

BOARD of SUPERVISORS



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MEMORANDUM

GOVERNMENT AUDIT AND OVERSIGHT COMMITTEE

SAN FRANCISCO BOARD OF SUPERVISORS

TO: Supervisor Gordon Mar, Chair
Government Audit and Oversight Committee

FROM: John Carroll, Assistant Clerk

DATE: December 15, 2020

SUBJECT: **COMMITTEE REPORT, BOARD MEETING**
Tuesday, December 15, 2020

The following file should be presented as COMMITTEE REPORT at the regular Board meeting on Tuesday, December 15, 2020. This ordinance was acted upon at the special Government Audit and Oversight Committee meeting on Tuesday, December 15, 2020, at 8:30 a.m., by the votes indicated.

Item No. 41 File No. 201264

Reenactment of emergency ordinance (Ordinance No. 59-20) to temporarily require private employers with 500 or more employees to provide public health emergency leave during the public health emergency related to COVID-19.

RECOMMENDED AS A COMMITTEE REPORT

Vote: Supervisor Gordon Mar - Aye
Supervisor Aaron Peskin - Aye
Supervisor Matt Haney - Aye

Cc: Board of Supervisors
Angela Calvillo, Clerk of the Board
Alisa Somera, Legislative Deputy
Anne Pearson, Deputy City Attorney

File No. 201264

Committee Item No. 1

Board Item No. 41

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Government Audit and Oversight

Date: Dec. 15, 2020

Board of Supervisors Meeting:

Date: Dec. 15, 2020

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| <input type="checkbox"/> | <input type="checkbox"/> | Motion |
| <input type="checkbox"/> | <input type="checkbox"/> | Resolution |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Ordinance |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Legislative Digest |
| <input type="checkbox"/> | <input type="checkbox"/> | Budget and Legislative Analyst Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Youth Commission Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Introduction Form |
| <input type="checkbox"/> | <input type="checkbox"/> | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/> | <input type="checkbox"/> | MOU |
| <input type="checkbox"/> | <input type="checkbox"/> | Grant Information Form |
| <input type="checkbox"/> | <input type="checkbox"/> | Grant Budget |
| <input type="checkbox"/> | <input type="checkbox"/> | Subcontract Budget |
| <input type="checkbox"/> | <input type="checkbox"/> | Contract/Agreement |
| <input type="checkbox"/> | <input type="checkbox"/> | Form 126 – Ethics Commission |
| <input type="checkbox"/> | <input type="checkbox"/> | Award Letter |
| <input type="checkbox"/> | <input type="checkbox"/> | Application |
| <input type="checkbox"/> | <input type="checkbox"/> | Public Correspondence |

OTHER

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| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Committee Report Request Memo – December 10, 2020</u> |
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Prepared by: John Carroll

Date: Dec. 11, 2020

Prepared by: John Carroll

Date: Dec. 15, 2020

1 [Emergency Ordinance - Public Health Emergency Leave]

2
3 **Reenactment of emergency ordinance (Ordinance No. 59-20) to temporarily require**
4 **private employers with 500 or more employees to provide public health emergency**
5 **leave during the public health emergency related to COVID-19.**

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

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

12
13 Section 1. Declaration of Emergency Pursuant to Charter Section 2.107.

14 (a) Section 2.107 of the Charter authorizes passage of an emergency ordinance in
15 cases of public emergency affecting life, health, or property, or for the uninterrupted operation
16 of any City or County department or office required to comply with time limitations established
17 by law. An emergency ordinance enacted under Charter Section 2.107 automatically
18 terminates on the 61st day after passage, but may be reenacted upon the same terms and
19 conditions applicable to its initial enactment.

20 (b) Pursuant to Charter Section 2.107, the City enacted an emergency ordinance
21 (Ordinance No. 59-20), the Public Health Emergency Leave Ordinance, which temporarily
22 requires private employers with 500 or more employees to provide public health emergency
23 leave during the public health emergency related to COVID-19. The emergency ordinance
24 became effective when enacted, on April 17, 2020. It would have terminated automatically on
25 June 16, 2020, but Ordinance No. 90-20 reenacted the emergency ordinance prior to its

1 termination. On August 24, 2020, Ordinance No. 136-20 reenacted Ordinance No. 59-20, as
2 reenacted by Ordinance No. 90-20, retroactive to August 15, 2020, the date that Ordinance
3 No. 59-20, as reenacted, expired. On October 30, 2020, Ordinance No. 217-20 reenacted
4 Ordinance No. 59-20, as reenacted by Ordinance No. 90-20 and Ordinance No. 136-20,
5 retroactive to October 14, 2020, the date that Ordinance No. 59-20, as reenacted, expired.
6 The original emergency ordinance, Ordinance No. 59-20, will terminate automatically on
7 December 13, 2020, unless reenacted.

8 (c) The Board of Supervisors hereby finds that the findings declared in Sections 1 and
9 2 of Ordinance No. 59-20 and reaffirmed in Ordinance No. 90-20, Ordinance No. 136-20, and
10 Ordinance No. 217-20 remain valid and compelling, and declares further that an actual
11 emergency continues to exist that requires the reenactment of the Public Health Emergency
12 Leave Ordinance to reduce the spread of COVID-19 and mitigate the economic harm for
13 individuals unable to work due to the public health emergency. COVID-19 continues to
14 present an extremely dangerous public health risk to the community, and the adverse
15 economic impact on workers and their families remains severe, notwithstanding gradual
16 reopening of sectors of the economy. Further, many employees continue to experience family
17 caregiving challenges due to care facility closures, remote learning for school children, and
18 other challenges securing caregiving assistance.

19

20 Section 2. Reenactment of Emergency Ordinance.

21 Consistent with Charter Section 2.107, this emergency ordinance reenacts for an
22 additional 60 days the emergency ordinance temporarily requiring private employers with 500
23 or more employees to provide public health emergency leave (Ordinance No. 59-20), as
24 reenacted by Ordinance No. 90-20, Ordinance No. 136-20, and Ordinance No. 217-20.

25

1 Section 3. Effective Date; Retroactive Application; Expiration.

2 (a) If enacted prior to the expiration of Ordinance No. 59-20, as reenacted by
3 Ordinance No. 90-20, Ordinance No. 136-20, and Ordinance No. 217-20, this reenacted
4 emergency ordinance shall become effective immediately upon the date of expiration of
5 Ordinance No. 59-20, and shall itself expire on the 61st day following its effective date unless
6 reenacted as provided by Charter Section 2.107, or upon the termination of the Public Health
7 Emergency, whichever occurs first.

8 (b) If enacted after the expiration of Ordinance No. 59-20, as reenacted by Ordinance
9 No. 90-20, Ordinance No. 136-20, and Ordinance No. 217-20, this reenacted emergency
10 ordinance shall become effective immediately upon enactment, shall have operative effect
11 retroactively to the date that Ordinance No. 59-20, as reenacted, expired, and shall expire on
12 the 61st day following the date that Ordinance No. 59-20, as reenacted, expired, unless
13 reenacted as provided by Charter Section 2.107, or upon the termination of the Public Health
14 Emergency, whichever occurs first.

15
16 Section 4. Directions to Clerk.

17 The Clerk of the Board of Supervisors is hereby directed to place a copy of this
18 reenacted emergency ordinance in File No. 200355 for Ordinance No. 59-20, File No. 200576
19 for Ordinance No. 90-20, File No. 200733 for Ordinance No. 136-20, and File No. 201055 for
20 Ordinance No. 217-20 and to make a notation cross-referencing this emergency ordinance
21 where Ordinance Nos. 59-20, 90-20, 136-20, and 217-20 appear on the Board of Supervisors
22 website as legislation passed.

23
24
25 Section 5. Supermajority Vote Required.

1 In accordance with Charter Section 2.107, passage of this reenacted emergency
2 ordinance by the Board of Supervisors requires an affirmative vote of two-thirds of the Board
3 of Supervisors.

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

7 By: /s/ _____
8 LISA POWELL
9 Deputy City Attorney

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LEGISLATIVE DIGEST

[Emergency Ordinance - Public Health Emergency Leave]

Reenactment of emergency ordinance (Ordinance No. 59-20) to temporarily require private employers with 500 or more employees to provide public health emergency leave during the public health emergency related to COVID-19.

Existing Law

An emergency ordinance, the Public Health Emergency Leave Ordinance, Ordinance No. 59-20, reenacted by Ordinance No. 90-20, Ordinance No. 136-20, and Ordinance No. 217-20, temporarily requires private employers with 500 or more employees to provide paid public health emergency leave during the public health emergency related to COVID-19.

The federal Families First Coronavirus Response Act (FFCRA), Public Law No. 116-127, requires employers to provide emergency paid sick leave to certain employees who are unable to work or telework due to the COVID-19 public health emergency, but it exempts private employers with 500 or more employees. The ordinance addresses the gap created by FFCRA's exemption of private employers with 500 or more employees.

The legislative digest for Ordinance No. 59-20 is found in Board File No. 200355. Slightly edited, it summarizes the ordinance as follows:

Under the ordinance, employees may use up to 80 hours of paid public health emergency leave if unable to work (including telework) because:

- (1) The employee is subject to a quarantine or isolation order related to COVID-19, including but not limited to the City or other Bay Area shelter-in-place or "stay-safer-at-home" orders. This includes an employee who is a member of a "vulnerable population" as defined in Order No. C19-05 who is unable to work due to recommendations in any City health order, or any order issued by Governor Newsom or Bay Area jurisdictions recommending or requiring additional restrictions for vulnerable or high-risk populations.
- (2) The employee has been advised by a health care provider to quarantine.
- (3) The employee is experiencing symptoms associated with COVID-19 and seeking a medical diagnosis.
- (4) The employee is caring for a family member who is subject to an order as described in (1), has been advised as described (2), or is experiencing symptoms as described in (3).
- (5) The employee is caring for a family member if the school or place of care of the family member has been closed, or the care provider of such family member is unavailable, due to the public health emergency.
- (6) The employee is experiencing any other substantially similar condition specified by the Local Health Officer, or under Section 5102(a)(6) of the FFCRA, by the United States Secretary of Health and Human Services.

The ordinance allows an employer of an employee who is a health care provider or an emergency responder to limit this leave, but requires such employers to provide such leave when the employee is unable to work: (1) due to a health care provider's advice to self-quarantine; or (2) because the employee is experiencing symptoms associated with COVID-19, seeking a medical diagnosis, and does not meet the Centers for Disease Control and Prevention guidance for criteria to return to work for healthcare personnel with confirmed or suspected COVID-19.

Public health emergency leave must be provided in addition to paid leave the employer provided before the date of enactment of the ordinance, except employers that voluntarily provided additional paid leave in response to the COVID-19 outbreak may count that leave toward the required public health emergency leave. The ordinance required public health emergency leave to be available for immediate use, and it expires with the expiration of the ordinance, unless reenacted.

The Office of Labor Standards Enforcement ("OLSE") has implemented and is enforcing the ordinance. OLSE published on its website and through email to employers a notice suitable for employers to inform employees of their rights under the ordinance, as well as information about City, state, and federal resources that employees negatively impacted by the public health emergency may qualify to receive. Employers were required to provide the notice to employees, in English, Spanish, Chinese, and any language spoken by at least 5% of the employees who are, or prior to the public health emergency were, at the workplace or job site, within three days after it was published.

The ordinance includes anti-retaliation protections that, among other provisions, prohibit interfering with any right protected under the ordinance and taking any adverse action against an employee for exercising these rights.

The ordinance became effective on April 17, 2020, was reenacted by Ordinance No. 90-20, on June 16, 2020; by Ordinance No. 136-20, on August 24, 2020, retroactive to August 15, 2020, the date that Ordinance 59-20, as reenacted, expired; and by Ordinance No. 217-20, retroactive to November 14, 2020, the date that Ordinance 59-20, as reenacted, expired. The ordinance will terminate automatically on December 13, 2020, unless reenacted.

Amendments to Existing Law

The proposed emergency ordinance reenacts Ordinance No. 59-20, as reenacted, with the result that it does not terminate on December 13, 2020, but rather is extended for an additional 60 days. If the ordinance is enacted after the expiration of Ordinance No. 59-20, as reenacted, it will have operative effect retroactively to the date that Ordinance No. 59-20, as reenacted, expired, and will expire on the 61st day following that date, unless reenacted.

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Member, Board of Supervisors
District 4

City and County of San Francisco

GORDON MAR

DATE: December 10, 2020

TO: Angela Calvillo
Clerk of the Board of Supervisors

FROM: Supervisor Mar 
Chairperson

RE: Government Audit and Oversight Committee
COMMITTEE REPORT

Pursuant to Board Rule 4.20, as Chair of the Government Audit and Oversight Committee, I have deemed the following matters are of an urgent nature and request they be considered by the full Board on Tuesday, December 15, 2020, as Committee Reports:

File No. 201264 [Emergency Ordinance – Public Health Emergency Leave]
Reenactment of emergency ordinance (Ordinance No. 59-20) to temporarily require private employers with 500 or more employees to provide public health emergency leave during the public health emergency related to COVID-19.

File No. 201176 [Mills Act Historical Property Contract – 450 Pacific Avenue]
Resolution approving a historical property contract between Pacific Stables Property Owner LLC, the owners of 450 Pacific Avenue, and the City and County of San Francisco, under Administrative Code, Chapter 71; and authorizing the Planning Director and the Assessor-Recorder to execute and record the historical property contract.

These matters will be heard in the Government Audit and Oversight Committee during a special meeting on December 15, 2020, at 8:30 a.m.

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:

For Clerk's Use Only