-time workers are not required to provide layoff notices under the California Worker Adjustment and Retraining Act².

Emergency Ordinance No. 104-20, known as the Back to Work Ordinance, establishes a *temporary* right to reemployment for certain workers laid off due to the COVID-19 pandemic³. Specifically, this temporary right to reemployment Emergency Ordinance applies to San Francisco employers of 100 or more workers who layoff 10 or more of those workers. Employers must supply workers with a written notice of the layoff at the time of or before the layoff becomes effective in a language that the worker understands. The written notice must also include a summary of the worker's right to reemployment, and a telephone number for a hotline to be managed by the Office of Economic and Workforce Development (OEWD).

The employer must also supply OEWD with a written notice of the layoff which includes the total number of workers located in San Francisco affected by the layoff, the job classification at time of the separation for each laid off worker, the original hire date for each laid off worker, and the date of separation for each laid off worker. Employers must retain these notices for at least two years.

If after administering a layoff, employers seek to rehire for substantially similar work, they are required to first make an offer of reemployment to workers that were initially laid off and who had been employed for at least 90 days preceding the layoff. The offer of reemployment must be for a position substantially similar to the worker's former position and must also be located in San Francisco. If the

¹ <https://www.dol.gov/sites/dolgov/files/ETA/Layoff/pdfs/WARN%20FAQ%20for%20COVID19.pdf>

² https://edd.ca.gov/Jobs_and_Training/Layoff_Services_WARN.htm#GeneralProvisionsoftheFederalandCaliforniaWARNLas

³ <https://sfgov.legistar.com/View.ashx?M=F&ID=8652534&GUID=DF73110D-AD36-4BB7-B91E-C8AB4D4B95CC>

employer laid off multiple workers in substantially similar positions, they must offer to rehire based on the worker seniority. If the offer of reemployment is rejected by the worker or, the worker fails to respond within two business days, the offer of reemployment may be made to the next most senior worker. If there are not alternative workers to make an offer of reemployment to, then an offer of employment may be made to an alternative applicant. The employer must notify OEWD that they have made an offer of reemployment and the workers' acceptance or rejection status.

There are certain exceptions to the temporary right to reemployment. Specifically, if an employer learns after a separation that a worker was engaged in any act of dishonesty, violation of law, violation of policy, or rule of the employer or other misconduct, the employer is not required to make an offer of reemployment to that worker. And, if a worker received a mutually agreed upon severance package prior to the effective date of the ordinance, the employer is not required to make an offer of reemployment.

A worker who believes that an employer violated the ordinance may bring an action to the Superior Court of the State of California and may be awarded the following relief: hiring and reinstatement rights; backpay for each day of the violation and front pay for each day the violation continues; and, the value of the benefits the worker would have otherwise received if still employed.

The ordinance applies to layoffs on or after February 25, 2020 and until the Emergency Ordinance's expiration. The ordinance was reenacted by the Board of Supervisors on Tuesday, August 25, 2020 with a November 3, 2020 expiration date.

Requirements Related to Worker Leave and Family Care

The Back to Work Ordinance also applies to workers who experience Family Care Hardship⁴. Family Care Hardship is defined as being unable to work due to: 1) a need to care for a child whose school or place of care has been closed, or whose childcare provider is unavailable, as a result of the COVID-19 local emergency, and no other suitable person is available to care for the child during the period of such leave; or, (2) 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. Employers are required to make a good-faith effort to reasonably accommodate workers during the period in which they experience a Family Care Hardship. To "reasonably accommodate" includes, without limitation, modifying a worker's schedule, modifying the number of hours to be worked, or permitting telework, to the extent operationally feasible, to accommodate the Eligible Worker's Family Care Hardship.

Data Reporting

OEWD currently administers Ordinance 104-20, or the Back to Work Ordinance, as earlier explained and tracks the number of Layoff Notices and Rehire Notices received from eligible employers. A significant uptick in notices occurred in the week of August 31, 2020 through September 4, 2020 which brought in more than one third of all notices received since the ordinance became effective on July 3. A

⁴ <https://sfgov.legistar.com/View.ashx?M=F&ID=8652534&GUID=DF73110D-AD36-4BB7-B91E-C8AB4D4B95CC>

continued increase in volume can be expected as employers become aware and more familiar with the requirements.

As of September 4, 2020, OEWD received 79 layoff notices and 16 rehire notices affecting 6,558 workers. According to OEWD records, 1,347 workers received re-employment offers and **328 workers have been successfully rehired**. We may assume from this data that 1,019 workers *did not* accept the reemployment offer.

PROPOSED CHANGES:

This Ordinance would codify many of the employer responsibilities established in Emergency Ordinance 104-20 as they relate to layoffs due to COVID-19, as described above and with several amendments. Specifically, the definition of “Employer” has been amended to mean any person who, directly or indirectly, employed or employs 100 or more workers worldwide. Under the Emergency Ordinance, Employer is defined as any person who directly or indirectly owns or operates a for-profit business or non-profit in the City and employs 100 or more workers.

This Ordinance would also shift the rulemaking responsibilities from the Office of Labor Standard and Enforcement (OLSE) to OEWD.

This Ordinance would sunset one year from its effective date or the date on which the state of emergency terminates, whichever date occurs latest.

ISSUES AND CONSIDERATIONS:

This legislation increases challenges during recovery for small to-medium-sized businesses, including those on the Office of Small Business’s Legacy Registry, creating barriers to timely rehiring and resumed operations through additional bureaucracy, as well as limiting businesses’ adaptability to the market in a moment of crisis. By limiting businesses ability to open and staff expeditiously, the policy may inadvertently harm the very workers it seeks to support, not to mention those it does not support, including participants in the City’s First Source Hiring Program.

The pandemic has created insurmountable challenges for a large majority of San Francisco small businesses including Legacy Businesses. While many of the City’s small businesses will be exempt from this proposed Ordinance’s requirements, there are some of our treasured Legacy Businesses and other local, independently owned medium-sized businesses who will be required to comply.

In addition to administering layoffs through no fault of their own, many of these businesses are already struggling to pay rents and mortgages and other fixed costs due to lack of revenue. To try to cover these fixed costs, many employers have applied for federal, state, and local assistance programs, too often to no avail. Temporary closures have evolved into permanent closures and permanent layoffs. In addition to a deluge of local and state reopening requirements, San Francisco employers have also been tasked with the additional burden of understanding and following the notification and rehire requirements of the existing temporary right to reemployment emergency Ordinance. This proposed extension of that earlier Emergency Ordinance would exacerbate existing significant challenges for struggling small to medium-sized businesses, including those on the Legacy Registry.

For the reasons established below, especially those relating to labor availability, equitable access to employment opportunities, and potential risks created to worker benefits, it is not recommended that the Small Business Commission support this proposed Ordinance.

Labor Availability During the Local Emergency

During the Public Health Emergency, businesses must comply with guidance 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 virtually all businesses. The situation has also created incredible uncertainty for businesses of all sizes. It has been difficult at many times for small businesses to keep abreast of constantly evolving rulemaking, to know which rules to follow, where to find those rules, and how to implement them.

Health directives are frequently issued without sufficient notice, leaving small to medium sized businesses already under stress and with severely limited capacity with little time to prepare. For example, small businesses may learn about new opportunities for reopening on the Thursday before the changes go into effect and only receive the new rules for said reopening the day its allowed.

Should this legislation pass, the requirements for rehiring will further burden small businesses and may inadvertently leave them significantly understaffed, possibly for days, when every hour and every day may count for their survival. **Where this legislation may leave a business without the staffing necessary to get themselves open and ready to serve customers in a timely and safe manner, it is not recommended that it be supported.**

Equity Impacts:

Until the economy fully rebounds and the labor market returns to pre-COVID levels, we can expect that there will be significantly fewer jobs available than jobseekers. As the local economy gradually reopens, employers may not be able to rehire at pre-pandemic staffing levels. This may be due to a lack of financial resources or local regulations requiring that the business only operate in a limited capacity. The businesses hardest hit by COVID-19 include small to medium sized businesses and those in the hospitality, entertainment, and personal services industries which also disproportionately employ women and people of color. Because this Ordinance requires businesses with over 100 workers to rehire their previously laid off workers, these workers from the hardest-hit industries and from small to medium size businesses are now competing for even fewer available jobs and are put at a distinct disadvantage. Importantly, we also know that workers of color face much higher rates of unemployment than their white counterparts. **As such, workers of color and women may be further disadvantaged by the hiring requirements that this proposed Ordinance seeks to codify.**

It bears repeating that workers of color have historically been overrepresented in those aforementioned and hardest hit industries and in low-wage positions⁵. We also know that workers of color have been historically discriminated against when seeking promotions or equal pay as compared to their white counterparts. **Where this Ordinance requires that workers be rehired in order of**

⁵ <https://www.americanprogress.org/issues/race/news/2020/04/14/483125/economic-fallout-coronavirus-people-color/>

seniority, it may exacerbate existing racial inequities in the workforce, and prolong the economic recovery for the City's workers of color, especially women. As such, it is strongly recommended that it not be supported.

Additionally, this proposed Ordinance is also in tension with the intent of City's First Source Hiring program that requires certain employers to first consider economically disadvantaged San Franciscans for openings⁶. This proposed ordinance solely relies on previous employment and does not account for economic status or need. As a result, it diminishes the City's ability to connect disadvantaged San Franciscans to employment opportunities as intended by the First Source Hiring Ordinance⁷.

Potential Risk to Unemployment Benefits

The proposed Ordinance requires that eligible workers affected by a layoff respond to offers of reemployment. If eligible workers do not respond within the prescribed timeline, the offer would be considered declined and a record of the declination would be retained by the employer for at least two years. A condition for receiving unemployment insurance is that a laid off worker is actively seeking work.

It is not unreasonable to assume that a worker laid off due to the local emergency may have moved out of the City due to the high cost of living and is not within a reasonable commuting distance. And, that said worker is receiving unemployment insurance benefits. Should there be a record made that an individual has effectively declined an offer of employment, it could jeopardize or otherwise create new barriers for the worker to qualify for unemployment benefits. While the California Employment Development Department may make case-by-case exceptions regarding an affected worker's refusal of the offer of reemployment, it is not guaranteed that the determination would be in the affected worker's favor. **Where this proposed Ordinance may jeopardize an affected worker's eligibility for unemployment insurance, it is not recommended that this legislation be supported.**

⁶ <https://oewd.org/first-source>

⁷ <https://sfgov.legistar.com/View.ashx?M=F&ID=3047384&GUID=08963D5D-F9AB-41C6-83B0-90B9F5D46BB2>

From: [Emily Abraham](#)
To: [Carroll, John \(BOS\)](#)
Subject: SF Chamber Opposition of File #200830
Date: Thursday, January 28, 2021 10:11:09 AM
Attachments: [Outlook-cid_image0.png](#)
[SFChamber Opposition File#200830.docx .pdf](#)

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Dear Supervisors,

On behalf of the San Francisco Chamber of Commerce and the hundreds of large and small businesses we represent, I sincerely thank you for your continued efforts to support the employees of our San Francisco businesses.

We support all efforts to keep San Francisco employees protected and employed. However, we cannot support legislation that creates added burdens on our small business community. **Due to the administrative barriers, our changing economy, and risk of liabilities, we respectfully ask you to reject File #200830 “Police Code - Right to Reemployment Following Layoff Due to COVID-19 Pandemic” at this time.** Please see attached for the full letter from the Chamber and our co-signers.

We would support this legislation being reconstituted as a strong policy statement encouraging San Francisco employers to reemploy persons laid off because of COVID-19. Imposing a new set of rigid requirements on employers with potential liability for failing to meet those requirements is not what is needed at this moment.

Respectfully,

Emily Abraham



Emily Abraham

Deputy Director, Public Policy

San Francisco Chamber of Commerce

(Direct) 916-294-5029 • (E) eabraham@sfchamber.com

Pronouns: [she/her/hers](#)



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sfchamber.com • twitter: @sf_chamber

January 28, 2021

Honorable Supervisors Mar, Stefani, and Haney
San Francisco City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

Re: Opposition to File #200830 "Police Code - Right to Reemployment Following Layoff Due to COVID-19 Pandemic."

Dear Supervisors,

On behalf of the Chamber of Commerce and the hundreds of large and small businesses we represent, I sincerely thank you for your continued efforts to support the employees of our San Francisco businesses.

In these uncertain times, businesses of all sizes are not only suffering, but many are being forced to reimagine their business models. **With such rapidly changing safety guidelines, orders for shelter in place, and even our economy, we must oppose this File #200830 "Police Code - Right to Reemployment Following Layoff Due to COVID-19 Pandemic."**

Emergency legislation was needed to meet a dire situation. However, legislation that was borne out of response to the COVID-19 pandemic was meant for a very unique and specific situation, and economy. Hastily codifying emergency legislation from this period could have unforeseen and dire consequences to our local San Francisco businesses and their employees.

The "Right to Reemployment" legislation is overly burdensome, especially for smaller businesses. The administrative requirements create a barrier to small businesses who are already barebones, and may have to outsource their human resource personnel. The steps required for notification of employees and the city, along with forcing employers to determine which jobs are "similar" or "substantially similar," create logistical barriers for employers who might not have the resources to hire back employees.

An employer may not be able to provide similar working conditions or pay benefits after COVID-19, due to social distancing or changes in economic landscape. While financial hardship may be a reason for a change in terms and conditions, expanded safety regulations and precautions might change the workplace.

Further, the ambiguity of which may force businesses to defend themselves from lawsuits from employees through the legislation's Private Right of Action. This ordinance creates a novel, retroactive right that is contrary to businesses' foundational understanding of employment law in California. Under California law, and absent agreement otherwise, all employment may be terminated at the will of either party on notice to the other. State and local law do not recognize a statutory right to reemployment or any cause of action for violating such a right. This ordinance likely violates the contracts clauses of the federal and California constitutions. Its passage will result in substantial litigation when businesses and the state should be focused on economic recovery.

This legislation comes at a time when San Francisco can finally start to look forward. As we enter the Purple Tier again and the Regional Stay At Home Order is lifted, our businesses are able to begin safely reopening and serving customers in approved capacities. Given the economic devastation that has occurred in San Francisco over the past eleven months, and what is clearly a long road to recovery, businesses need flexibility, not burdensome and unnecessary requirements.

We support all efforts to keep San Francisco employees protected and employed. However, we cannot support legislation that creates added burdens on our small business community. **Due to the administrative barriers, our changing economy, and risk of liabilities, we respectfully ask you to reject this legislation at this time.** We would support this legislation being reconstituted as a strong policy statement encouraging San Francisco employers to reemploy persons laid off because of COVID-19. Imposing a new set of rigid requirements on employers with potential liability for failing to meet those requirements is not what is needed at this moment.

Thank you for your service and consideration.

Respectfully,

Rodney Fong
President & CEO
San Francisco Chamber of Commerce

Chris Wright
Executive Director
Committee on Jobs

Laurie Thomas
Executive Director
Golden Gate Restaurant Association

Kevin Carroll
President & CEO
Hotel Council of San Francisco

Lee Gregory
Executive Vice President
McCalls Catering & Events

Taylor Safford
President & CEO
PIER 39

Maryo Mogannam
President
**San Francisco Council of District Merchants
Associations**

Jennifer Stojkovic
Executive Director
sf.citi

Kate Sofis
CEO
SFMade




Member, Board of Supervisors
District 4

City and County of San Francisco

GORDON MAR

DATE: March 12, 2021

TO: Angela Calvillo
Clerk of the Board of Supervisors

FROM: Supervisor Mar 
Chairperson

RE: Public Safety and Neighborhood Services Committee
COMMITTEE REPORT

Pursuant to Board Rule 4.20, as Chair of the Public Safety and Neighborhood Services Committee, I have deemed the following matter is of an urgent nature and request it be considered by the full Board on Tuesday, March 23, 2021, as a Committee Report:

File No. 200830 [Police Code – Right to Reemployment Following Layoff Due to COVID-19 Pandemic]

Ordinance amending the Police Code to create a right to reemployment for certain employees laid-off due to the COVID-19 pandemic if their employer seeks to fill the same position previously held by the laid-off employee, or a substantially similar position, and to reasonably accommodate employees who cannot work because of a family care hardship.

This matter will be heard in the Public Safety and Neighborhood Services Committee during a special meeting on March 18th, 2021, at 4:00 p.m.

BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

MEMORANDUM

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

FROM: John Carroll, Assistant Clerk,
Public Safety and Neighborhood Services Committee,
Board of Supervisors

DATE: August 5, 2020

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Public Safety and Neighborhood Services Committee has received the following proposed legislation, introduced by Supervisor Mar on July 28, 2020:

File No. 200830

Ordinance amending the Police Code to create a right to reemployment for certain employees laid-off due to the COVID-19 pandemic if their employer seeks to fill the same position previously held by the laid-off employee, or a substantially similar position, and to reasonably accommodate employees who cannot work because of a family care hardship.

If you have any comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

c: Office of Chair Mandelman
Office of Supervisor Mar
Rowena Carr, Police Department
Asja Steeves, Police Department
J'Wel Vaughan, Office of Economic and Workforce Development
Anne Taupier, Office of Economic and Workforce Development
Lisa Pagan, Office of Economic and Workforce Development

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MEMORANDUM

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

FROM: John Carroll, Assistant Clerk, Public Safety and Neighborhood Services
Committee, Board of Supervisors

DATE: August 5, 2020

SUBJECT: REFERRAL FROM BOARD OF SUPERVISORS
Public Safety and Neighborhood Services Committee

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

File No. 200830

Ordinance amending the Police Code to create a right to reemployment for certain employees laid-off due to the COVID-19 pandemic if their employer seeks to fill the same position previously held by the laid-off employee, or a substantially similar position, and to reasonably accommodate employees who cannot work because of a family care hardship.

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

RESPONSE FROM SMALL BUSINESS COMMISSION - Date: _____

_____ **No Comment**

_____ **Recommendation Attached**

Chairperson, Small Business Commission

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:

Signature of Sponsoring Supervisor: