

File No. 220022

Committee Item No. 1

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Rules Committee

Date Feb 22, 2022

Board of Supervisors Meeting

Date _____

Cmte Board

- Motion
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- Legislative Digest
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- Department/Agency Cover Letter and/or Report
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- Form 126 - Ethics Commission
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- Form 700
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OTHER (Use back side if additional space is needed)

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Completed by: Victor Young Date Feb 18, 2022

Completed by: _____ Date _____

1 [Initiative Ordinance - Police Code - Public Health Emergency Leave]

2

3 **Motion ordering submitted to the voters at an election to be held on June 7, 2022, an**
4 **ordinance to amend the Police Code to require employers to provide public health**
5 **emergency leave during a public health emergency.**

6

7 MOVED, That the Board of Supervisors hereby submits the following ordinance to the
8 voters of the City and County of San Francisco, at an election to be held on June 7, 2022.

9

10 **Ordinance to amend the Police Code to require employers to provide public health**
11 **emergency leave during a public health emergency.**

12

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

16

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

18 Section 1. The Police Code is hereby amended by adding Article 33P, consisting of
19 Sections 3300P.1 through 3300P.14, to read as follows:

20

21 **ARTICLE 33P: PUBLIC HEALTH EMERGENCY LEAVE**

22

23 **SEC. 3300P.1. TITLE.**

24 *This Article 33P shall be known as the “Public Health Emergency Leave Ordinance.”*

25

1 **SEC. 3300P.2. DEFINITIONS.**

2 *For purposes of this Article 33P, the following definitions apply:*

3 *“Agency” means the Office of Labor Standards Enforcement or its successor agency.*

4 *“Air Quality Emergency” means a day when the Bay Area Air Quality Management District*
5 *issues a Spare the Air Alert.*

6 *“City” means the City and County of San Francisco.*

7 *“Emergency Responder” means an Employee whose work involves emergency medical services,*
8 *including but not limited to emergency medical services personnel, physicians, nurses, public health*
9 *personnel, emergency medical technicians, paramedics, 911 operators, and persons with skills or*
10 *training in operating specialized equipment or other skills needed to provide aid in a Public Health*
11 *Emergency.*

12 *“Employee” means any person providing labor or services for remuneration who is an*
13 *employee under California Labor Code Section 2775, as may be amended from time to time, including*
14 *a part-time or temporary employee, and who performs work as an employee within the geographic*
15 *boundaries of the City. “Employee” includes a participant in a Welfare-to-Work Program when the*
16 *participant is engaged in work activity that would be considered “employment” under the federal Fair*
17 *Labor Standards Act (FLSA), 29 U.S.C. §§ 201 et seq., and any applicable U.S. Department of Labor*
18 *Guidelines. “Welfare-to-Work Program” includes any public assistance program administered by the*
19 *Human Services Agency, including but not limited to CalWORKS and the County Adult Assistance*
20 *Program (CAAP), and any substantially similar successor programs, that require a public assistance*
21 *applicant or recipient to work in exchange for their grant.*

22 *“Employer” means any person, as defined in Section 18 of the California Labor and*
23 *Employment Code, including corporate officers or executives, who directly or indirectly or through an*
24 *agent or any other person, including through the services of a temporary services or staffing agency or*
25 *similar entity, employs or exercises control over the wages, hours, or working conditions of 100 or*

1 more employees worldwide, including one or more Employees; provided however that “Employer”
2 shall not include a Non-Profit Organization if the majority of the annual revenue of the Non-Profit
3 Organization is program service revenue that is not unrelated business taxable income under 26 U.S.C.
4 § 512, as may be amended from time to time, and the Non-Profit Organization does not engage in
5 Healthcare Operations. “Employer” shall include the City, but shall not include any government entity
6 other than the City.

7 “Family Member” means any person for whom an Employee may use paid sick leave to provide
8 care pursuant to Administrative Code Section 12W.4(a), as may be amended from time to time.

9 “Healthcare Operations” means the provision of diagnostic and healthcare services and
10 devices including, without limitation, hospitals, medical clinics, diagnostic testing locations, dentists,
11 pharmacies, blood banks and blood drives, pharmaceutical and biotechnology companies, other
12 healthcare facilities, healthcare suppliers, home healthcare services providers, mental health
13 providers, or any related and/or ancillary healthcare services. “Healthcare Operations” also includes
14 veterinary care and all healthcare services provided to animals. “Healthcare Operations” excludes
15 fitness and exercise gyms and similar facilities.

16 “Healthcare Provider” means a “Health care provider” as that term is defined in the
17 regulations implementing the federal Family and Medical Leave Act, 29 C.F.R. § 825.102, as may be
18 amended from time to time.

19 “Nonprofit Organization” means a nonprofit corporation, duly organized, validly existing and
20 in good standing under the laws of the jurisdiction of its incorporation and (if a foreign corporation) in
21 good standing under the laws of the State of California, which corporation has established and
22 maintains valid nonprofit status under 26 U.S.C. § 501(c)(3), as may be amended from time to time,
23 and all rules and regulations promulgated under such Section.

24 “Operative Date” means the date this Article 33P becomes operative, which shall be October 1,
25 2022.

1 “Public Health Emergency” means a local or statewide health emergency related to any
2 contagious, infectious, or communicable disease, declared by the City’s local health officer or the state
3 health officer pursuant to the California Health and Safety Code, or an Air Quality Emergency.

4 “Public Health Emergency Leave” means paid leave provided by an Employer to an Employee
5 during a Public Health Emergency for the uses described in Section 3300P.4(a) or Section 3300P.4(b),
6 as applicable.

7 “Vulnerable Population” means a person who has been diagnosed with heart or lung disease;
8 has respiratory problems including but not limited to asthma, emphysema, and chronic obstructive
9 pulmonary disease; is pregnant; or is age 60 or older.

10
11 **SEC. 3300P.3. PUBLIC HEALTH EMERGENCY LEAVE REQUIREMENTS.**

12 (a) Allocation of Public Health Emergency Leave.

13 (1) Except as provided in subsections (a)(2) and (a)(3) below, on the Operative Date,
14 and on January 1 of each year thereafter, an Employer shall allocate Public Health Emergency Leave
15 to each Employee that may be used for all purposes specified in Section 3300P.4(a) or Section
16 3300P.4(b), as applicable, during that calendar year. The allocation shall be calculated as follows:

17 (A) For an Employee who works a full-time, regular, or fixed schedule, the
18 allocation shall be equal to the number of hours over a two-week period that the Employee regularly
19 works or takes paid leave, not to exceed 80 hours; provided, however, for the remainder of 2022
20 beginning on the Operative Date, the allocation shall be equal to the number of hours over a one-week
21 period that the Employee regularly works or takes paid leave, not to exceed 40 hours.

22 (B) For an Employee whose number of weekly work hours varies, the allocation
23 shall be equal to the average number of hours over a two-week period that the Employee worked or
24 took paid leave during the previous calendar year, or since the Employee’s start date if after the
25 beginning of the previous calendar year, not to exceed 80 hours; provided, however, for the remainder

1 of 2022 beginning on the Operative Date, the allocation shall be equal to the average number of hours
2 over a one-week period that the Employee worked or took paid leave during the previous calendar
3 year, or since the Employee's start date if after the beginning of the previous calendar year, not to
4 exceed 40 hours.

5 _____ (2) If an Employee was not employed on the Operative Date, or on January 1 of a
6 calendar year thereafter, on the start date of the first Public Health Emergency that begins during the
7 Employee's employment, an Employer shall allocate Public Health Emergency Leave to each such
8 Employee that may be used for all purposes specified in Section 3300P.4(a) or Section 3300P.4(b), as
9 applicable, during that calendar year. The allocation shall be calculated as follows:

10 _____ (A) For an Employee who works a full-time, regular, or fixed schedule, the
11 allocation shall be equal to the number of hours over a two-week period that the Employee regularly
12 works or takes paid leave, not to exceed 80 hours; provided, however, for the remainder of 2022
13 beginning on the Operative Date, the allocation shall be equal to the number of hours over a one-week
14 period that the Employee regularly works or takes paid leave, not to exceed 40 hours.

15 _____ (B) For an Employee whose number of weekly work hours varies, the allocation
16 shall be equal to the average number of hours over a two-week period that the Employee worked or
17 took paid leave during the previous six months, or since the Employee's start date if the Employee has
18 been employed for fewer than six months, not to exceed 80 hours; provided, however, for the remainder
19 of 2022 beginning on the Operative Date, the allocation shall be equal to the average number of hours
20 over a one-week period that the Employee worked or took paid leave during the previous six months, or
21 since the Employee's start date if the Employee has been employed for fewer than six months, not to
22 exceed 40 hours.

23 _____ (3) Offset provisions.

24 _____ (A) During 2022, (i) if an Employer voluntarily extended additional paid leave or
25 paid time off that Employees may use for the reasons described in Section 3300P.4 and that paid leave

1 or paid time off remains in effect on or after the Operative Date of this Article 33P, or (ii) if State
2 COVID-19 supplemental paid sick leave requirements are extended beyond September 30, 2022, an
3 Employer may reduce the allocation of Public Health Emergency Leave under subsection (a)(1) or
4 (a)(2) for every hour an Employee takes such paid leave or paid time off after the Operative Date.

5 _____ (B) During 2023 and subsequent years, if an Employer is required by federal,
6 state, or City law to provide paid leave or paid time off to address a public health threat, which
7 Employees may use for the reasons described in Section 3300P.4, an Employer may reduce the
8 allocation of Public Health Emergency Leave under subsection (a)(1) or (a)(2) for every hour of such
9 paid leave or paid time off the Employer is required to provide.

10 _____ (C) If circumstances that are similar to those described in subsection (a)(3)(A)
11 or subsection (a)(3)(B) merit the addition of other offsets to reduce the otherwise applicable allocation
12 of Public Health Emergency Leave, the Agency may issue guidelines or rules authorizing additional
13 circumstances for an offset of the otherwise applicable allocation of Public Health Emergency Leave.
14 By way of illustration but not limitation, the Agency would be authorized to issue such guidelines or
15 rules if a state law were to require Employers to provide paid leave to address a public health threat,
16 which Employees could use for reasons that are similar to but not the same as the reasons described in
17 Section 3300P.4, or if certain Employers were to voluntarily extend additional paid leave in response
18 to a public health threat that later becomes a Public Health Emergency, which Employees could use for
19 the reasons described in Section 3300P.4.

20 (b) For the duration of a Public Health Emergency, Public Health Emergency Leave shall be
21 made available to Employees in addition to any paid leave that the Employer offered or provided to
22 Employees as of the date the Public Health Emergency began.

23 (c) Public Health Emergency Leave shall be available for immediate use for the purposes
24 described in Section 3300P.4(a) or Section 3300P.4(b), as applicable, regardless of how long the
25 Employee has been employed by the Employer, the Employee's status (as full-time, part-time,

1 permanent, temporary, seasonal, salaried, paid by commission, or any other status), or any other
2 consideration pertaining to the Employee.

3 (d) An Employee may use Public Health Emergency Leave for the purposes described in Section
4 3300P.4(a) or Section 3300P.4(b), as applicable, before using other accrued paid leave. An Employee
5 may voluntarily choose, but an Employer may not require, induce, or encourage the Employee, to use
6 other accrued paid leave provided by the Employer to the Employee before the Employee uses Public
7 Health Emergency Leave.

8 (e) This Article 33P provides minimum requirements pertaining to Public Health Emergency
9 Leave and shall not be construed to prevent an Employer from providing or advancing additional paid
10 leave to an Employee, and shall not be construed to limit the amount of paid leave that may be
11 provided to an Employee. This Article shall not be construed to preempt, limit, or otherwise affect the
12 applicability of any other law, regulation, requirement, policy, or standard that provides for greater or
13 different types of paid or unpaid leave, or that extends other protections to employees.

14 (f) An Employer is not required to carry over an Employee's unused Public Health Emergency
15 Leave from year to year.

16 (g) Compensation rates under this Article 33P shall be:

17 (1) For an Employee who is not exempt from the overtime provisions of the FLSA, an
18 Employer may calculate pay for Public Health Emergency Leave using either of the following methods:

19 (A) In the same manner as the regular rate of pay for the workweek in which the
20 Employee uses Public Health Emergency Leave, whether or not the Employee works overtime in that
21 workweek; or

22 (B) By dividing the Employee's total wages, not including overtime premium pay,
23 by the Employee's total hours worked in the full pay periods of the 90 days of employment prior to the
24 Employee's use of Public Health Emergency Leave.

1 (2) For an Employee who is exempt from the overtime provisions of FLSA and
2 California labor law, pay for Public Health Emergency Leave shall be calculated in the same manner
3 as the Employer calculates wages for other forms of paid leave.

4 (3) In no circumstance may Public Health Emergency Leave be provided at less than the
5 minimum wage rate required by the Minimum Wage Ordinance, Administrative Code Chapter 12R.

6
7 **SEC. 3300P.4. PUBLIC HEALTH EMERGENCY LEAVE USE.**

8 (a) Except as provided in subsections (b) and (c) below, an Employee may use Public Health
9 Emergency Leave during a Public Health Emergency if the Employee is unable to work due to any of
10 the following:

11 (1) The recommendations or requirements of an individual or general federal, state, or
12 local health order (including an order issued by the local jurisdiction in which an Employee resides)
13 related to the Public Health Emergency.

14 (2) The Employee has been advised by a Healthcare Provider to isolate or quarantine.

15 (3) The Employee is experiencing symptoms of and seeking a medical diagnosis, or has
16 received a positive medical diagnosis, for a possible infectious, contagious, or communicable disease
17 associated with the Public Health Emergency.

18 (4) The Employee is caring for a Family Member who is subject to an order as
19 described in subsection (a)(1), has been advised as described in subsection (a)(2), or is experiencing
20 symptoms as described in subsection (a)(3).

21 (5) The Employee is caring for a Family Member if the school or place of care of the
22 Family Member has been closed, or the care provider of such Family Member is unavailable, due to
23 the Public Health Emergency.

24 (6) An Air Quality Emergency, if the Employee is a member of a Vulnerable Population
25 and primarily works outdoors.

1 (b) An Employer of an Employee who is a Healthcare Provider or an Emergency Responder
2 may elect to limit such an Employee's use of Public Health Emergency Leave, but at a minimum such
3 an Employee may use Public Health Emergency Leave during a Public Health Emergency to the extent
4 that the Employee is unable to work due to any of the following:

5 _____ (1) The Employee has been advised by a Healthcare Provider to isolate or quarantine.

6 _____ (2) The Employee is experiencing symptoms of and is seeking a medical diagnosis, or
7 has received a positive medical diagnosis, for a possible infectious, contagious, or communicable
8 disease associated with the Public Health Emergency and does not meet federal, state, or local
9 guidance to return to work.

10 _____ (3) An Air Quality Emergency, if the Employee is a member of a Vulnerable Population,
11 primarily works outdoors, and has been advised by a Healthcare Provider not to work during an Air
12 Quality Emergency.

13 (c) With respect to subsections (a)(1), (2), and (6) and subsections (b)(1) and (3) above, if an
14 Employee is able to telework without increasing the Employee's exposure to disease or unhealthy air
15 quality, the Employee may not use Public Health Emergency Leave.

16 (d) An Employer may not require, as a condition of an Employee's taking Public Health
17 Emergency Leave, that the Employee search for or find a replacement worker to cover the hours during
18 which the Employee is on Public Health Emergency Leave.

19 (e) An Employer may not require, as a condition of an Employee's taking Public Health
20 Emergency Leave, that the Employee take Public Health Emergency Leave in increments of more than
21 one hour.

22 (f) An Employer may require the Employee to follow reasonable notice procedures in order to
23 use Public Health Emergency Leave, but only when the need for Public Health Emergency Leave is
24 foreseeable.

1 (g) An Employer may require a doctor’s note or other documentation to confirm an Employee’s
2 status as a member of a Vulnerable Population, if that Employee uses Public Health Emergency Leave
3 for a use inapplicable to an Employee who is not a member of a Vulnerable Population. An Employer
4 may not otherwise require the disclosure of health information for use of Public Health Emergency
5 Leave.

6 (h) An Employer shall provide payment for Public Health Emergency Leave taken by an
7 Employee no later than the payday for the next regular payroll period after the Public Health
8 Emergency Leave is taken.

9
10 **SEC. 3300P.5. NOTICE OF EMPLOYEE RIGHTS.**

11 (a) The Agency shall, no later than 30 days after the effective date of this Article 33P, publish
12 and make available to Employers, in English, Spanish, Chinese, Filipino, and any other language
13 spoken by more than 5% of the San Francisco workforce, a notice suitable for posting by Employers in
14 the workplace informing Employees of their rights under this Article 33P. The Agency shall update this
15 notice on December 1 of any year in which there is a change in the languages spoken by more than 5%
16 of the San Francisco workforce. In its discretion, the Agency may combine this notice with the notice
17 required by Section 12W.5(a) of the Administrative Code.

18 (b) Every Employer shall provide the notice prepared by the Agency under subsection (a) above
19 to Employees in all languages the Agency makes available by posting it in a conspicuous place at any
20 workplace or job site where any of its Employees works, and where feasible by providing it to
21 Employees via electronic communication, which may include email, text, and/or posting in a
22 conspicuous place in an Employer’s web-based or app-based platform.

23 (c) On the written notice that an Employer is required to provide under Section 246(i) of the
24 California Labor Code, as may be amended from time to time, an Employer shall set forth the amount
25 of Public Health Emergency Leave that is available to the Employee under this Article 33P. If an

1 Employer provides unlimited paid leave or paid time off to an Employee, the Employer may satisfy this
2 subsection (c) by indicating on the notice or the Employee's itemized wage statement "unlimited." This
3 subsection (c) shall apply only to Employers that are required by state law to provide such notice to
4 Employees regarding paid sick leave available under California law.

5
6 **SEC. 3300P.6. EXERCISE OF RIGHTS PROTECTED; RETALIATION PROHIBITED.**

7 (a) It shall be unlawful for an Employer or any other person to interfere with, restrain, or deny
8 the exercise of, or the attempt to exercise, any right protected under this Article 33P.

9 (b) It shall be unlawful for an Employer or any other person to discharge, threaten to
10 discharge, demote, suspend, reduce other Employee benefits, or in any manner discriminate or take
11 adverse action against any person in retaliation for exercising rights protected under this Article 33P.
12 Such rights include but are not limited to the right to use Public Health Emergency Leave pursuant to
13 this Article 33P; the right to file a complaint or inform any person about any Employer's alleged
14 violation of this Article 33P; the right to cooperate with the Agency in its investigations of alleged
15 violations of this Article 33P; and the right to inform any person of that person's potential rights under
16 this Article 33P.

17 (c) It shall be unlawful for any Employer absence control policy to count an Employee's use of
18 Public Health Emergency Leave as an absence that, alone or in combination with other absences, may
19 lead to or result in discipline, discharge, demotion, suspension, or any other adverse action.

20 (d) Protections of this Section 3300P.6 shall apply to any person who mistakenly but in good
21 faith alleges violations of this Article 33P.

22 (e) Taking adverse action against a person within 90 days of the person's filing a complaint
23 with the Agency or a court alleging a violation of any provision of this Article 33P; informing any
24 person about an Employer's alleged violation of this Article; cooperating with the Agency or other
25 persons in the investigation or prosecution of any alleged violation of this Article; opposing any policy,

1 practice, or act that is unlawful under this Article; or informing any person of that person's rights
2 under this Article shall raise a rebuttable presumption that such adverse action was taken in retaliation
3 for the exercise of one or more of the aforementioned rights.

4
5 **SEC. 3300P.7. EMPLOYER RECORDS.**

6 Employers shall retain records documenting hours worked by Employees and Public Health
7 Emergency Leave taken by Employees, for a period of four years, and shall allow the Agency access to
8 such records, with reasonable notice, to monitor compliance with the requirements of this Article 33P.
9 When an issue arises as to an Employee's entitlement to Public Health Emergency Leave under this
10 Article, if the Employer does not maintain or retain accurate and adequate records documenting hours
11 worked by the Employee and Public Health Emergency Leave taken by the Employee, or does not allow
12 the Agency reasonable access to such records, it shall be presumed that the Employer has violated this
13 Article, absent clear and convincing evidence otherwise.

14
15 **SEC. 3300P.8. IMPLEMENTATION AND ENFORCEMENT.**

16 (a) The Agency is authorized to implement and enforce this Article 33P and may promulgate
17 guidelines or rules for such purposes. Any rules promulgated by the Agency shall have the force and
18 effect of law and may be relied on by Employers, Employees, and other persons to determine their
19 rights and responsibilities under this Article.

20 (b) An Employee or any other person, who has reason to believe that a violation of this Article
21 33P has occurred may report the suspected violation to the Agency. The Agency shall encourage such
22 reporting by keeping confidential, to the maximum extent permitted by law, the name and other
23 identifying information of the individual reporting the suspected violation; provided, however, that with
24 the authorization of the reporting individual, the Agency may disclose the name of the reporting
25 individual and identifying information as necessary to enforce this Article or for other lawful purposes.

1 (c) The Agency may investigate possible violations of this Article 33P.

2 (1) Where the Agency has reason to believe that a violation has occurred, it may order
3 any appropriate temporary or interim relief to mitigate the violation or maintain the status quo pending
4 completion of a full investigation.

5 (2) Where, following an investigation that affords due process, including notice of the
6 alleged violation and the right to respond, the Agency determines that a violation has occurred, the
7 Agency may issue a determination of violation and order any appropriate relief.

8 (A) If any Public Health Emergency Leave was unlawfully withheld, the dollar
9 amount of paid leave withheld from the Employee multiplied by three, or \$500, whichever amount is
10 greater, shall be awarded as an administrative penalty paid to the Employee, pursuant to California
11 Constitution Article XIIC, Section 1(e)(5).

12 (B) For violation of Section 3300P.6, the Agency shall award appropriate
13 restitution to each person subjected to the violation, including but not limited to reinstatement and back
14 pay.

15 (C) Pursuant to California Constitution Article XIIC, Section 1(e)(5), the
16 Agency may order administrative penalties of \$500 for each of the following violations: failure to post
17 notice pursuant to Section 3300P.5, violation of Section 3300P.6, refusing to allow access to records
18 pursuant to Section 3300P.7, failure to maintain or retain accurate and adequate records pursuant to
19 Section 3300P.7, and any other violation not specified in this Section 3300P.8(c)(2). These penalties
20 shall be increased cumulatively by 50% for each subsequent violation of the same provision by the
21 same Employer within a three-year period.

22 (D) To compensate the City for the reasonable regulatory costs of investigating
23 and remedying the violation, pursuant to California Constitution Article XIIC, Section 1(e)(3), the
24 Agency may also order the Employer to pay to the City an amount that does not exceed its investigation
25 and administrative enforcement costs.

1 (3) The determination of violation shall provide notice to the Employer of the right to
2 appeal the determination to the City Controller and that failure to do so within 15 days shall result in
3 the determination becoming a final administrative decision, which the City may seek to enforce as a
4 judgment in superior court.

5 (4) The determination of violation shall specify a reasonable time period for payment of
6 any relief ordered. The Agency may award interest on all amounts due and unpaid at the expiration of
7 such time period at the rate of interest specified in subdivision (b) of Section 3289 of the California
8 Civil Code, as may be amended from time to time.

9 (5) The remedies and penalties provided under subsection (c)(2) above are cumulative.

10 (6) The Agency may require that remedies and penalties due and owing to Employees be
11 paid directly to the City for disbursement to the Employees. The Controller shall hold these funds in
12 escrow for the Employees. The Agency shall make best efforts to distribute such funds to Employees. In
13 the event such funds are unclaimed for a period of three years, the Controller may undertake
14 administrative procedures for escheat of unclaimed funds under California Government Code Section
15 50050, et seq., as may be amended from time to time. Such escheated funds shall be dedicated to the
16 enforcement of this Article 33P or other laws the Agency enforces.

17 (d) Appeal Procedure. An appeal from a determination of violation (“Appeal”) may be filed by
18 the Appellant in accordance with the following procedures:

19 (1) The Appellant shall file the Appeal with the City Controller and serve a copy on the
20 Agency. The Appeal shall be filed in writing within 15 days of the date of service of the determination
21 of violation, and shall specify the basis for the Appeal and shall request that the Controller appoint a
22 hearing officer to hear and decide the Appeal. Failure to submit a timely, written Appeal shall
23 constitute concession to the violation, and the determination of violation shall be deemed the final
24 administrative decision upon expiration of the 15-day period. Further, failure to submit a timely,
25 written Appeal shall constitute a failure to exhaust administrative remedies, which shall serve as a

1 complete defense to any petition or claim brought against the City regarding the determination of
2 violation.

3 (2) Following the filing of the Appeal and service of a copy on the Agency, the Agency
4 shall promptly afford Appellant an opportunity to meet and confer in good faith regarding possible
5 resolution of the Determination of Violation.

6 (3) Within 30 days of receiving an Appeal, the Controller shall appoint an impartial
7 hearing officer who is not part of the Agency and immediately notify the Agency and Appellant of the
8 appointment.

9 (4) The hearing officer shall promptly set a date for a hearing. The hearing must
10 commence within 45 days of the date of the Controller's notice of appointment of the hearing officer,
11 and conclude within 75 days of such notice, provided, however, that the hearing officer may extend
12 these time limits upon a determination of good cause.

13 (5) The hearing officer shall conduct a fair and impartial evidentiary hearing. The
14 Agency shall have the burden of proof in such hearing.

15 (6) Within 30 days of the conclusion of the hearing, the hearing officer shall issue a
16 written decision affirming, modifying, or dismissing the determination of violation. The hearing
17 officer's decision shall be the final administrative decision. The decision shall consist of findings, a
18 determination, any relief ordered, a reasonable time period for payment of any relief ordered, and
19 notice to the Employer of the right to appeal by filing a petition for a writ of mandate in San Francisco
20 Superior Court under California Code of Civil Procedure, Section 1094.5, et seq., as may be amended
21 from time to time, and that failure to file a timely appeal shall result in the final administrative decision
22 becoming enforceable as a judgment by the superior court.

23 (7) Appellant may appeal the final administrative decision only by filing in San
24 Francisco Superior Court a petition for a writ of mandate under California Code of Civil Procedure,
25 Section 1094.5, et seq., as applicable, and as may be amended from time to time.

1 (e) Where an Employer fails to comply with a final administrative decision within the time
2 period required therein, the Agency may take any appropriate enforcement action to secure
3 compliance, including referring the action to the City Attorney to seek to enforce the final
4 administrative decision as a judgment in superior court, and/or except where prohibited by State or
5 Federal law, requesting that City agencies or departments revoke or suspend any registration
6 certificates, permits, or licenses held or requested by the Employer until such time as the violation is
7 remedied.

8
9 **SEC. 3300P.9. CIVIL ENFORCEMENT.**

10 The City Attorney or any person aggrieved by a violation of this Article 33P may bring a civil
11 action in a court of competent jurisdiction against an Employer for violating any requirement of this
12 Article 33P and, upon prevailing, shall be entitled to such legal or equitable relief as may be
13 appropriate to remedy the violation including, without limitation, all forms of relief available under
14 Section 3300P.8(c), plus interest on all amounts due and unpaid at the rate of interest specified in
15 subdivision (b) of Section 3289 of the California Civil Code. The court shall award reasonable
16 attorneys' fees and costs to the prevailing party.

17
18 **SEC. 3300P.10. WAIVER THROUGH COLLECTIVE BARGAINING.**

19 All or any portion of the requirements of this Article 33P shall not apply to Employees covered
20 by a bona fide collective bargaining agreement to the extent that such requirements are expressly
21 waived in the collective bargaining agreement in clear and unambiguous terms.

22
23 **SEC. 3300P.11. PREEMPTION.**

1 Nothing in this Article 33P shall be interpreted or applied so as to create any power, right, or
2 duty in conflict with federal or state law. The term “conflict,” as used in this Section 3300P.11, means
3 a conflict that is preemptive under federal or state law.

4
5 **SEC. 3300P.12. CITY UNDERTAKING LIMITED TO PROMOTION OF THE GENERAL**
6 **WELFARE.**

7 In undertaking the adoption and enforcement of this Article 33P, the City is undertaking only to
8 promote the general welfare. The City is not assuming, nor is it imposing on its officers and employees,
9 an obligation for breach of which it is liable in money damages to any person who claims that such
10 breach proximately caused injury. This Article does not create a legally enforceable right by any
11 member of the public against the City.

12
13 **SEC. 3300P.13. SEVERABILITY.**

14 If any section, subsection, sentence, clause, phrase, or word of this Article 33P, or any
15 application thereof to any person or circumstance, is held to be invalid or unconstitutional by a
16 decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining
17 portions or applications of this Article. The voters hereby declare that they would have passed this
18 Article and every section, subsection, sentence, clause, phrase, and word not declared invalid and
19 unconstitutional without regard to whether any other portion of this Article or application thereof
20 would be subsequently declared invalid or unconstitutional.

21
22 **SEC. 3300P.14. AMENDMENT BY THE BOARD OF SUPERVISORS.**

23 (a) The Board of Supervisors may by ordinance amend this Article 33P with respect to matters
24 relating to its implementation and enforcement and matters relating to Employer requirements for
25 verification or documentation of an Employee’s use of Public Health Emergency Leave.

1 (b) The Board of Supervisors may by ordinance amend this Article 33P's substantive
2 requirements or scope of coverage as follows:

3 (1) as to Air Quality Emergencies, without limitation, and
4 (2) as to other provisions of this Article, only for the purpose of adopting greater or
5 additional substantive requirements or broader coverage.

6 (c) In the event any provision in this Article 33P is held legally invalid, the Board of
7 Supervisors retains the power to adopt an ordinance concerning the subject matter that was covered in
8 the invalid provision.

9 (d) Nothing in this Article 33P prevents the Board of Supervisors by ordinance from providing
10 for greater or different types of paid or unpaid leave, or extending other protections to employees or
11 other workers.

12
13 Section 2. Effective Date and Operative Date.

14 (a) The effective date of this ordinance shall be 10 days after the date the official vote
15 count is declared by the Board of Supervisors.

16 (b) As stated in Police Code Section 3300P.2, this ordinance shall become operative
17 on October 1, 2022.

18
19 APPROVED AS TO FORM:

20 DAVID CHIU, City Attorney

21
22 By: /s/ _____
23 LISA POWELL
24 Deputy City Attorney

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LEGISLATIVE DIGEST

(revised 2/14/2022)

[Initiative Ordinance - Police Code - Public Health Emergency Leave]

Motion ordering submitted to the voters at an election to be held on June 7, 2022, an ordinance to amend the Police Code to require employers to provide public health emergency leave during a public health emergency.

Existing Law

There is no current legal requirement pertaining to public health emergency leave.

Administrative Code Chapter 12W, the Paid Sick Leave Ordinance, requires employers to provide employees who work in San Francisco paid sick leave.

Background Information

The federal Families First Coronavirus Response Act (FFCRA), Public Law No. 116-127, previously required certain employers to provide emergency paid sick leave to certain employees who were unable to work due to the COVID-19 pandemic, through December 31, 2020. The FFCRA exempted private employers with 500 or more employees. A City emergency ordinance (Ordinance No. 59-20) required private employers with 500 or more employees to provide paid public health emergency leave for many of the same purposes as FFCRA emergency sick leave to employees in the City, through April 11, 2021.

This initiative ordinance would not amend existing law, but it would adopt paid leave requirements similar to the previous requirements in the FFCRA and Ordinance No. 59-20.

This initiative ordinance would require employers with more than 100 employees worldwide to provide public health emergency leave to employees who work in the City during a public health emergency. The ordinance would exempt certain non-profit organizations from its requirements. Public health emergencies include local or state health emergencies related to contagious, infectious, or communicable diseases, as well as air quality emergencies.

Under the ordinance, as amended in Committee, employees would be provided two weeks' worth (up to 80 hours) of paid public health emergency leave. Because the initiative ordinance would become operative on October 1, 2022, one week of leave will be required for 2022.

Public health emergency leave would be available if the employee is unable to work (including telework) due to:

- (1) The recommendations or requirements of a health order related to the public health emergency.
- (2) The employee has been advised by a health care provider to isolate or quarantine.
- (3) The employee is experiencing symptoms of and seeking a medical diagnosis, or has a positive diagnosis, for a possible infectious, contagious, or communicable disease associated with the public health emergency.
- (4) The employee is caring for a family member who is subject to an order as described in (1), has been advised as described in (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 whose care provider is unavailable, due to the public health emergency.
- (6) An air quality emergency, if the employee is a member of a vulnerable population and primarily works outdoors.

The ordinance would allow 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 isolate or quarantine; (2) because the employee is experiencing symptoms of an infectious, contagious, or communicable disease associated with the public health emergency, and does not meet federal, state, or local guidance to return to work; or (3) during an air quality emergency, if the employee is a member of a vulnerable population, primarily works outdoors, and has been advised by a health care provider not to work. Reasons 1, 2, and 6 (or reasons 1 and 3 for health care providers and emergency responders) do not apply if the employee may safely telework.

Public health emergency leave would be provided in addition to paid leave the employer provided before the date the public health emergency is declared and must be made available for immediate use during a public health emergency. Employers would not be required to roll over any unused public health emergency leave from year to year. Employers would be permitted to offset any paid leave that may be required by law to address a public health threat, as well as specified paid leave voluntarily granted for 2022 only. OLSE would have authority to issue guidelines or rules for additional offsets in circumstances that are similar to those in which the ordinance grants offsets.

The Office of Labor Standards Enforcement ("OLSE") would implement and enforce the ordinance and would publish a notice for employers to inform employees of their rights under the ordinance, which employers will be required to post in the workplace, in English, Spanish, Chinese, Filipino, and any language spoken by at least 5% of the City workforce.

FILE NO. 220022

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

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BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. (415) 554-5184
Fax No. (415) 554-5163
TDD/TTY No. (415) 554-5227

February 16, 2022

File No. 220022 (ver3)

Lisa Gibson
Environmental Review Officer
Planning Department
1650 Mission Street, Suite 400
San Francisco, CA 94103

Dear Ms. Gibson:

The following proposed Initiative Ordinance for the June 7, 2022, Election was received and assigned to the Board of Supervisors' Rules Committee:

File No. 220022 (ver3)

Motion ordering submitted to the voters at an election to be held on June 7, 2022, an Ordinance to amend the Police Code to require employers to provide public health emergency leave during a public health emergency.

This legislation is being **re-transmitted** to you for environmental review.

Angela Calvillo, Clerk of the Board

A handwritten signature in black ink that reads "Victor Young".

By: Victor Young, Assistant Clerk
Rules Committee

Attachment

c: Devyani Jain, Deputy Environmental Review Officer
Joy Navarrete, Environmental Planning
Don Lewis, Environmental Planning
Laura Lynch, Environmental Planning

Not defined as a project under CEQA Guidelines Sections 15378 and 15060(c)(2) because it would not result in a direct or indirect physical change in the environment.

02/17/2022

A handwritten signature in black ink that reads "Joy Navarrete".

BOARD of SUPERVISORS



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January 18, 2022

File No. 220022

Lisa Gibson
Environmental Review Officer
Planning Department
1650 Mission Street, Suite 400
San Francisco, CA 94103

Dear Ms. Gibson:

The following proposed Initiative Ordinance for the June 7, 2022, Election was received and assigned to the Board of Supervisors' Rules Committee:

File No. 220022

Motion ordering submitted to the voters at an election to be held on June 7, 2022, an Ordinance to amend the Police Code to require employers to provide public health emergency leave during a public health emergency.

This legislation is being transmitted to you for environmental review.

Angela Calvillo, Clerk of the Board

A handwritten signature in black ink that reads "Victor Young".

By: Victor Young, Assistant Clerk
Rules Committee

Attachment

c: Devyani Jain, Deputy Environmental Review Officer
Joy Navarrete, Environmental Planning
Don Lewis, Environmental Planning
Laura Lynch, Environmental Planning

Not defined as a project under CEQA Guidelines Sections 15378 and 15060(c)(2) because it would not result in a direct or indirect physical change in the environment.

02/10/2022

A handwritten signature in black ink that reads "Joy Navarrete".



OFFICE OF THE CONTROLLER
CITY AND COUNTY OF SAN FRANCISCO

Ben Rosenfield
Controller
Todd Rydstrom
Deputy Controller

Ms. Angela Calvillo
Clerk of the Board of Supervisors
1 Dr. Carlton B. Goodlett Place Room 244
San Francisco, CA 94102-4689

February 4, 2022

RE: File 220022 – Ordinance to amend the Police Code to require employers to provide public health emergency leave during a public health emergency

Dear Ms. Calvillo,

Should the proposed ordinance be approved by the voters, in my opinion, it would minimally to significantly increase the cost of government.

The proposed ordinance requires employers with more than 100 worldwide employees to provide public health emergency leave to employees who work in San Francisco during a public health emergency, including air quality emergencies. Employees may use this leave for defined purposes. Employers would provide up to 80 hours of paid public health emergency leave, based on an employee's number of regular work hours. In response to the COVID-19 pandemic, federal, state and local laws required employers of a certain size to provide paid emergency sick leave. The proposed ordinance adopts similar requirements but does not amend current law.

The cost to city government would include implementation tasks and enforcing the compliance of private employers, including at least one compliance officer position at a cost of \$170,000 per year. Estimating the cost to the City of the paid leave mandate in future years is more difficult. The COVID-19 sick pay benefit of up to 80 hours granted to each city worker during the emergency is not typically considered additional compensation. Employees also have regular sick pay balances they may utilize. Extending the COVID-19 benefit could have a significant fiscal impact to the City. The impact would be limited to the extent individual absences need to be covered with overtime pay. In the past this has been a small fraction of actual sick leave but is difficult to predict with certainty.

Sincerely,

for
Ben Rosenfield
Ben Rosenfield
Controller

Note: This analysis reflects our understanding of the proposal as of the date shown. At times further information is provided to us which may result in revisions being made to this analysis before the final Controller's statement appears in the Voter Information Pamphlet.

BOARD of SUPERVISORS



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MEMORANDUM

TO: Ben Rosenfield, City Controller, Office of the Controller

FROM: Victor Young, Assistant Clerk, Rules Committee
Board of Supervisors

A handwritten signature in cursive script that reads "Victor Young".

DATE: January 18, 2022

SUBJECT: INITIATIVE ORDINANCE INTRODUCED
June 7, 2022 Election

The Board of Supervisors' Rules Committee has received the following Charter Amendment for the June 7, 2022, Election. This matter is being referred to you in accordance with Rules of Order 2.22.3.

File No. 220022

Motion ordering submitted to the voters at an election to be held on June 7, 2022, an Ordinance to amend the Police Code to require employers to provide public health emergency leave during a public health emergency.

Please review and prepare a financial analysis of the proposed measure prior to the first Rules Committee hearing.

If you have any questions or concerns, please call me at (415) 554-7723 or email: victor.young@sfgov.org. To submit documentation, please email or forward to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

c: Todd Rydstrom, Deputy City Controller
Peg Stevenson, City Performance Director
Natasha Mihal, City Services Auditor

BOARD of SUPERVISORS



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MEMORANDUM

TO: Tom Paulino, Liaison to the Board of Supervisors, Mayor's Office
Anne Pearson, Deputy City Attorney, Office of the City Attorney
John Arntz, Director, Department of Elections
LeeAnn Pelham, Executive Director, Ethics Commission

FROM: Victor Young, Assistant Clerk, Rules Committee *Victor Young*
Board of Supervisors

DATE: February 7, 2022

SUBJECT: INITIATIVE ORDINANCE INTRODUCED
June 7, 2022 Election

The Board of Supervisors' Rules Committee has received the following Initiative Ordinance for the June 7, 2022, Election. This matter is being **re-referred** to you in accordance with Rules of Order 2.22.4.

File No. 220022 (ver2)

Motion ordering submitted to the voters at an election to be held on June 7, 2022, an Ordinance to amend the Police Code to require employers to provide public health emergency leave during a public health emergency.

Please review and submit any reports or comments you wish to be included with the legislative file.

If you have any questions or concerns, please call me at (415) 554-7723 or email: victor.young@sfgov.org. To submit documentation, please forward to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

c: Andres Power, Mayor's Office
Patrick Ford, Ethics Commission

From: [Claire Lau](#)
To: [Young, Victor \(BOS\)](#)
Cc: [Shaw San Liu](#); [Kung Feng](#); [Susan Kikuchi](#)
Subject: Comments re: Item 6 - 220022
Date: Monday, February 7, 2022 10:11:47 AM

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

Dear Clerk Young,

I'd like to submit comments for item 6 at Rules Committee today:

6. 220022 [Initiative Ordinance - Police Code - Public Health Emergency Leave]

This is a great step, but the exemption for businesses with 100 employees or less means that many vulnerable immigrant workers and workers of color that we serve will not be protected by this legislation. We recommend that this legislation be paired with a fund for small businesses not covered by this legislation to pay for sick leave for their employees. In addition to the fund, we need an outreach /education and enforcement strategy, and we need to look at how challenging it has been for essential workers to assert their rights to sick leave and ensure there is robust programming around strategic enforcement and community-based outreach and education.

Claire Lau
Just Recovery Campaign Coordinator
Chinese Progressive Association 華人進步會
Pronouns she/her

February 4, 2022

Honorable Aaron Peskin
Honorable Connie Chan
Honorable Raphael Mandelman
Honorable Gordon Mar
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

Dear Supervisors,

On behalf of several of the City's key business associations, representing small, medium, and large employers, we respectfully ask that the Rules Committee postpone consideration of File # 220022 - The Public Health Emergency Leave measure so that Supervisors can consider more input from the employer community.

The past two years have been difficult for everyone, and the local business community is no exception. We have seen many businesses shutter under the immense financial pressure brought on by the pandemic, and we are eager to get storefronts filled and to see a return of the vibrant downtown core and neighborhood business districts as they once were. The first step towards that end is to ensure employee safety, and that is why we supported and fully complied with the Public Health Emergency Leave legislation passed at the Board of Supervisors in the early stages of the COVID-19 pandemic, among other ordinances, which together offered flexibility and paid benefits to our employees during this crisis.

However, this ballot version of the Public Health Emergency Leave law, while similar to the Board's measures, differs in some very significant and impactful ways. We ask that you consider the following specific issues, most notably the AQI component, and get input from more stakeholders before moving forward with the measure in its current form:

- **Workplace Air Quality:** We need more time to review and consider the best approach to address workplace concerns around air quality. This is very concerning as written, especially as it could be interpreted that hospitality workers could fall under the 101 and higher category. As per the [City Performance Scorecard](#), in 2018 (last reported data), in San Francisco, there were 73 Days in the Orange (101-150, Unhealthy for Sensitive Groups) category, and 11 days in the Red (151 - 200 category), citywide. Requiring sick pay potentially be paid for all these days is a huge potential financial burden on our smaller employers, particularly our restaurants, and could result in more closures. Additionally, most offices and retail store locations' air quality already have high ventilation and filtration standards to ensure a healthy air work environment, especially with the

recent more stringent COVID and Cal/OHSHA requirements. In fact, the commercial systems in place in many of these businesses likely create an air quality that would surpass most residential systems. Our hospitality industry has also added in-house air purifiers and replaced filters in their HVAC systems to comply with requirements during the pandemic.

Moreover, we feel it should be Cal/OHSA's role to determine these standards as the agency that closely regulates workplace safety. At the very least, this measure should not apply to employees who work in locations who have put forth the effort and expense to address air quality in their establishments to ensure a healthy environment for their employees and customers.

- **Where and When:** It is well known that weather conditions and air quality can vary significantly throughout San Francisco. If the air quality is poor in one neighborhood, it may not be in another. We are very concerned that enforcement is a huge potential issue with this ordinance as written. Will some businesses have to provide emergency leave while their counterparts on a different hill a few minutes away will not? Additionally, the air quality may change during the day depending on various factors, even small shifts in wind direction. What happens if the air quality may be good in one neighborhood in the morning but then worsens later in the afternoon? This would be a substantial administrative and operational challenge that will have a disruptive impact on businesses across the City.
- **Exclusion Threshold:** As drafted, this proposal would now impact employers with 100 or more employees worldwide, which will affect numerous smaller restaurant and bar groups with locations in San Francisco that may have 2 or 3+ locations and which would put them over 100 total headcounts as many of our hospitality workers work part-time. As such, we feel more outreach is necessary to understand the potential operational impacts on all our employers in San Francisco.
- **Staffing Problems:** When this unpredictable and shifting air quality component is combined with the City's existing predictive scheduling requirements and labor agreements, many business locations may simply have to close if they cannot find employees to fill unfilled positions.
- **Employee Production of Documentation:** The legislation references that employees get recommendations from a medical professional advising them that they do not come to the workplace, but no requirement for employees to present those recommendations to their employers.
- **City Employee Exemption:** Many in the business community are also struggling to understand why the legislation's proposed new requirements only apply to them, and notably not to the City's own non-emergency and public health employees.

- **Overall Impact:** The new AQI component will add a significant and unpredictable additional burden to employers. Employers now have the existing 72 hours (9 days) of Sick Pay (that could be higher should employees carry it over and use it near the start of a year), and the State’s pending reinforcement of the ETS of up to 80 hours. If this new requirement is added, many businesses could see 72 + 80 + 80 hours of potential paid sick/health leave a year. That equates to 11% of a standard 40-hour workweek – more than half a day every week.

As this measure is going to the ballot, it is critical we get it right for the sake of our local businesses, our employees, and those that rely on those services. Specifically, we need to be careful about adding the AQI component, particularly when the State is likely to enact regulations, and we ask you to pause this so we can fully consider all the impacts and the potential unintended consequences.

In summary, given the broad swath of businesses that this legislation would apply to and the complex impact of a new AQI component, a much wider and deeper engagement with stakeholders in the business community is critical. This is simply not ready in its current form, and we stand ready to discuss and provide input to help navigate unintended negative consequences.

Thank you for your consideration.

Sincerely,

Rodney Fong
San Francisco Chamber of Commerce

Kriss Quigly
California Life Sciences

Laurie Thomas
Golden Gate Restaurant Association

Ben Bleiman
SF Bar Owner Alliance

Chris Wright
SF Partnership

Masood Samereie
San Francisco Council of District Merchants

Matt Regan
Bay Area Council

Sharky Laguana
American Car Rental Association

Rachel Michelin
California Retailers Association

Kevin Carroll
Hotel Council of San Francisco