

1 [Emergency Ordinance - Grocery Store, Drug Store, Restaurant, and On-Demand Delivery
2 Service Employee Protections]

3 **Emergency ordinance to temporarily require grocery store, drug store, restaurant, and**
4 **on-demand delivery service employers to provide health, scheduling, and hours**
5 **protections to employees 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~~.
11 Asterisks (* * * *) indicate the omission of unchanged Code
12 subsections or parts of tables.

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

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

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.

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

24 (c) To mitigate the spread of COVID-19, on March 16, 2020, the Local Health Officer
25 issued Health Order No. C19-07 directing San Franciscans to “shelter in place,” or stay at
home, except as necessary to take care of essential needs. That order extended to April 7,

1 2020. On March 31, 2020, the Local Health Officer issued a replacement order, Health Order
2 No. C19-07b, which tightens the restrictions and extends the stay-at-home order through May
3 3. These Orders have forced the closure of many businesses. Restaurants are prohibited from
4 operating except for carry out and delivery service. Essential Businesses, including grocery
5 stores, drug stores, and on-demand delivery services for food, medicines, and other essential
6 items, may continue to operate under Health Order No. C19-07b, subject to certain social
7 distancing and sanitation requirements.

8 (d) This emergency ordinance is necessary to reduce the likelihood of COVID-19
9 infection among employees of grocery stores, drug stores, restaurants, and on-demand
10 delivery services and the members of the public with whom they interact.

11

12 Section 2. Findings and Purpose.

13 (a) Grocery stores, drug stores, restaurants, and on-demand delivery services, provide
14 critical access to essential items during the Public Health Emergency. Many San Franciscans,
15 especially residents who are particularly vulnerable to COVID-19 due to age or underlying
16 health conditions, have turned to on-demand delivery services to receive food and other
17 essential items while staying safe at home.

18 (b) Grocery store, drug store, and restaurant employees, and on-demand delivery
19 drivers and shoppers are an essential population of workers who cannot perform their work
20 remotely. These workers must be provided the necessary supplies, tools, and equipment to
21 protect themselves from infection and to prevent the spread of COVID-19 to other employees
22 or to the members of the public to whom they supply essential goods. All grocery stores, drug
23 stores, restaurants, and on-demand delivery services must fully implement and follow Health
24 Order No. C19-07b.

25

1 (c) This need is particularly pressing for on-demand delivery drivers and shoppers.
2 Under California Labor Code Section 2750.3, a worker who provides services for a hiring
3 entity is an employee unless the hiring entity demonstrates that the worker is an independent
4 contractor. Many delivery services incorrectly classify their delivery shoppers and drivers as
5 independent contractors. Independent contractors generally are not provided health
6 insurance, sick leave, other paid leave, unemployment insurance, or workers compensation;
7 they may not be provided or reimbursed for the necessary supplies, tools and equipment to
8 protect themselves from COVID-19; and they may not be provided guidance on the social
9 distancing and sanitation requirements of Order No. C19-07b. Existing City ordinances govern
10 employee benefits, which are beyond the scope of this emergency ordinance. However, to
11 prevent the spread of COVID-19 through essential on-demand delivery services, it is
12 necessary to clarify and supplement Health Order No. C19-07b's requirements in the on-
13 demand delivery service context. To do so, this emergency ordinance defines on-demand
14 delivery drivers and shoppers as Employees, regardless of how the on-demand delivery
15 service classifies them for any other purpose.

16 (d) Further, by providing additional scheduling flexibility and hours protections, this
17 emergency ordinance provides grocery store, drug store, restaurant, and on-demand delivery
18 employees additional tools to protect themselves and others from infection and thereby
19 protect public health.

20

21 Section 3. Definitions.

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

23 "Agency" means the Office of Labor Standards Enforcement.

24 "City" means the City and County of San Francisco.

25

1 “Covered Employer” means any person, as defined in Section 18 of the California
2 Labor Code, including corporate officers or executives, who directly or indirectly or through an
3 agent or any other person, including through the services of a temporary services or staffing
4 agency or similar entity, employs, suffers or permits to work, or exercises control over the
5 wages, hours, or working conditions of an Employee for any of the following: (a) a grocery
6 store, supermarket, convenience store, restaurant, cafe, or other establishment primarily
7 engaged in the retail sale of food; or (b) a drug store, pharmacy, or other establishment
8 primarily engaged in the retail sale of medication, pharmaceuticals, or medical supplies; or (c)
9 an On-Demand Delivery Service.

10 “Employee” means any person who in a particular week performs at least two hours of
11 work for a Covered Employer within the geographical boundaries of the City, without regard to
12 whether the Covered Employer classifies the person as an employee for any other purpose.
13 “Employee” includes, without limitation, shoppers and drivers for an On-Demand Delivery
14 Service.

15 “Essential Business” has the same meaning of “Essential Business” in Health Order
16 No. C19-07b.

17 “On-Demand Delivery Service” means an online or mobile app-based delivery platform
18 or network company that facilitates the consumer purchase and delivery of food products,
19 medications, or other goods directly from restaurants, grocery stores, drug stores, and other
20 Essential Businesses.

21 “Part-time” means fewer than 35 hours of work in each work week.

22

23 Section 4. Protections for Employees of On-Demand Delivery Services.

24 (a) As required by Health Order No. C19-07b (Section 13.h.iii) all Essential Businesses
25 must provide employees hand sanitizer, soap and water, or effective disinfectant in the

1 workplace. Additionally, under this emergency ordinance, Covered Employers that are On-
2 Demand Delivery Services must provide to or reimburse Employees for the reasonable cost of
3 purchasing necessary hand sanitizer, disinfecting cleaning supplies, and any needed personal
4 protective equipment such as gloves and face masks.

5 (b) As required by Health Order No. C19-07b (Section 13.h), all Essential Businesses
6 must provide a Social Distancing Protocol to each employee who works at a facility and must
7 post the Social Distancing Protocol in each facility. Additionally, under this emergency
8 ordinance, Covered Employers that are On-Demand Delivery Services must provide the
9 Social Distancing Protocol to Employees in a manner calculated to reach all such Employees
10 via electronic communication, and/or by posting conspicuously on the Employer’s web-based
11 or app-based platform.

12 (c) As required by Health Order No. C19-07b (Sections 13.h.i, 13.k.i), individuals are to
13 maintain at least six feet of physical distance from people who are not part of the same
14 household. Additionally, under this emergency ordinance, Covered Employers that are On-
15 Demand Delivery Services must offer Employees who make deliveries the option of a “no-
16 contact” delivery method where feasible with detailed guidance on how to safely make both in-
17 person and no-contact deliveries.

18 (d) As required by Health Order No. C19-07b (Section 13.h.v), essential businesses
19 must regularly disinfect high-touch surfaces. Additionally, under this emergency ordinance,
20 Covered Employers that are On-Demand Delivery Services must require delivery drivers to
21 regularly disinfect high-touch surfaces in their vehicles and compensate them for doing so.

22

23 Section 5. Right to Schedule Changes.

24 A Covered Employer shall where reasonably feasible approve an Employee’s request
25 to cancel scheduled work for any reason for which an Employee may otherwise use leave

1 under the City's Paid Sick Leave Ordinance (Administrative Code Sections 12W.2(e) and
2 12W.4(a)), and the Agency's rules and guidance implementing those provisions, or
3 emergency paid sick leave under the Families First Coronavirus Response Act, H.R. 6201,
4 Public Law No. 116-127, Section 5102(a) and implementing regulations. The Employer shall
5 allow the Employee to use any available accrued paid sick leave or emergency paid sick
6 leave, or to reschedule the work.

7

8 Section 6. Offering Additional Work to Part-Time Employees.

9 (a) Subject to the limitations in this Section 6, before a Covered Employer may hire
10 new Employees or use contractors or a temporary services or staffing agency to perform work
11 for the Covered Employer, the Covered Employer shall first offer the additional work to
12 existing Part-time Employee(s) if (1) the Part-time Employee(s) are qualified to do the
13 additional work, as reasonably determined by the Covered Employer, and (2) the additional
14 work is the same or similar to work the Employee(s) have performed for the Covered
15 Employer. This Section 6 requires Covered Employers to offer to Part-time Employees only
16 the number of hours required to give the Employee 35 hours of work in a week.

17 (b) A Covered Employer has discretion to divide the additional work hours among Part-
18 time Employees consistent with this Section 6.

19 (c) A Part-time Employee may, but is not required to, accept the Covered Employer's
20 offer of additional work hours under this Section 6. The Part-Time Employee shall have 72
21 hours to accept the additional hours, after which time the Covered Employer may hire new
22 Employees to work the additional hours. The 72 hours referenced in the previous sentence
23 begins either when the Part-Time Employee receives the written offer of additional hours or
24 whenever the Covered Employer posts the offer of additional hours described in subsection

25

1 (d), whichever is later. A Part-Time Employee who wishes to accept the additional hours must
2 do so in writing.

3 (d) When this Section 6 requires a Covered Employer to offer additional work hours to
4 existing Part-time Employees, the Covered Employer shall make the offer either in writing
5 directly to an Employee or by providing notice to Employees in a manner calculated to reach
6 all such Employees by posting the offer in a conspicuous location in the workplace where
7 notices to Employees are customarily posted, providing it via electronic communication,
8 and/or by posting conspicuously on the Employer's web-based or app-based platform.

9

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

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

14 (b) It shall be unlawful for a Covered Employer or any other person to discharge,
15 threaten to discharge, demote, suspend, or in any manner discriminate or take adverse action
16 against any person in retaliation for exercising rights protected under this emergency
17 ordinance.

18 (c) Protections of this emergency ordinance shall apply to any person who mistakenly
19 but in good faith alleges violations of this emergency ordinance.

20

21 Section 8. Implementation and Enforcement.

22 The Agency is authorized to implement and enforce this emergency ordinance and
23 may promulgate regulations and guidelines for such purposes. Except as otherwise provided
24 by Agency regulations or guidelines, the investigation and administrative enforcement

25

1 provisions of Police Code Section 3300F.10 and the civil enforcement provisions of Police
2 Code Section 3300F.12 apply to this emergency ordinance.

3

4 Section 9. Other City Laws.

5 This emergency ordinance is not intended to limit the operation of any other City law.
6 Should there be any overlap in application between this emergency ordinance and another
7 City law, both laws shall be followed, except if there is a conflict between the two that cannot
8 be reconciled, the City law providing greater protection to the Employee shall take
9 precedence.

10

11 Section 10. Preemption.

12 Nothing in this emergency ordinance shall be interpreted or applied so as to create any
13 right, requirement, power, or duty in conflict with federal or state law. The term "conflict," as
14 used in this Section 9 means a conflict that is preemptive under federal or state law.

15

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

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

23

24 Section 12. Severability.

25

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

9
10 Section 13. Effective Date; Expiration.

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

17
18 Section 14. Supermajority Vote Required.

19 In accordance with Charter Section 2.107, passage of this emergency ordinance by the
20 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

6 n:\govern\as2020\2000442\01438699.doc

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25