

File No. 200360

Committee Item No. 4

Board Item No. \_\_\_\_\_

## COMMITTEE/BOARD OF SUPERVISORS

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Date: April 16, 2020

Board of Supervisors Meeting:

Date: \_\_\_\_\_

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Prepared by: John Carroll

Date: April 10, 2020

Prepared by: John Carroll

Date: \_\_\_\_\_

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

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## LEGISLATIVE DIGEST

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

**Emergency ordinance to temporarily require grocery store, drug store, restaurant, and on-demand delivery service employers to provide health, scheduling, and hours protections to employees during the public health emergency related to COVID-19.**

### Existing Law

Local Health Order No. C19-07b requires individuals in the City to shelter in place, or stay at home, except for specified essential needs. Under this Order, many businesses have closed temporarily. Restaurants are prohibited from operating except for carry out and delivery service. Other Essential Businesses, including grocery stores, drug stores, and on-demand delivery services for food, medicines, and other essential items, may continue to operate, subject to certain social distancing and sanitation requirements. Among other provisions, these requirements include that essential businesses provide employees hand sanitizer, soap and water, or effective disinfectant; provide employees with a social distancing protocol, which requires maintaining at least six feet of distance from people who are not part of the same household; and regularly disinfect high-touch surfaces.

### Amendments to Current Law

This emergency ordinance does not amend current law, but it supplements and clarifies how Health Order No. C19-07b applies in the on-demand delivery service context, where delivery drivers and shoppers do not work in a fixed workplace.

### Background Information

This emergency ordinance provides certain protections for employees of “covered employers,” which are grocery stores, drug stores, restaurants, and on-demand delivery services. Consistent with the presumption in California Labor Code Section 2750.3, which has not been demonstrated to be inapplicable, on-demand delivery service workers are classified as employees for the purposes of the emergency ordinance regardless of how the employer classifies them.

The emergency ordinance supplements and clarifies how Order No. C19-07b’s social distancing and sanitation requirements apply in the on-demand delivery service context. The emergency ordinance requires on-demand delivery services to provide to or reimburse employees for the reasonable cost of purchasing necessary hand sanitizer, disinfecting cleaning supplies, and any needed personal protective equipment such as gloves and face masks, and to provide employees a social distancing protocol. Additionally, on-demand

delivery services must offer delivery employees the option of a no-contact delivery method where feasible to facilitate social distancing and provide them detailed guidance on how to safely make both in-person and no-contact deliveries. On-demand delivery services also must require delivery drivers to regularly disinfect high-touch surfaces in their vehicles and compensate them for doing so.

The emergency order provides scheduling protections that give grocery, drug store, restaurant, and on-demand delivery service employees an additional tool to keep themselves safe. Covered employers must, where reasonably feasible, allow employees to cancel work for any reason for which sick leave or emergency paid sick leave under the federal Families First Coronavirus Response Act may be taken. Employees may use any available accrued paid sick leave or emergency paid sick leave, or reschedule the work.

The emergency ordinance requires covered employers to offer additional work to part-time employees before they hire new employees or contractors to perform work if the part-time employees are qualified for the work and the work is similar to their normal duties. Covered employers must give employees 72 hours to accept the additional work before hiring additional employees.

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

The Office of Labor Standards Enforcement will implement and enforce the emergency ordinance.

# Introduction Form

By a Member of the Board of Supervisors or Mayor

Time stamp  
or meeting date

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee. (An Ordinance, Resolution, Motion or Charter Amendment).
- 2. Request for next printed agenda Without Reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning : "Supervisor  inquiries"
- 5. City Attorney Request.
- 6. Call File No.  from Committee.
- 7. Budget Analyst request (attached written motion).
- 8. Substitute Legislation File No.
- 9. Reactivate File No.
- 10. Topic submitted for Mayoral Appearance before the BOS on

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission
- Youth Commission
- Ethics Commission
- Planning Commission
- Building Inspection Commission

**Note: For the Imperative Agenda (a resolution not on the printed agenda), use the Imperative Form.**

Sponsor(s):

Subject:

The text is listed:

Signature of Sponsoring Supervisor:

For Clerk's Use Only