

1 [Emergency Ordinance - Public Health Emergency Leave]

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3 **Emergency ordinance to temporarily require private employers with 500 or more**  
4 **employees to provide public health emergency leave during the public health**  
5 **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 ~~striketrough italics Times New Roman~~.  
9 **Board amendment additions** are in double underlined Arial font.  
10 **Board amendment deletions** are in ~~striketrough Arial font~~.  
11 Asterisks (\* \* \* \*) indicate the omission of unchanged Code  
12 subsections or parts of tables.

10

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

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

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

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19 (b) On February 25, 2020, Mayor London Breed proclaimed a state of emergency in  
20 response to the spread of the novel coronavirus COVID-19. On March 3, 2020, the Board of  
21 Supervisors concurred in the February 25 Proclamation and in the actions taken by the Mayor  
22 to meet the emergency.

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23 (c) To mitigate the spread of COVID-19, on March 16, 2020, the Local Health Officer  
24 issued Order No. C19-07, replaced by Order No. C19-07b on March 31, 2020, directing San  
25 Franciscans to “shelter in place.” This Order generally requires individuals to stay in their

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1 homes through May 3, and requires businesses to cease all non-essential operations at  
2 physical locations in the City.

3 (d) Due to the public health emergency related to COVID-19 and the actions required  
4 to respond to the emergency, a growing number of workers across the City are unable to work  
5 (including telework) due to illness, exposure to others with the coronavirus, business closures,  
6 and family caregiving obligations related to closures of schools and care facilities and an  
7 inability to secure caregiving assistance. These conditions pose a severe and imminent threat  
8 to the health, safety, and economic well-being of San Franciscans and those who work in San  
9 Francisco.

10 (e) This emergency ordinance is necessary to reduce the spread of COVID-19 and  
11 mitigate the economic harm for individuals unable to work due to the Public health  
12 emergency.

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14 Section 2. Findings and Purpose.

15 (a) Pursuant to Order No. C19-07b, businesses with a facility in the City, except  
16 Essential Businesses as defined in the Order, are required to cease all activities at facilities  
17 located within the City except Minimum Basic Operations, as defined in the Order. Although  
18 some businesses are able to continue operations exclusively via teleworking, many  
19 employees are in positions that cannot be fulfilled through teleworking or are unable to  
20 perform the required telework hours because of the need to care for a child or other family  
21 member.

22 (b) President Trump signed into law the Families First Coronavirus Response Act, H.R.  
23 6201, Public Law No. 116-127 (“Act”) on March 18, 2020. The Act provides emergency paid  
24 sick leave to certain employees who are unable to work or telework due to the COVID-19

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1 public health emergency, but it exempts employers with 500 or more employees, leaving their  
2 employees without the critical protections included in the Act.

3 (c) This emergency ordinance addresses the emergency paid leave coverage gap  
4 created by the Act by extending paid leave to employees in the City who are employed by  
5 businesses with 500 or more employees.

6 (d) By providing public health emergency leave to these employees, this measure will  
7 address the current emergency in several regards:

8 (1) Order No. C19-07b and similar shelter-in-place orders in other Bay Area  
9 counties were issued to ensure that the maximum number of people self-isolate at home to  
10 slow the spread of COVID-19 to the extent possible. This emergency ordinance will ensure  
11 that employees in San Francisco who are permitted to work under Order No. C19-07b and  
12 other such orders are financially able to stay home and isolate if exposed to COVID-19 or  
13 exhibiting symptoms related to COVID-19. This need is particularly critical to ensure that  
14 workers for certain essential businesses, including food service and grocery employees, are  
15 able to stay home if exposed to COVID-19 or exhibiting symptoms related to COVID-19.  
16 Studies have shown that employees with lower rates of access to paid leave are more likely to  
17 go to work sick than those with higher rates of access to paid leave. By increasing employee  
18 access to paid leave during the current COVID-19 emergency, this emergency ordinance will  
19 reduce the likelihood that infected employees will report to work, and will therefore decrease  
20 the spread of COVID-19 through interactions with fellow employees or members of the public.

21 (2) Employees in San Francisco have access to paid sick leave under the City's  
22 Paid Sick Leave Ordinance (Administrative Code Chapter 12W), and can use that leave for  
23 many of the same purposes as public health emergency leave under this emergency  
24 ordinance. However, the Act extends additional leave in the form of emergency paid sick  
25 leave only to employees of businesses with fewer than 500 employees and employees of

1 public agencies. The Act does not cover employees of businesses with 500 or more  
2 employees. This emergency ordinance will address this gap in coverage and provide  
3 necessary additional protection for employees of businesses with 500 or more employees,  
4 and thereby help contain the spread of COVID-19.

5 (3) With the closure of schools by the San Francisco Unified School District and  
6 other Bay Area school districts, as well as the closure of other facilities providing education,  
7 childcare, elder care, or other family caregiving support, workers across the City are facing a  
8 growing caregiving emergency. By extending public health emergency leave to employees not  
9 protected by the Act, this emergency ordinance makes it more likely that those employees will  
10 be able to care for their loved ones and ensure those loved ones stay home, and thereby  
11 minimize the spread of COVID-19 in the community.

12 (4) This emergency ordinance will also address the current financial crisis of  
13 those employees in San Francisco not protected by the Act who are struggling to make ends  
14 meet due to widespread closures, lack of access to childcare and elder care, and other  
15 workplace disruptions, which are likely to continue to affect employees after the expiration of  
16 Order No. C19-07b and other shelter-in-place orders in Bay Area counties.

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18 Section 3. Definitions.

19 For purposes of this emergency ordinance, the following definitions apply.

20 “Act” means the federal Families First Coronavirus Response Act, H.R. 6201, Public  
21 Law No. 116-127, signed into law by the President on March 18, 2020.

22 “Agency” means the Office of Labor Standards Enforcement.

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

24 “Employee” means any person, including part-time and temporary workers, who has  
25 performed 56 or more hours of work as an employee within the geographic boundaries of the

1 City during the 365 days immediately preceding the effective date of this emergency  
2 ordinance. "Employee" includes a participant in a Welfare-to-Work Program when the  
3 participant is engaged in work activity that would be considered "employment" under the  
4 federal Fair Labor Standards Act, 29 U.S.C. §§ 201 et seq., and any applicable U.S.  
5 Department of Labor Guidelines. "Welfare-to-Work Program" includes any public assistance  
6 program administered by the Human Services Agency, including but not limited to CalWORKS  
7 and the County Adult Assistance Program (CAAP), and any successor programs that are  
8 substantially similar to them, that require a public assistance applicant or recipient to work in  
9 exchange for their grant.

10 "Employer" means any person, as defined in Section 18 of the California Labor Code,  
11 including corporate officers or executives, who directly or indirectly or through an agent or any  
12 other person, including through the services of a temporary services or staffing agency or  
13 similar entity, employs or exercises control over the wages, hours, or working conditions of an  
14 employee. Notwithstanding the prior sentence, "Employer" shall not include any person that is  
15 a "Covered Employer," as that term is defined in Section 5110(2)(B) of the Act.

16 "Family Member" means any person for whom an Employee may use paid sick leave to  
17 provide care pursuant to Administrative Code Section 12W.4(a).

18 "Public Health Emergency" means the local emergency Mayor London Breed  
19 proclaimed on February 25, 2020, with the concurrence of the Board of Supervisors on March  
20 3, 2020.

21 "Public Health Emergency Leave" means paid leave provided by an Employer to an  
22 Employee for the uses described in Section 5(a) of this emergency ordinance.

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24 Section 4. Public Health Emergency Leave Requirements.

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1 (a) Except as provided in subsection (b), beginning on the effective date of this  
2 emergency ordinance, an Employer shall provide each Employee with Public Health  
3 Emergency Leave for all purposes specified in Section 5(a) in amounts calculated as specified  
4 in Sections 5102(b)(2) and 5110(5)(C) of the Act, as may be amended from time to time.

5 (b) An Employer of an Employee who is a health care provider or an emergency  
6 responder (as each term is defined in 29 C.F.R. 826.30(c), as may be amended from time to  
7 time) may elect to exclude such Employee from the application of this emergency ordinance.  
8 ~~“Health care provider” has the meaning given to such term in section 101 of the Family and~~  
9 ~~Medical Leave Act of 1993, 29 U.S.C. § 2611, as may be amended from time to time.~~

10 (c) Public Health Emergency Leave shall be made available to Employees of the  
11 Employer in addition to any paid time off that the Employer offered or provided to Employees  
12 on or before the effective date of this emergency ordinance, provided however that an  
13 Employer’s obligation to provide Public Health Emergency Leave under Section 4(a) shall be  
14 reduced for every hour an Employer allowed an Employee to take paid leave or paid time off  
15 consistent with the requirements of Section 4(h), not including previously accrued hours, on or  
16 after February 25, 2020, for any of the reasons described in Section 5(a). An Employer may  
17 not change any paid time off policies on or after the effective date of this emergency  
18 ordinance except to provide additional paid leave.

19 (d) An Employee may use Public Health Emergency Leave for the purposes described  
20 in Section 5(a) before using other accrued paid time off. An Employee may voluntarily choose,  
21 but an Employer may not require the Employee, to use other accrued paid time off provided  
22 by the Employer to the Employee before the Employee uses Public Health Emergency Leave.

23 (e) This emergency ordinance provides minimum requirements pertaining to Public  
24 Health Emergency Leave and shall not be construed to prevent an Employer from providing or  
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1 advancing additional paid time off to an Employee, and shall not be construed to limit the  
2 amount of paid time off that may be provided to an Employee.

3 (f) Upon an Employee’s separation from employment, an Employer is no longer  
4 obligated to provide or pay for any Public Health Emergency Leave not used prior to  
5 separation.

6 (g) Public Health Emergency Leave as required by this emergency ordinance shall  
7 expire upon the expiration of this emergency ordinance, unless an Employer extends an  
8 Employee’s access to such leave.

9 (h) An Employer shall compensate Employees for Public Health Emergency Leave in  
10 the manner set forth for calculating paid sick leave under Administrative Code Section  
11 12W.3(h).

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13 Section 5. Public Health Emergency Leave Use.

14 (a) An Employee may use Public Health Emergency Leave to the extent that the  
15 Employee is unable to work (either at the Employee’s customary place of work or telework)  
16 due to any of the following:

17 (1) The Employee is subject to an individual or general Federal, State, or local  
18 quarantine or isolation order related to COVID-19. This includes, but is not limited to, an  
19 Employee who is unable to work due to Governor Newsom’s Executive Order N-33-20, the  
20 shelter-in-place Order No. C19-07b or any succeeding order requiring residents to stay in their  
21 homes during the emergency, or shelter-in-place orders issued in other Bay Area jurisdictions.  
22 Further, this includes an Employee who is a member of a “vulnerable population” as defined in  
23 Order No. C19-05 who is unable to work due to recommendations in Order No. C19-05, C19-  
24 07b, or any order issued by Governor Newsom or Bay Area jurisdictions recommending or  
25 requiring additional restrictions for vulnerable or high-risk populations.

1 (2) The Employee has been advised by a health care provider to self-quarantine.

2 (3) The Employee is experiencing symptoms associated with COVID-19 and  
3 seeking a medical diagnosis.

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

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

10 (6) The Employee is experiencing any other substantially similar condition  
11 specified by the Local Health Officer, or under Section 5102(a)(6) of the Act, by the United  
12 States Secretary of Health and Human Services.

13 (b) Public Health Emergency Leave shall be available for immediate use for the  
14 purposes described in Section 5(a), regardless of how long the Employee has been employed  
15 by the Employer; regardless of whether or when the employee is scheduled to work; the  
16 employee's status as full-time, part-time, permanent, temporary, seasonal, salaried, paid by  
17 commission, or any other status; or any other consideration pertaining to the Employee.

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

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

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1 (e) An Employer may require the Employee to follow reasonable notice procedures in  
2 order to use Public Health Emergency Leave, but only when the need for Public Health  
3 Emergency Leave is foreseeable.

4 (f) An Employer may require an Employee to identify the basis for requesting Public  
5 Health Emergency Leave, but may not require the disclosure of health information or other  
6 documentation (including but not limited to a doctor's note) for absences due to the purposes  
7 described in subsection (a).

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

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12 Section 6. Notice to Employees.

13 (a) The Agency shall, within seven days of the effective date of this emergency  
14 ordinance, publish and make available on its website and through electronic communication to  
15 Employers a notice suitable for Employers to inform Employees of their rights under this  
16 emergency ordinance as well as of City, State, or Federal resources that Employees  
17 negatively impacted by the Public Health Emergency may qualify to receive.

18 (b) Every Employer shall, within three days after the Agency has published and made  
19 available the notice described in subsection (a), provide the notice to Employees in a manner  
20 calculated to reach all employees: by posting in a conspicuous place at the workplace, via  
21 electronic communication, and/or by posting in a conspicuous place in an Employer's web-  
22 based or app-based platform. Every employer shall provide the notice in English, Spanish,  
23 Chinese, and any language spoken by at least 5% of the Employees who are, or prior to the  
24 Public Health Emergency were, at the workplace or job site.

1 (c) To the extent feasible, on the same written notice that an Employer is required to  
2 provide under Section 246(i) of the California Labor Code, an Employer shall set forth the  
3 amount of Public Health Emergency Leave that is available to the Employee under this  
4 emergency ordinance. If an Employer provides unlimited paid time off to an Employee, the  
5 Employer may satisfy this subsection (c) by indicating on the notice or the Employee's  
6 itemized wage statement "unlimited." This subsection (c) shall apply only to Employers that  
7 are required by state law to provide such notice to Employees regarding paid sick leave  
8 available under California law.

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10 Section 7. Exercise of Rights Protected; Retaliation Prohibited.

11 (a) It shall be unlawful for an Employer or any other person to interfere with, restrain, or  
12 deny the exercise of, or the attempt to exercise, any right protected under this emergency  
13 ordinance.

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

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

1 (d) Protections of this emergency ordinance shall apply to any person who mistakenly  
2 but in good faith alleges violations of this emergency ordinance.

3 (e) Taking adverse action against a person within 90 days of the person's filing a  
4 complaint with the Agency or a court alleging a violation of any provision of this emergency  
5 ordinance; informing any person about an Employer's alleged violation of this emergency  
6 ordinance; cooperating with the Agency or other persons in the investigation or prosecution of  
7 any alleged violation of this emergency ordinance; opposing any policy, practice, or act that is  
8 unlawful under this emergency ordinance; or informing any person of that person's rights  
9 under this emergency ordinance shall raise a rebuttable presumption that such adverse action  
10 was taken in retaliation for the exercise of one or more of the aforementioned rights.

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12 Section 8. Records, Implementation, and Enforcement.

13 (a) Employers shall retain records related to Public Health Emergency Leave in the  
14 same manner and to the same extent as records that must be retained under Administrative  
15 Code Section 12W.6 and Agency rules and guidelines governing retention of such records.

16 (b) The Agency is authorized to implement and enforce this emergency ordinance and  
17 may promulgate rules and guidelines for such purposes. Except as otherwise provided by  
18 Agency rules or guidelines, the administrative and civil enforcement provisions of  
19 Administrative Code Section 12W.8(b)-(e) apply to this emergency ordinance. Until such time  
20 as the Agency promulgates any additional rules or guidelines, the rules and guidelines  
21 adopted by the Agency interpreting Administrative Code Section 12W.8 shall apply to this  
22 emergency ordinance.

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24 Section 9. Waiver Through Collective Bargaining.

1 All or any portion of the applicable requirements of this emergency ordinance shall not  
2 apply to Employees covered by a bona fide collective bargaining agreement to the extent that  
3 such requirements are expressly waived in the collective bargaining agreement in clear and  
4 unambiguous terms.

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6 Section 10. Preemption.

7 Nothing in this emergency ordinance shall be interpreted or applied so as to create any  
8 power or duty in conflict with federal or state law. The term “conflict,” as used in this Section 9  
9 means a conflict that is preemptive under federal or state law.

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11 Section 11. City Undertaking Limited to Promotion of the General Welfare.

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

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19 Section 12. Severability.

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

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

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4 Section 13. Effective Date; Expiration.

5 Consistent with Charter Section 2.107, this emergency ordinance shall become  
6 effective immediately upon enactment, and shall expire on the 61st day following enactment  
7 unless reenacted as provided by Section 2.107, or upon the termination of the Public Health  
8 Emergency, whichever occurs first. Enactment occurs when the Mayor signs the ordinance,  
9 the Mayor returns the ordinance unsigned or does not sign the ordinance within ten days of  
10 receiving it, or the Board of Supervisors overrides the Mayor's veto of the ordinance.

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12 Section 14. Suspension of Charter Section 14.101.

13 To address the emergency conditions described above, the Board of Supervisors finds  
14 that it is necessary to temporarily modify the Paid Sick Leave Ordinance (Administrative Code  
15 Section 12W.16(a)), which provides that the Board of Supervisors may not amend the  
16 substantive requirements or scope of that Ordinance, and to suspend the restriction in Charter  
17 Section 14.101 for that limited purpose.

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19 Section 15. Supermajority Vote Required.

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

1 APPROVED AS TO FORM:  
2 DENNIS J. HERRERA, City Attorney

3 By: /s/ \_\_\_\_\_  
4 LISA POWELL  
5 Deputy City Attorney

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