

1 [Emergency Ordinance - Restroom and Hand Washing Facilities for Unsheltered People]

2

3 **Emergency ordinance to limit the spread of COVID-19 by requiring the City, through**
 4 **service agreements with third parties, to provide, staff, and maintain restrooms**
 5 **equipped with toilets and hand washing facilities, at a ratio of one restroom per 50**
 6 **unsheltered people, concentrated in areas with the greatest need, located within 1,000**
 7 **feet of any encampment, and for select “pit stop” restrooms, open 24 hours per day,**
 8 **within three weeks of the effective date of this ordinance; waive the requirement under**
 9 **Charter, Section 9.118, that the Board of Supervisors approve the service agreements**
 10 **for restrooms equipped with toilets and hand washing facilities; and affirming the**
 11 **Planning Department’s determination under the California Environmental Quality Act.**

12

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

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

21 Section 1. CEQA Findings.

22 The Planning Department has determined that the actions contemplated in this
 23 ordinance comply with the California Environmental Quality Act (California Public Resources
 24 Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of
 25 Supervisors in File No. 200373 and is incorporated herein by reference. The Board affirms
 this determination.

1 Section 2. Declaration of Emergency under Charter Section 2.107.

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

7 (b) On February 25, 2020, Mayor London Breed proclaimed a state of emergency in
8 response to the COVID-19 pandemic. On March 3, 2020, the Board of Supervisors concurred
9 in the February 25 Proclamation and in the actions taken by the Mayor to meet the
10 emergency.

11 (c) On March 16, 2020, the County Health Officer issued Order No. C19-07, replaced
12 by Order No. C19-07b on March 31, 2020 (~~March 31 Order~~), extended and replaced by Order
13 No. C19-07c on April 29, 2020 (April 29 Order), directing San Franciscans to stay in their
14 homes and follow social distancing requirements when outside their residence. The social
15 distancing requirements include a requirement that people frequently wash hands with soap
16 and water for at least 20 seconds, or use hand sanitizer that is recognized by the Centers for
17 Disease Control and Prevention (CDC) as effective in combatting COVID-19. Although the
18 ~~March 31~~ April 29 Order requires governmental agencies to “take appropriate steps to help
19 ensure compliance with social distancing requirements, including adequate provision of hand
20 sanitizer,” it does not go so far as to mandate the provision of bathrooms and handwashing
21 stations. Rather, the ~~March 31~~ April 29 ~~Order~~ merely states that government agencies
22 should provide restroom and hand washing or hand sanitation facilities to persons who are
23 unsheltered.

24 (d) The ~~March 31~~ April 29 Order references the CDC Interim Guidance: “Responding
25 to Coronavirus Disease 2019 COVID-19 among People Experiencing Unsheltered Homeless,”

1 which specifically provides that one method of preventing the spread of COVID-19 among
2 those who are unsheltered is to “[e]nsure nearby restroom facilities have functional water
3 taps, are stocked with hand hygiene materials (soap, drying materials) and bath tissue, and
4 remain open to people experiencing homelessness 24 hours per day. If toilets or
5 handwashing facilities are not available nearby, provide access to portable latrines with
6 handwashing facilities for encampments of more than 10 people.”

7 (e) The CDC guidance recommending the provision of restrooms is clear. Given the
8 ever-present spread of COVID-19, individuals without homes should have the opportunity to
9 comply with social distancing requirements, including as to hand washing, to the greatest
10 extent possible. But absent a governmental mandate to provide restrooms equipped with
11 hand washing or hand sanitation facilities, thousands of unsheltered people are unable to
12 maintain proper personal hygiene and to comply with the social distancing requirements to
13 wash their hands frequently and thoroughly. The lack of facilities that enable unhoused
14 people to maintain personal hygiene and to frequently and thoroughly wash their hands,
15 poses a severe and imminent threat to the health, safety, and well-being of themselves and
16 others.

17 (f) This emergency ordinance is necessary to reduce the spread of COVID-19 by
18 enhancing the ability of people experiencing homelessness to comply with social distancing
19 protocols, particularly the ability to maintain personal hygiene and to frequently and thoroughly
20 wash their hands as recommended by the CDC.

21

22 Section 3. Findings and Purpose.

23 (a) The occurrence of COVID-19 is rapidly increasing within the City and County of
24 San Francisco (“City”) and throughout the Bay Area. According to the County Health Officer,
25 there is also “a significant and increasing number of suspected cases of community

1 transmission and likely further significant increases in transmission.” Even if there is a
2 “flattening of the curve” and some stabilization or even decline in the occurrence of COVID-19
3 in the City and/or Bay Area, COVID-19 will remain an extremely serious public health risk
4 locally for the duration of this emergency ordinance.

5 (b) The County Health Officer’s Orders, together with directives from public health
6 experts at the local, state, and national level, recognize that limiting interactions among
7 people as much as possible slows transmission of COVID-19. The CDC has found that “[t]he
8 potential for presymptomatic transmission underscores the importance of social distancing,”
9 including frequently washing hands with soap and water for at least 20 seconds, or using
10 hand sanitizer that is recognized by the CDC as effective in combatting COVID-19, to reduce
11 COVID-19 spread.

12 (c) The approximately 5,180 San Francisco unsheltered residents experiencing
13 homelessness have no realistic way to comply with social distancing and personal hygiene
14 protocols when living in encampments or on the street. Communicable diseases, such as
15 COVID-19, have the potential to spread quickly through the homeless community due in part
16 to the close proximity of people in these settings and the lack of adequate sanitation. Many
17 public restrooms that were accessible to the unsheltered are now closed, making it difficult, if
18 not impossible, for unhoused residents to comply with social distancing guidelines, including
19 frequently and thoroughly washing their hands.

20 (d) The prevalence of underlying health conditions among people experiencing
21 homelessness increases their vulnerability to COVID-19 infection, and therefore increases the
22 likelihood that COVID-19 will spread rapidly through the homeless community. This makes it
23 especially important that unsheltered individuals have access to free, public restrooms with
24 hand washing facilities.

1 (e) In the April 29 Order No. ~~C19-0766~~, the County Health Officer requires government
2 agencies and other entities operating shelters and other congregate facilities for the homeless
3 to “take appropriate steps to help ensure compliance with Social Distancing Requirements,
4 including adequate provision of hand sanitizer.” Additionally the Order states that government
5 agencies should provide restroom and handwashing or hand sanitation facilities to persons
6 who are unsheltered.

7 (f) Notwithstanding these requirements, according to the San Francisco Public Works
8 website there are currently only ~~thirty-nine~~ 39 Pit Stop combined toilet and hand washing units
9 in all of San Francisco. This number does not meet the need for restroom and hand washing
10 facilities for San Francisco’s unsheltered residents. The United Nations High Commissioner
11 for Refugees Emergency Handbook establishes standards for the ratio of toilets to individuals
12 at one toilet for 50 people in an emergency. This ratio corresponds to the standards set by
13 Sphere, an international humanitarian organization that provides disaster relief response
14 guidance. To meet the needs of San Francisco’s approximately 5,180 unsheltered individuals
15 at a ratio one restroom for 50 unsheltered persons, the City needs approximately 65 additional
16 restrooms.

17 (g) Having a sufficient number of restrooms equipped with hand washing facilities will
18 allow people experiencing homelessness to maintain proper personal hygiene and to
19 frequently and thoroughly wash their hands, and will help slow community spread of COVID-
20 19.

21
22 Section 4. City Procurement of Restrooms and Hand Washing Facilities to Slow
23 Community Spread of COVID-19.

24 (a) Subject to the budgetary and fiscal provisions of the Charter, by no later than three
25 weeks after the effective date of this ordinance, the City shall procure, through service

1 agreements, restroom units equipped with both a toilet and a hand washing facility, at a ratio
2 of one restroom unit per 50 unsheltered individuals. Such restroom units shall be
3 concentrated in areas with the greatest need, and located within 1,000 feet of any
4 encampment. The hours of operation for all existing and new “pit stop” restrooms shall be 24
5 hours per day seven days per week, except at the following locations: corner of Market Street
6 and Church Street; corner of Haight Street and Buena Vista Avenue; corner of 16th Street and
7 Capp Street; corner of 18th Street and Mission Street; Washington Square Park on Union
8 Street near Stockton Street; and adjacent to the Great Highway near the Beach Chalet.

9 (b) If an adequate supply of such units is not available to meet the required 1:50 ratio,
10 the City shall procure alternative toilet units sufficient to meet the required ratio, and must
11 accompany them with a corresponding hand washing station.

12 (c) As unsheltered individuals are placed in hotels or other housing, the total number
13 of required restrooms under subsection (a) or, if necessary, toilet units/hand washing stations
14 under subsection (b), may be reduced, consistent with maintaining the required 1:50 ratio.

15 (d) Notwithstanding the requirements of Charter Section 9.118, the service
16 agreements authorized by this emergency ordinance shall not be subject to approval by the
17 Board of Supervisors.

18

19 Section 5. Maintenance and Cleaning of the Restrooms and Hand Washing Facilities.

20 (a) The City shall also procure, through service agreements, adequate staffing,
21 maintenance and cleaning services for each restroom and hand washing facility procured
22 under this ordinance.

23 (b) The maintenance and cleaning of restrooms and hand washing facilities procured
24 under this ordinance shall, at a minimum, conform to the Minimum Environmental Cleaning
25 Standards for Businesses, Schools and SRO Settings (“Minimum Standards”) published by

1 the Department of Public Health on March 9, 2020, and attached to the Order of the Health
2 Officer No. C19-04, on file with the Clerk of the Board of Supervisors in File No. 200373.
3 Should the Minimum Standards be revised, the maintenance and cleaning of restrooms and
4 handwashing facilities procured under this ordinance shall, at a minimum, conform to the
5 Minimum Standards as revised.

6
7 Section 6. Implementation.

8 The ~~Mayor, as the City's Chief Executive Officer~~ Department of Public Works is
9 authorized to ~~designate one or more City agencies to~~ develop rules, regulations, guidance,
10 forms, and procedures as necessary and appropriate to effectuate the purposes of this
11 emergency ordinance.

12
13 Section 7. Undertaking for the General Welfare.

14 In enacting and implementing this emergency ordinance, the City is assuming an
15 undertaking only to promote the general welfare. It is not assuming, nor is it imposing on its
16 officers and employees, an obligation for breach of which it is liable in money damages to any
17 person who claims that such breach proximately caused injury. This emergency ordinance
18 does not create a legally enforceable right by any member of the public against the City.

19
20 Section 8. Severability. If any section, subsection, sentence, clause, phrase, or word
21 of this emergency ordinance, or any application thereof to any person or circumstance, is held
22 to be invalid or unconstitutional by a decision of a court of competent jurisdiction, such
23 decision shall not affect the validity of the remaining portions or applications of the ordinance.
24 The Board of Supervisors hereby declares that it would have passed this ordinance and each
25 and every section, subsection, sentence, clause, phrase, and word not declared invalid or

1 unconstitutional without regard to whether any other portion of this ordinance or application
2 thereof would be subsequently declared invalid or unconstitutional.

3
4 Section 9. Effective Date; Expiration.

5 Consistent with Charter Section 2.107, this emergency ordinance shall become
6 effective immediately upon enactment. Enactment occurs when the Mayor signs the
7 ordinance, the Mayor returns the ordinance unsigned or does not sign the ordinance within
8 ten days of receiving it, or the Board of Supervisors overrides the Mayor’s veto of the
9 ordinance. Once enacted, it shall remain in effect for 60 days, unless reenacted as provided
10 by Section 2.107. If not reenacted, it shall expire on the 61st day after enactment.

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12 Section 10. Supermajority Vote Required. In accordance with Charter Section 2.107,
13 passage of this emergency ordinance by the Board of Supervisors requires an affirmative vote
14 of two-thirds of the Board of Supervisors.

15
16 APPROVED AS TO FORM:
17 DENNIS J. HERRERA, City Attorney

18 By: /s/ Virginia Dario Elizondo
19 VIRGINIA DARIO ELIZONDO
20 Deputy City Attorney

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