

BOARD of SUPERVISORS



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## MEMORANDUM

### RULES COMMITTEE

#### SAN FRANCISCO BOARD OF SUPERVISORS

TO: Supervisor Hillary Ronen, Chair  
Rules Committee

FROM: Victor Young, Assistant Clerk *Victor Young*

DATE: April 13, 2020

SUBJECT: **COMMITTEE REPORT, BOARD MEETING**  
Tuesday, April 14, 2020

The following file should be presented as a **COMMITTEE REPORT** at the Board Meeting on Tuesday, April 14, 2020. This item was acted upon at the Rules Committee Meeting on Monday, April 13, 2020, at 10:00 a.m., by the votes indicated.

#### **Item No. 29 File No. 200355**

[Emergency Ordinance - Public Health Emergency Leave]

Emergency ordinance to temporarily require private employers with 500 or more employees to provide public health emergency leave during the public health emergency related to COVID-19.

RECOMMENDED AS A COMMITTEE REPORT

Vote: Supervisor Hillary Ronen - Aye  
Supervisor Catherine Stefani - Aye  
Supervisor Gordon Mar - Aye

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

File No. 200355

Committee Item No. 1

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

## COMMITTEE/BOARD OF SUPERVISORS

### AGENDA PACKET CONTENTS LIST

Committee: Rules Committee

Date April 13, 2020

Board of Supervisors Meeting

Date \_\_\_\_\_

#### Cmte Board

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| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Legislative Digest                           |
| <input type="checkbox"/> | <input type="checkbox"/>            | Budget and Legislative Analyst Report        |
| <input type="checkbox"/> | <input type="checkbox"/>            | Youth Commission Report                      |
| <input type="checkbox"/> | <input type="checkbox"/>            | Introduction Form                            |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/> | <input type="checkbox"/>            | Memorandum of Understanding (MOU)            |
| <input type="checkbox"/> | <input type="checkbox"/>            | Grant Information Form                       |
| <input type="checkbox"/> | <input type="checkbox"/>            | Grant Budget                                 |
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| <input type="checkbox"/> | <input type="checkbox"/>            | Contract/Agreement                           |
| <input type="checkbox"/> | <input type="checkbox"/>            | Form 126 - Ethics Commission                 |
| <input type="checkbox"/> | <input type="checkbox"/>            | Award Letter                                 |
| <input type="checkbox"/> | <input type="checkbox"/>            | Application                                  |
| <input type="checkbox"/> | <input type="checkbox"/>            | Form 700                                     |
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Completed by: Victor Young Date April 9, 2020

Completed by: \_\_\_\_\_ Date \_\_\_\_\_

1 [Emergency Ordinance - Public Health Emergency Leave]

2  
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.

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 in  
21 response to the spread of the novel coronavirus COVID-19. On March 3, 2020, the Board of  
22 Supervisors concurred in the February 25 Proclamation and in the actions taken by the Mayor  
23 to meet the emergency.

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

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.

13  
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  
25

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.

17  
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) or Section 5(b), as applicable, of this  
23 emergency ordinance.

#### 24 25 Section 4. Public Health Emergency Leave Requirements.

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) or Section 5(b), as applicable, in  
4 amounts calculated as specified in Sections 5102(b)(2) and 5110(5)(C) of the Act, as may be  
5 amended from time to time.

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

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

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



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

5           (e~~f~~) Upon an Employee's separation from employment, an Employer is no longer  
6 obligated to provide or pay for any Public Health Emergency Leave not used prior to  
7 separation.

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

11           (g~~h~~) An Employer shall compensate Employees for Public Health Emergency Leave in  
12 the manner set forth for calculating paid sick leave under Administrative Code Section  
13 12W.3(h).  
14

15           Section 5. Public Health Emergency Leave Use.

16           (a) Except as provided in subsection (b), aAn Employee may use Public Health  
17 Emergency Leave to the extent that the Employee is unable to work (either at the Employee's  
18 customary place of work or telework) due to any of the following:

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

1 07b, or any order issued by Governor Newsom or Bay Area jurisdictions recommending or  
2 requiring additional restrictions for vulnerable or high-risk populations.

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

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

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

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

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

15 (b) An Employer of an Employee who is a health care provider or an emergency  
16 responder (as each term is defined in 29 C.F.R. 826.30(c), as may be amended from time to  
17 time) may elect to limit such an Employee's use of Public Health Emergency Leave, but at a  
18 minimum such an Employee may use Public Health Emergency Leave to the extent that the  
19 Employee is unable to work (either at the Employee's customary place of work or telework)  
20 due to any of the following:

21 (1) The Employee is subject to an individual or general Federal, State, or local  
22 quarantine or isolation order related to COVID-19. Because health care providers and  
23 emergency responders provide essential services, such orders do not include Governor  
24 Newsom's Executive Order N-33-20, the shelter-in-place Order No. C19-07b or any  
25

1 succeeding shelter-in-place order, or shelter-in-place orders issued in other Bay Area  
2 jurisdictions.

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

4 (3) The Employee is experiencing symptoms associated with COVID-19,  
5 seeking a medical diagnosis, and does not meet the Centers for Disease Control and  
6 Prevention guidance for criteria to return to work for healthcare personnel with confirmed or  
7 suspected COVID-19.

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

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

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

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

23 (gf) An Employer may require an Employee to identify the basis for requesting Public  
24 Health Emergency Leave, but may not require the disclosure of health information or other  
25

1 documentation (including but not limited to a doctor's note) for absences due to the purposes  
2 described in subsection (a).

3 (hg) An Employer shall provide payment for Public Health Emergency Leave taken by  
4 an Employee no later than the payday for the next regular payroll period after the Public  
5 Health Emergency Leave is taken.

6  
7 Section 6. Notice to Employees.

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

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

20 (c) To the extent feasible, on the same written notice that an Employer is required to  
21 provide under Section 246(i) of the California Labor Code, an Employer shall set forth the  
22 amount of Public Health Emergency Leave that is available to the Employee under this  
23 emergency ordinance. If an Employer provides unlimited paid time off to an Employee, the  
24 Employer may satisfy this subsection (c) by indicating on the notice or the Employee's  
25 itemized wage statement "unlimited." This subsection (c) shall apply only to Employers that

1 are required by state law to provide such notice to Employees regarding paid sick leave  
2 available under California law.

3  
4 Section 7. Exercise of Rights Protected; Retaliation Prohibited.

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

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

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

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

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

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

5  
6 Section 8. Records, Implementation, and Enforcement.

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

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

17  
18 Section 9. Waiver Through Collective Bargaining.

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

23  
24 Section 10. Preemption.

1           Nothing in this emergency ordinance shall be interpreted or applied so as to create any  
2 power or duty in conflict with federal or state law. The term “conflict,” as used in this Section 9  
3 means a conflict that is preemptive under federal or state law.  
4

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

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

13          Section 12. Severability.

14          If any section, subsection, sentence, clause, phrase, or word of this emergency  
15 ordinance, or any application thereof to any person or circumstance, is held to be invalid or  
16 unconstitutional by a decision of a court of competent jurisdiction, such decision shall not  
17 affect the validity of the remaining portions or applications of this emergency ordinance. The  
18 Board of Supervisors hereby declares that it would have passed this ordinance and every  
19 section, subsection, sentence, clause, phrase, and word not declared invalid and  
20 unconstitutional without regard to whether any other portion of this emergency ordinance or  
21 application thereof would be subsequently declared invalid or unconstitutional.  
22

23          Section 13. Effective Date; Expiration.

24          Consistent with Charter Section 2.107, this emergency ordinance shall become  
25 effective immediately upon enactment, and shall expire on the 61st day following enactment

1 unless reenacted as provided by Section 2.107, or upon the termination of the Public Health  
2 Emergency, whichever occurs first. Enactment occurs when the Mayor signs the ordinance,  
3 the Mayor returns the ordinance unsigned or does not sign the ordinance within ten days of  
4 receiving it, or the Board of Supervisors overrides the Mayor's veto of the ordinance.

5  
6 Section 14. Suspension of Charter Section 14.101.

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

12  
13 Section 15. Supermajority Vote Required.

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

16  
17 APPROVED AS TO FORM:  
18 DENNIS J. HERRERA, City Attorney

19 By: /s/  
20 LISA POWELL  
21 Deputy City Attorney

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23  
24  
25



**REVISED LEGISLATIVE DIGEST**  
**4/6/20**

[Emergency Ordinance - Public Health Emergency Leave]

**Emergency ordinance to temporarily require private employers with 500 or more employees to provide public health emergency leave during the public health emergency related to COVID-19.**

Existing Law

This emergency ordinance does not amend existing law, but it supplements paid leave provided under federal law and a City ordinance. The federal Families First Coronavirus Response Act, H.R. 6201, Public Law No. 116-127 (“Act”) requires employers to provide emergency paid sick leave to certain employees who are unable to work or telework due to the COVID-19 public health emergency, but it exempts private employers with 500 or more employees.

The San Francisco Paid Sick Leave Ordinance (PSLO), Administrative Code Chapter 12W, requires employers to provide paid leave that can be used for many of the same purposes as public health emergency leave under this emergency ordinance.

Background Information

The emergency ordinance extends additional paid leave, public health emergency leave, to employees of private employers with 500 or more employees during the public health emergency related to COVID-19. The Act extended similar leave to employees of businesses with fewer than 500 employees and public agencies. Employers must provide public health emergency leave in addition to sick leave provided under the PSLO.

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

- (1) The employee is subject to a quarantine or isolation order related to COVID-19, including but not limited to the Local Health Officer’s shelter-in-place Order No. C19-07b or any succeeding order requiring residents to stay in their homes during the emergency, or shelter-in-place orders issued in other Bay Area jurisdictions. This includes an employee who is a member of a “vulnerable population” as defined in Order No. C19-05 who is unable to work due to recommendations in Order No. C19-05, C19-07b, or any order issued by Governor Newsom or Bay Area jurisdictions recommending or requiring additional restrictions for vulnerable or high-risk populations.
- (2) The employee has been advised by a health care provider to self-quarantine.
- (3) The employee is experiencing symptoms associated with COVID-19 and seeking a medical diagnosis.

- (4) The employee is caring for a family member who is subject to an order as described in (1), has been advised as described (2), or is experiencing symptoms as described in (3).
- (5) The employee is caring for a family member if the school or place of care of family member has been closed, or the care provider of such family member is unavailable, due to the public health emergency.
- (6) The employee is experiencing any other substantially similar condition specified by the Local Health Officer, or under Section 5102(a)(6) of the Act, by the United States Secretary of Health and Human Services.

As introduced, this emergency ordinance would have allowed an employer of an employee who is a health care provider or an emergency responder to elect to exclude such employee from the emergency ordinance. As amended, the emergency ordinance instead allows such employers to limit this leave, but require employers to provide such leave when the employee is unable to work: (1) due to a quarantine or isolation order, not including the shelter-in-place orders; (2) due to a health care provider's advice to quarantine or isolate; or (3) because the employee is experiencing symptoms associated with COVID-19, seeking a medical diagnosis, and does not meet the Centers for Disease Control and Prevention guidance for criteria to return to work for healthcare personnel with confirmed or suspected COVID-19.

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

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

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.

On April 6, 2020, the Rules Committee duplicated this emergency ordinance in Committee, adopted non-substantive amendments, and sent Board file 200313 to the Board for approval, as well as substantive amendments that were held for a week in Committee in file 200355.

FILE NO. 200355

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**ORDER OF THE HEALTH OFFICER No. C19-07**

**ORDER OF THE HEALTH OFFICER  
OF THE CITY AND COUNTY OF SAN FRANCISCO DIRECTING  
ALL INDIVIDUALS LIVING IN THE COUNTY TO SHELTER AT THEIR  
PLACE OF RESIDENCE EXCEPT THAT THEY MAY LEAVE TO  
PROVIDE OR RECEIVE CERTAIN ESSENTIAL SERVICES OR  
ENGAGE IN CERTAIN ESSENTIAL ACTIVITIES AND WORK FOR  
ESSENTIAL BUSINESS AND GOVERNMENT SERVICES; EXEMPTING  
INDIVIDUALS EXPERIENCING HOMELESSNESS FROM THE  
SHELTER IN PLACE ORDER BUT URGING THEM TO FIND SHELTER  
AND GOVERNMENT AGENCIES TO PROVIDE IT; DIRECTING ALL  
BUSINESSES AND GOVERNMENTAL AGENCIES TO CEASE NON-  
ESSENTIAL OPERATIONS AT PHYSICAL LOCATIONS IN THE  
COUNTY; PROHIBITING ALL NON-ESSENTIAL GATHERINGS OF  
ANY NUMBER OF INDIVIDUALS; AND ORDERING CESSATION OF  
ALL NON-ESSENTIAL TRAVEL**

**(SHELTER IN PLACE)**

DATE OF ORDER: March 16, 2020

**Please read this Order carefully. Violation of or failure to comply with this Order is a misdemeanor punishable by fine, imprisonment, or both. (California Health and Safety Code § 120295, *et seq.*; California Penal Code §§ 69, 148(a)(1); San Francisco Administrative Code section 7.17(b).)**

Summary: The virus that causes Coronavirus 2019 Disease (“COVID-19”) is easily transmitted, especially in group settings, and it is essential that the spread of the virus be slowed to protect the ability of public and private health care providers to handle the influx of new patients and safeguard public health and safety. Because of the risk of the rapid spread of the virus, and the need to protect all members of the community and the Bay Area region, especially including our members most vulnerable to the virus and also health care providers, this Order requires all individuals anywhere in San Francisco to shelter in place—that is, stay at home—except for certain essential activities and work to provide essential business and government services or perform essential public infrastructure construction, including housing. This order begins at 12:01 a.m. on March 17, 2020 and will continue for three weeks through April 7, 2020, subject to the limited exceptions and under the terms and conditions more particularly set forth below.

Gatherings of individuals outside the home are generally prohibited, with certain exceptions for essential activities or essential travel or to perform work for essential businesses and government agencies or perform essential infrastructure work. Consistent



**ORDER OF THE HEALTH OFFICER No. C19-07**

with the directive issued by Governor Gavin Newsom on March 15, 2020, all bars and nightclubs are ordered closed. Restaurants and cafes—regardless of their seating capacity—that serve food are ordered closed except solely for takeout and delivery service. Additionally, all gyms and recreation facilities are ordered closed. Homeless individuals are not subject to the shelter in place order but are strongly urged to find shelter and government agencies are urged to take steps needed to provide shelter for those individuals.

Under any of the limited circumstances in which individuals are allowed to interact in person outside their residence, the Health Officer orders individuals to abide by the following requirements: (i) maintain at least six feet from other individuals, wash hands with soap and water for at least 20 seconds as frequently as possible or using hand sanitizer, cover coughs or sneezes, and not shake hands; (ii) for people with medical conditions, regardless of age, that put them at higher risk of serious complications should they get COVID-19, and other than health care workers and other essential providers, avoid leaving their homes to the extent possible; and (iii) for employers in San Francisco that do not provide essential businesses or government services, take all steps necessary for employees to work remotely from home to the extent possible. These requirements build on the California Department of Public Health and United States Centers for Disease Control and Prevention guidelines issued March 11, 2020, extended as necessary to address the health emergency affecting the Bay Area region. No individual who is sick may go to the workplace or be outside the home except as necessary to seek or receive medical care in accordance with guidance from public health officials. The Health Officer may revise this Order as the situation evolves, and facilities must stay updated by checking the City Administrator's website ([sfgsa.org](https://sfgsa.org)) regularly.

This Order revokes and replaces Order Number C19-05b, issued March 13, 2020, and C19-02, issued March 7, 2020. Those orders are no longer in effect as of the effective date and time of this Order. This Order does not revoke Order Numbers C19-01b, C19-03, C19-04, or C19-06.

**UNDER THE AUTHORITY OF CALIFORNIA HEALTH AND SAFETY CODE  
SECTIONS 101040, 101085, AND 120175, THE HEALTH OFFICER OF THE CITY AND  
COUNTY OF SAN FRANCISCO ("HEALTH OFFICER") ORDERS:**

- 1. The intent of this Order is to ensure that the maximum number of people self-isolate in their places of residence to the maximum extent feasible, while enabling essential services to continue, to slow the spread of COVID-19 to the maximum extent possible. When people need to leave their places of residence, whether to obtain or perform vital services, or to otherwise facilitate authorized activities necessary for continuity of social and commercial life, they should at all times reasonably possible comply with Social Distancing Requirements as defined in Section 10 below. All provisions of this Order should be interpreted to effectuate this intent. Failure to**



**ORDER OF THE HEALTH OFFICER No. C19-07**

comply with any of the provisions of this Order constitutes an imminent threat and creates an immediate menace to public health.

2. All individuals currently living within the City and County of San Francisco (the “County”) are ordered to shelter at their place of residence. To the extent individuals are using shared or outdoor spaces, they must at all times as reasonably possible maintain social distancing of at least six feet from any other person when they are outside their residence. All persons may leave their residences only for Essential Activities, Essential Governmental Functions, or to operate Essential Businesses, all as defined in Section 10. Individuals experiencing homelessness are exempt from this Section, but are strongly urged to obtain shelter, and governmental and other entities are strongly urged to make such shelter available as soon as possible and to the maximum extent practicable (and to use COVID-19 risk mitigation practices in their operation).
3. All businesses with a facility in the County, except Essential Businesses as defined below in Section 10, are required to cease all activities at facilities located within the County except Minimum Basic Operations, as defined in Section 10. For clarity, businesses may also continue operations consisting exclusively of employees or contractors performing activities at their own residences (i.e., working from home). All Essential Businesses are strongly encouraged to remain open. To the greatest extent feasible, Essential Businesses shall comply with Social Distancing Requirements as defined in Section 10 below, including by maintaining six-foot social distancing for both employees and members of the public, including, but not limited to, when any customers are standing in line.
4. All public and private gatherings of any number of people occurring outside a single household or living unit are prohibited, except for the limited purposes as expressly permitted in Section 10. Nothing in this Order prohibits the gathering of members of a household or living unit.
5. All travel, including, but not limited to, travel on foot, bicycle, scooter, motorcycle, automobile, or public transit, except Essential Travel and Essential Activities as defined below in Section 10, is prohibited. People must use public transit only for purposes of performing Essential Activities or to travel to and from work to operate Essential Businesses or maintain Essential Governmental Functions. People riding on public transit must comply with Social Distancing Requirements as defined in Section 10 below, to the greatest extent feasible. This Order allows travel into or out of the County to perform Essential Activities, operate Essential Businesses, or maintain Essential Governmental Functions.
6. This Order is issued based on evidence of increasing occurrence of COVID-19 within the County and throughout the Bay Area, scientific evidence and best practices regarding the most effective approaches to slow the transmission of communicable diseases generally and COVID-19 specifically, and evidence that the



**ORDER OF THE HEALTH OFFICER No. C19-07**

age, condition, and health of a significant portion of the population of the County places it at risk for serious health complications, including death, from COVID-19. Due to the outbreak of the COVID-19 virus in the general public, which is now a pandemic according to the World Health Organization, there is a public health emergency throughout the County. Making the problem worse, some individuals who contract the COVID-19 virus have no symptoms or have mild symptoms, which means they may not be aware they carry the virus. Because even people without symptoms can transmit the disease, and because evidence shows the disease is easily spread, gatherings can result in preventable transmission of the virus. The scientific evidence shows that at this stage of the emergency, it is essential to slow virus transmission as much as possible to protect the most vulnerable and to prevent the health care system from being overwhelmed. One proven way to slow the transmission is to limit interactions among people to the greatest extent practicable. By reducing the spread of the COVID-19 virus, this Order helps preserve critical and limited healthcare capacity in the County.

7. This Order also is issued in light of the existence of 37 cases of COVID-19 in the County, as well as at least 258 confirmed cases and at least three deaths in neighboring Bay Area counties, as of 10:00 a.m. on Sunday, March 16, 2020, including a significant and increasing number of suspected cases of community transmission and likely further significant increases in transmission. Widespread testing for COVID-19 is not yet available but is expected to increase in the coming days. This Order is necessary to slow the rate of spread and the Health Officer will re-evaluate it as further data becomes available.
8. This Order is issued in accordance with, and incorporates by reference, the March 4, 2020 Proclamation of a State of Emergency issued by Governor Gavin Newsom, the February 25, 2020 Proclamation by the Mayor Declaring the Existence of a Local Emergency issued by Mayor London Breed, as supplemented on March 11, 2020, the March 6, 2020 Declaration of Local Health Emergency Regarding Novel Coronavirus 2019 (COVID-19) issued by the Health Officer, and guidance issued by the California Department of Public Health, as each of them have been and may be supplemented.
9. This Order is also issued in accordance with, and incorporates by reference the March 12, 2020 Executive Order (Executive Order N-25-20) issued by Governor Gavin Newsom. Executive Order N-25-20 expressly orders that “[a]ll residents are to heed any orders and guidance of state and local public health officials, including but not limited to the imposition of social distancing measures, to control the spread of COVID-19.” This Order is also based on statements by Governor Newsom during a press conference on March 15, 2020, indicating the guidance of the State of California that all nightclubs, bars, wineries, and brewpubs close and that persons 65 years old and older isolate at home.



**ORDER OF THE HEALTH OFFICER No. C19-07**

**10. Definitions and Exemptions.**

- a. For purposes of this Order, individuals may leave their residence only to perform any of the following “Essential Activities.” But people at high risk of severe illness from COVID-19 and people who are sick are urged to stay in their residence to the extent possible except as necessary to seek medical care.**
  - i. To engage in activities or perform tasks essential to their health and safety, or to the health and safety of their family or household members (including, but not limited to, pets), such as, by way of example only and without limitation, obtaining medical supplies or medication, visiting a health care professional, or obtaining supplies they need to work from home.**
  - ii. To obtain necessary services or supplies for themselves and their family or household members, or to deliver those services or supplies to others, such as, by way of example only and without limitation, canned food, dry goods, fresh fruits and vegetables, pet supply, fresh meats, fish, and poultry, and any other household consumer products, and products necessary to maintain the safety, sanitation, and essential operation of residences.**
  - iii. To engage in outdoor activity, provided the individuals comply with Social Distancing Requirements as defined in this Section, such as, by way of example and without limitation, walking, hiking, or running.**
  - iv. To perform work providing essential products and services at an Essential Business or to otherwise carry out activities specifically permitted in this Order, including Minimum Basic Operations.**
  - v. To care for a family member or pet in another household.**
- b. For purposes of this Order, individuals may leave their residence to work for or obtain services at any “Healthcare Operations” including hospitals, clinics, dentists, pharmacies, pharmaceutical and biotechnology companies, other healthcare facilities, healthcare suppliers, home healthcare services providers, mental health providers, or any related and/or ancillary healthcare services. “Healthcare Operations” also includes veterinary care and all healthcare services provided to animals. This exemption shall be construed broadly to avoid any impacts to the delivery of healthcare, broadly defined. “Healthcare Operations” does not include fitness and exercise gyms and similar facilities.**





**ORDER OF THE HEALTH OFFICER No. C19-07**

- c. For purposes of this Order, individuals may leave their residence to provide any services or perform any work necessary to the operations and maintenance of “Essential Infrastructure,” including, but not limited to, public works construction, construction of housing (in particular affordable housing or housing for individuals experiencing homelessness), airport operations, water, sewer, gas, electrical, oil refining, roads and highways, public transportation, solid waste collection and removal, internet, and telecommunications systems (including the provision of essential global, national, and local infrastructure for computing services, business infrastructure, communications, and web-based services), provided that they carry out those services or that work in compliance with Social Distancing Requirements as defined this Section, to the extent possible.
- d. For purposes of this Order, all first responders, emergency management personnel, emergency dispatchers, court personnel, and law enforcement personnel, and others working for or to support Essential Businesses are categorically exempt from this Order. Further, nothing in this Order shall prohibit any individual from performing or accessing “Essential Governmental Functions.” Essential Government Functions means all services needed to ensure the continuing operation of the government agencies and provide for the health, safety and welfare of the public. All Essential Governmental Functions shall be performed in compliance with Social Distancing Requirements as defined this Section, to the extent possible.
- e. For the purposes of this Order, covered businesses include any for-profit, non-profit, or educational entities, regardless of the nature of the service, the function they perform, or its corporate or entity structure.
- f. For the purposes of this Order, “Essential Businesses” means:
  - i. Healthcare Operations and Essential Infrastructure;
  - ii. Grocery stores, certified farmers’ markets, farm and produce stands, supermarkets, food banks, convenience stores, and other establishments engaged in the retail sale of canned food, dry goods, fresh fruits and vegetables, pet supply, fresh meats, fish, and poultry, and any other household consumer products (such as cleaning and personal care products). This includes stores that sell groceries and also sell other non-grocery products, and products necessary to maintaining the safety, sanitation, and essential operation of residences;
  - iii. Food cultivation, including farming, livestock, and fishing;



**ORDER OF THE HEALTH OFFICER No. C19-07**

- iv. Businesses that provide food, shelter, and social services, and other necessities of life for economically disadvantaged or otherwise needy individuals;**
- v. Newspapers, television, radio, and other media services;**
- vi. Gas stations and auto-supply, auto-repair, and related facilities;**
- vii. Banks and related financial institutions;**
- viii. Hardware stores;**
- ix. Plumbers, electricians, exterminators, and other service providers who provide services that are necessary to maintaining the safety, sanitation, and essential operation of residences, Essential Activities, and Essential Businesses;**
- x. Businesses providing mailing and shipping services, including post office boxes;**
- xi. Educational institutions—including public and private K-12 schools, colleges, and universities—for purposes of facilitating distance learning or performing essential functions, provided that social distancing of six-feet per person is maintained to the greatest extent possible;**
- xii. Laundromats, dry cleaners, and laundry service providers;**
- xiii. Restaurants and other facilities that prepare and serve food, but only for delivery or carry out. Schools and other entities that typically provide free food services to students or members of the public may continue to do so under this Order on the condition that the food is provided to students or members of the public on a pick-up and take-away basis only. Schools and other entities that provide food services under this exemption shall not permit the food to be eaten at the site where it is provided, or at any other gathering site;**
- xiv. Businesses that supply products needed for people to work from home;**
- xv. Businesses that supply other essential businesses with the support or supplies necessary to operate;**



**ORDER OF THE HEALTH OFFICER No. C19-07**

- xvi. **Businesses that ship or deliver groceries, food, goods or services directly to residences;**
- xvii. **Airlines, taxis, and other private transportation providers providing transportation services necessary for Essential Activities and other purposes expressly authorized in this Order;**
- xviii. **Home-based care for seniors, adults, or children;**
- xix. **Residential facilities and shelters for seniors, adults, and children;**
- xx. **Professional services, such as legal or accounting services, when necessary to assist in compliance with legally mandated activities;**
- xxi. **Childcare facilities providing services that enable employees exempted in this Order to work as permitted. To the extent possible, childcare facilities must operate under the following mandatory conditions:**
  - 1. **Childcare must be carried out in stable groups of 12 or fewer (“stable” means that the same 12 or fewer children are in the same group each day).**
  - 2. **Children shall not change from one group to another.**
  - 3. **If more than one group of children is cared for at one facility, each group shall be in a separate room. Groups shall not mix with each other.**
  - 4. **Childcare providers shall remain solely with one group of children.**
- g. **For the purposes of this Order, “Minimum Basic Operations” include the following, provided that employees comply with Social Distancing Requirements as defined this Section, to the extent possible, while carrying out such operations:**
  - i. **The minimum necessary activities to maintain the value of the business’s inventory, ensure security, process payroll and employee benefits, or for related functions.**
  - ii. **The minimum necessary activities to facilitate employees of the business being able to continue to work remotely from their residences.**



**ORDER OF THE HEALTH OFFICER No. C19-07**

- h. For the purposes of this Order, “Essential Travel” includes travel for any of the following purposes. Individuals engaged in any Essential Travel must comply with all Social Distancing Requirements as defined in this Section.**

  - i. Any travel related to the provision of or access to Essential Activities, Essential Governmental Functions, Essential Businesses, or Minimum Basic Operations.**
  - ii. Travel to care for elderly, minors, dependents, persons with disabilities, or other vulnerable persons.**
  - iii. Travel to or from educational institutions for purposes of receiving materials for distance learning, for receiving meals, and any other related services.**
  - iv. Travel to return to a place of residence from outside the jurisdiction.**
  - v. Travel required by law enforcement or court order.**
  - vi. Travel required for non-residents to return to their place of residence outside the County. Individuals are strongly encouraged to verify that their transportation out of the County remains available and functional prior to commencing such travel.**
- i. For purposes of this order, residences include hotels, motels, shared rental units, and similar facilities.**
- j. For purposes of this order Social Distancing Requirements includes maintaining at least six-foot social distancing from other individuals, washing hands with soap and water for at least twenty seconds as frequently as possible or using hand sanitizer, covering coughs or sneezes (into the sleeve or elbow, not hands), regularly cleaning high-touch surfaces, and not shaking hands.**
- 11. Pursuant to Government Code sections 26602 and 41601 and Health and Safety Code section 101029, the Health Officer requests that the Sheriff and the Chief of Police in the County ensure compliance with and enforce this Order. The violation of any provision of this Order constitutes an imminent threat and creates an immediate menace to public health.**
- 12. This Order shall become effective at 12:01 a.m. on March 17, 2020 and will continue to be in effect until 11:59 p.m. on April 7, 2020, or until it is extended, rescinded, superseded, or amended in writing by the Health Officer.**



**ORDER OF THE HEALTH OFFICER No. C19-07**

- 13. The City must promptly provide copies of this Order as follows: (1) by posting on the City Administrator's website ([sfgsa.org](http://sfgsa.org)) and the Department of Public Health website ([sfdph.org](http://sfdph.org)); (2) by posting at City Hall, located at 1 Dr. Carlton B. Goodlett Pl., San Francisco, CA 94102; and (3) by providing to any member of the public requesting a copy. In addition, the owner, manager, or operator of any facility that is likely to be impacted by this Order is strongly encouraged to post a copy of this Order onsite and to provide a copy to any member of the public asking for a copy.**
- 14. If any provision of this Order or its application to any person or circumstance is held to be invalid, then the reminder of the Order, including the application of such part or provision to other persons or circumstances, shall not be affected and shall continue in full force and effect. To this end, the provisions of this Order are severable.**

**IT IS SO ORDERED:**

A handwritten signature in blue ink that reads "Tomás Aragón".

\_\_\_\_\_  
Tomás J. Aragón, MD, DrPH,  
Health Officer of the  
City and County of San Francisco

Dated: March 16, 2020

April 3, 2020

Supervisor Gordon Mar  
San Francisco Board of Supervisors  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco, Ca 94102

Re: File #200313, Emergency Ordinance - Administrative Code - Public Health Emergency Leave

Dear Supervisor Mar,

The San Francisco Chamber of Commerce, representing hundreds of local businesses and thousands of employees, has reviewed Supervisor Mar's Emergency Ordinance for Public Health Emergency Leave (File #200313). The measure, should it pass, would temporarily require private employers with 500 or more employees to provide public health emergency leave during the public health emergency related to COVID-19.

The San Francisco Chamber of Commerce is supportive of the sentiment of the legislation, which is to aid employees who cannot work, telework, or are personally affected in one way or another by the COVID-19 public health crisis. However, this legislation would have the San Francisco Chamber of Commerce's full support with the following eight amendments:

- 1. In section 3 or 4 there needs added clarity that this legislation applies to private employers who have 500 or more employees within San Francisco.**

**Reasoning:** In Section 2 it is made clear that this legislation is to serve as coverage for the gap created in the Families First Coronavirus Response Act, by requiring private employers with 500 or more employees to provide public health emergency leave during the public health emergency related to COVID-19. In Section 3, there is no definition within the legislation that limits it to large employers with 500 or more San Francisco employees.

Employee is currently defined as: "Employee" means any person, including part-time and temporary workers, who has performed 56 or more hours of work as an employee within the geographic boundaries of the City. There needs to be clarity that the 500 employees are San Francisco based, and the legislation is targeted for only large employers .

- 2. Definition of employee changed to someone who works for 30 or more days within a year to the same employer.**

In Section 3 we suggest the following amendment:

Section 3 line 24: 'Employee' means any person, including part-time and temporary workers, who has performed ~~56 or more hours of work as an employee within the geographic boundaries of the City during the 365 days immediately preceding the~~

~~effective date of this emergency ordinance: 30 or more days of employed work in San Francisco within the year 2020.~~

5(b) Public Health Emergency Leave shall be available for immediate use for the purposes described in Section 5(a), ~~regardless of how long the Employee has been employed by the Employer;~~ regardless of whether or when the employee is scheduled to work; the employee's status as full-time, part-time, permanent, temporary, seasonal, salaried, paid by commission, or any other status; or any other consideration pertaining to the Employee, as long as the the employee has performed for 30 or more days of employed work within the year 2020 in San Francisco.

**Reasoning:** Section 246 of the California Labor Code reads: (a) An employee who, on or after July 1, 2015, works in California for the same employer for 30 or more days within a year from the commencement of employment is entitled to paid sick days. It follows that emergency leave should mirror state law in qualifications for paid sick leave.

### 3. Clarification that the emergency sick pay hours do not continue indefinitely.

In Section 13 lines 15 - 18 we propose the following amendment:

Consistent with Charter Section 2.107, this emergency ordinance shall become effective immediately upon enactment, and shall expire on the 61st day following enactment unless reenacted as provided by Section 2.107, or upon the termination of the Public Health Emergency, whichever occurs first. This ordinance's subsequent emergency leave hours shall expire upon termination of the Public Health Emergency.

**Reasoning:** The legislation as it stands makes the expiration date of the ordinance clear, however, it remains unclear if the emergency leave hours remain. Once the public health emergency expires, the emergency leave hours should dissolve, as employees will have previous vacation and leave remaining - as Section 4 states, "an Employer may not require the Employee, to use other accrued paid time off provided by the Employer to the Employee before the Employee uses Public Health Emergency Leave."

### 4. Employers that voluntarily gave additional COVID-19 related sick pay to their employees prior to the legislation will have those additional hours counted to the 80 mandated hours in the legislation.

In Section 4 we propose the following amendment:

ADD: *An Employer who voluntarily provided additional paid leave before this legislation as effect of COVID-19 will be able to count that benefit toward their obligations as specified in Sections 5102(b)(2) and 5110(5)(C) of the Act.*

**Reasoning:** San Francisco was one of the first cities to shelter in place. In response to this and Mayor Breed’s declaration of a State of Emergency on February 25th, many companies awarded their employees additional paid time off upon the emergence of this public health crisis. These previously awarded hours are of the same sentiment of this legislation, and thus should be allowed to count towards employers’ required emergency paid leave amount.

**5. Provision clarifying that temporary workers do not get duplicate time off from both agency and company.**

Clarity is needed to delineate if temporary employees are entitled to leave from both employers. As written, the legislation indicates a host company would be responsible for PHEL for agency temporary workers if it controls their “working conditions.”

**6. Remove the requirement to notice on every pay stub.**

In Section 6(c) we propose the following amendment:

~~(c) by indicating on the notice or the Employee’s itemized wage statement “unlimited.”~~

**Reasoning:** It is burdensome to ask employers to display the amount of PHEL available to employees on every pay stub. For complicated payrolls, it can take weeks of work for our Payroll team and payroll vendor (ADP) to add additional line items to a pay stub. Taking out this notice would help employers implement this legislation quickly and efficiently.

**7. Employees who can work remotely are exempt.**

In Section 5(a) we propose the following amendment:

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



**Reasoning:** New York passed a paid leave law (Bill No: A10153) that provides 2 weeks of time off for quarantine and/or isolation but employees who can work remotely are exempt. They would still be able to use accrued sick time if they are too sick to work.

**8. Added clarity that private employers who provide unlimited leave meet the mandates of this legislation.**


**Reasoning:** Many San Francisco based companies already offer unlimited paid time off for their employees as standard practice, which meets the sentiment of this legislation.

We share the Supervisor's concerns for workers during these unprecedented times. These amendments are suggested to help make the legislation more easily and quickly implementable for our employers in San Francisco.

The San Francisco Chamber of Commerce supports these emergency efforts, and urges you to discuss and approve the following amendments when this item comes before you at the Rules Committee to ensure a swift and effective implementation of this legislation.

On behalf of the San Francisco Chamber of Commerce, I thank you for your continued service during this public health crisis.

Sincerely,



Rodney Fong  
President and CEO

CC: Mayor London Breed; Clerk of the Board, for the full Board of Supervisors

April 13, 2020

The Honorable Hillary Ronen  
Chair  
San Francisco Rules Committee  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102

**File No. 200355: Emergency Ordinance – Public Health Emergency Leave**

Dear Chair Ronen:

We appreciate all the support the City and County of San Francisco is providing to the health care community and the people of San Francisco during this unprecedented community health crisis, including taking steps to protect workers.

**Kaiser Permanente Is on the Frontlines of this Crisis**

While most Californians are prudently staying safe at home, the people of Kaiser Permanente are on the frontline of the battle against the COVID-19 pandemic. Kaiser Permanente is intensely focused on providing care and preparing for the anticipated surge, while keeping our health care workers and support staff safe. We absolutely agree that the shelter in place order is critical to beating this pandemic, and that sick leave is an important tool for protecting workers and patients. We have generous sick leave policies in place for our employees, including existing paid time off policies. And, we have created additional benefits to both union and non-union employees, to include up to an additional 80 hours of COVID-related paid leave time, as well as a childcare stipend. If a hospital or clinic employee is ill, we want them to stay home and recuperate.

**The City Ordinance, Though Well-Intentioned, Risks Detrimental Adverse Consequences**

We are concerned about the proposed amendment to the Ordinance mandating emergency leave on crucial health care services. The City's original emergency leave Ordinance prudently included an exemption for health care workers, consistent with the Federal regulations and also other larger jurisdictions, such as Los Angeles. Now, however, the proposed amendment would take away that exemption. Although the amendment has the best intentions, it would have unintended consequences of adding to piecemeal local rules with no actual exemptions and diverting focus from the coming possible surge and onto implementation and administrative compliance. Any gain to Kaiser employees is minor given enterprise-wide COVID leave and other benefits Kaiser is already rolling out. Finally, failure to exempt hospitals and health systems encourages absenteeism when healthcare workers are most needed. We do not believe that this is the City's goal.

### **The Correct Solution**

1. We respectfully submit that the City should keep its original exemption for health care workers, in line with the Federal regulations and other jurisdictions like Los Angeles.

Such an exemption is the best way to keep the focus of health care on health care at this crucial time.

If nothing else, create exemptions that make administration easier.

2. The City should recognize that unionized work forces are already working with employers to create nuanced solutions. The current collective bargaining agreement ("CBA") exemption in the ordinance in effect offers no waiver at all, as it requires an explicit waiver to be added to CBAs. It would be an enormous burden to reopen collective bargaining agreements at this time, especially for employers like Kaiser who have many different unions and CBAs. Instead, we ask you – at least for health care employers -- to modify the waiver so that it applies to all employees covered by a CBA, with no explicit waiver requirement. Employees represented by unions already tend to have more generous benefits and are the least likely to need the protections of the Ordinance. Eliminating city-imposed conditions for a waiver also would mitigate inadvertently running afoul of the National Labor Relations Act.
3. Consider exempting employees exempt from overtime and other Labor Code provisions. Such employees are already likely to receive generous time-off packages.
4. Limit Emergency Leave for Health care workers to ordered COVID-quarantines or per the CDC guidelines.

We are ready to discuss this Ordinance with your office and answer any questions you might have. Our Community and Government Relations Manager, Arcadi Kolchak can be reached at (415) 971-4229 or by e-mail at [Arcadi.X.Kolchak@kp.org](mailto:Arcadi.X.Kolchak@kp.org).

Thank you for your leadership and support in this historic time. We appreciate your attention to this matter.

Sincerely,



Ron Groepper  
Senior Vice President and Area Manager  
Greater San Francisco Service Area