

File No. 200687

Committee Item No. _____

Board Item No. 35

COMMITTEE/BOARD OF SUPERVISORS

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Date: _____

Board of Supervisors Meeting

Date: June 30, 2020

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Prepared by: Lisa Lew

Date: June 26, 2020

Prepared by: _____

Date: _____

1 [Concurring in Actions to Meet Local Emergency - Coronavirus Response - Nineteenth
2 Supplement]

3 **Motion concurring in actions taken by the Mayor in the Nineteenth Supplement to the**
4 **Proclamation of Emergency, released on June 13, 2020, to meet the ongoing local**
5 **emergency related to the novel coronavirus COVID-19 pandemic.**

6
7 WHEREAS, On February 25, 2020, Mayor London N. Breed declared a local
8 emergency to exist in connection with the spread of the novel coronavirus COVID-19; and

9 WHEREAS, The Mayor transmitted a copy of that Proclamation Declaring the
10 Existence of a Local Emergency to the Board of Supervisors (the "Proclamation"), and on
11 March 3, 2020, the Board of Supervisors concurred in the Proclamation and in the actions
12 taken by the Mayor to meet the emergency; the Proclamation and the Board's concurring
13 motion are on file with the Clerk of the Board of Supervisors in File No. 200228; and

14 WHEREAS, On March 11, 2020, and March 13, 2020, the Mayor took additional steps
15 to meet the local emergency by issuing the First and Second Supplements to the
16 Proclamation, and on March 24, 2020, the Board of Supervisors concurred in the actions
17 taken by the Mayor in those Supplements; the First and Second Supplements and the Board's
18 concurring motion are on file with the Clerk of the Board of Supervisors in File No. 200294;
19 and

20 WHEREAS, On March 17, 2020, March 18, 2020, and March 23, 2020, the Mayor took
21 additional steps to meet the local emergency by issuing the Third, Fourth, and Fifth
22 Supplements to the Proclamation, and on March 31, 2020, the Board of Supervisors
23 concurred in the actions taken by the Mayor in those Supplements; the Third, Fourth, and
24 Fifth Supplements and the Board's concurring motion are on file with the Clerk of the Board of
25 Supervisors in File No. 200326; and

1 WHEREAS, On March 27, 2020, and March 31 2020, the Mayor took additional steps
2 to meet the local emergency by issuing the Sixth and Seventh Supplements to the
3 Proclamation and on April 7, 2020, the Board of Supervisors concurred in the actions taken in
4 those Supplements; the Sixth and Seventh Supplements to the Proclamation and the Board's
5 concurring motion are on file with the Clerk of the Board of Supervisors in File No. 200352;
6 and

7 WHEREAS, On April 1, 2020, the Mayor took additional steps to meet the local
8 emergency by issuing the Eighth Supplement to the Proclamation, and on April 14, 2020, the
9 Board of Supervisors concurred in the actions taken in that Supplement; the Eighth
10 Supplement to the Proclamation and the Board's concurring motion are on file with the Clerk
11 of the Board of Supervisors in File No. 200369; and

12 WHEREAS, On April 10, 2020, and April 14, 2020, the Mayor took additional steps to
13 meet the emergency by issuing the Ninth and Tenth Supplements to the Proclamation, and on
14 April 21, 2020, the Board of Supervisors concurred in the actions taken in those Supplements;
15 the Ninth and Tenth Supplements and the Board's concurring motion are on file with the Clerk
16 of the Board of Supervisors in File No. 200384; and

17 WHEREAS, On April 23, 2020, the Mayor took additional steps to meet the emergency
18 by issuing the Eleventh Supplement to the Proclamation, and on May 5, 2020, the Board of
19 Supervisors concurred in the actions taken in that Supplement; the Eleventh Supplement and
20 the Board's concurring motion are on file with the Clerk of the Board of Supervisors in File No.
21 200437; and

22 WHEREAS, On April 30, 2020, the Mayor took additional steps to meet the emergency
23 by issuing the Twelfth Supplement to the Proclamation, and on May 12, 2020, the Board of
24 Supervisors concurred in the actions taken in that Supplement; the Twelfth Supplement and
25

1 the Board's concurring motion are on file with the Clerk of the Board of Supervisors in File No.
2 200473; and

3 WHEREAS, On May 11, 2020, the Mayor took additional steps to meet the emergency
4 by issuing the Thirteenth Supplement to the Proclamation, and on May 19, 2020, the Board of
5 Supervisors concurred in the actions taken in that Supplement; the Thirteenth Supplement
6 and the Board's concurring motion are file with the Clerk of the Board of Supervisors in File
7 No. 200498; and

8 WHEREAS, On May 13, 2020, and May 18, 2020, the Mayor took additional steps to
9 meet the emergency by issuing the Fourteenth and Fifteenth Supplements to the
10 Proclamation, and on May 26, 2020, the Board of Supervisors concurred in the actions taken
11 in those Supplements; the Fourteenth and Fifteenth Supplements and the Board's concurring
12 motion are on file with the Clerk of the Board of Supervisors in File No. 200553; and

13 WHEREAS, On May 29, 2020, the Mayor took additional steps to meet the emergency
14 by issuing the Sixteenth Supplement to the Proclamation, and on June 9, 2020, the Board of
15 Supervisors concurred in the actions taken in that Supplement; the Sixteenth Supplement and
16 the Board's concurring motion are on file with the Clerk of the Board of Supervisors in File No.
17 200600; and

18 WHEREAS, On June 2, 2020, and June 9, 2020, the Mayor took additional steps to
19 meet the emergency by issuing the Seventeenth and Eighteenth Supplements to the
20 Proclamation, and on June 17, 2020, the Board of Supervisors concurred in the actions taken
21 in those Supplements; the Seventeenth and Eighteenth Supplements are on file with the Clerk
22 of the Board of Supervisors in File No.200632; and

23 WHEREAS, On June 13, 2020, the Mayor took additional steps to meet the emergency
24 by issuing the Nineteenth Supplement to the Proclamation, ordering one action to meet the
25

1 emergency; the Nineteenth Supplement is on file with the Clerk of the Board of Supervisors in
2 Board File No. 200687; and

3 WHEREAS, Government Code, Sections 8550 et seq. and Charter, Section 3.100
4 provide for the concurrence by members of the Board of Supervisors in such emergency
5 declaration and in action taken by the Mayor to meet the emergency; now, therefore, be it

6 MOVED, That the Board of Supervisors concurs with the following action taken by the
7 Mayor to meet the local emergency included in the Mayor's Nineteenth Supplement to the
8 Proclamation, dated June 13, 2020, as that action is described in full in the Nineteenth
9 Supplement and summarized as follows:

10 Action #1: Clarifying that Section 1 of the Ninth Supplement to the
11 Proclamation, dated April 10, 2020, which capped the fee that third-party food delivery apps
12 and online platforms may charge restaurants at 15% per online order, shall terminate at such
13 time as the Health Officer amends or terminates the order prohibiting restaurants from offering
14 indoor dining service or that prohibition otherwise expires, so that indoor dining service is
15 allowed.

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**NINETEENTH SUPPLEMENT TO MAYORAL PROCLAMATION DECLARING
THE EXISTENCE OF A LOCAL EMERGENCY DATED FEBRUARY 25, 2020**

WHEREAS, California Government Code Sections 8550 et seq., San Francisco Charter Section 3.100(14) and Chapter 7 of the San Francisco Administrative Code empower the Mayor to proclaim the existence of a local emergency, subject to concurrence by the Board of Supervisors as provided in the Charter, in the case of an emergency threatening the lives, property or welfare of the City and County or its citizens; and

WHEREAS, On February 25, 2020, the Mayor issued a Proclamation (the “Proclamation”) declaring a local emergency to exist in connection with the imminent spread within the City of a novel (new) coronavirus (“COVID-19”); and

WHEREAS, On March 3, 2020, the Board of Supervisors concurred in the Proclamation and in the actions taken by the Mayor to meet the emergency; and

WHEREAS, On March 4, 2020, Governor Gavin Newsom proclaimed a state of emergency to exist within the State due to the threat posed by COVID-19; and

WHEREAS, On March 6, 2020, the Health Officer declared a local health emergency under Section 101080 of the California Health and Safety Code, and the Board of Supervisors concurred in that declaration on March 10, 2020; and

WHEREAS, On March 16, 2020, the City’s Health Officer issued a stay safe at home order, Health Officer Order No. C19-07 (the “Stay Safe At Home Order”), requiring most people to remain in their homes subject to certain exceptions including obtaining essential goods such as food and necessary supplies, and requiring the closure of non-essential businesses; the Health Officer has amended the Stay Safe At Home Order to modify the ongoing restrictions; and

WHEREAS, There have been 2,877 confirmed cases of COVID-19 within the City and 44 COVID-19-related deaths in the City; there have been more than 147,000 confirmed cases in California and more than 4,900 COVID-19-related deaths in California; and

WHEREAS, This order and the previous orders issued during this emergency have all been issued because of the propensity of the virus to spread person to person and also



because the virus physically is causing property loss or damage due to its proclivity to attach to surfaces for prolonged periods of time; and

WHEREAS, To reduce the spread of the virus and protect the public health, the Stay Safe At Home Order prohibits restaurants in the City from offering dine-in service, limiting restaurants to delivery and takeout, and as of June 12, 2020, the Stay Safe At Home Order allows restaurants to offer outdoor dining subject to physical distancing and other safety requirements. Many restaurants in the City are unable to offer outdoor dining due to locational and physical space limitations; and

WHEREAS, In the Ninth Supplement to the Proclamation of Local Emergency, dated April 10, 2020, the Mayor issued an order capping the fees that third-party applications and websites can charge restaurants per order. The Board of Supervisors concurred in that order on April 21, 2020. That order terminates when the Stay Safe At Home Order is amended or modified to allow dine-in service. For the avoidance of doubt, the Mayor now issues the order below to clarify that the order terminates when the Stay Safe At Home Order is amended or modified to allow indoor dining; and

WHEREAS, For all the reasons stated in the Ninth Supplement, it is in the public interest for the order capping fees that third party applications and websites can charge restaurants per order to remain in place until all restaurants are allowed to offer dine-in service; and

NOW, THEREFORE,

I, London N. Breed, Mayor of the City and County of San Francisco, proclaim that there continues to exist an emergency within the City and County threatening the lives, property or welfare of the City and County and its citizens;

In addition to the measures outlined in the Proclamation and in the Supplements to the Proclamation dated March 11, March 13, March 17, March 18, March 23, March 27, March 31, April 1, April 10, April 14, April 23, April 30, May 11, May 13, May 18, May 29, June 2, and June 9, 2020, it is further ordered that:

Section 1 of the Ninth Supplement to the Emergency Proclamation, dated April 10, 2020, is revised and replaced as follows, solely to modify subsection (c) for clarity:



It shall be unlawful for a third-party food delivery service to charge a covered establishment a fee per online order for the use of its services that totals more than 15% of the purchase price of such online order.

(a) For purposes of this Order, the following definitions apply:

“Covered establishment” means a restaurant that offers, in a single commercial transaction over the internet, whether directly or through a third-party food delivery service, the sale and same-day delivery of food to customers from one or more retail locations within the City. Covered establishment shall not include any restaurant that meets the definition of a formula retail use under Section 303.1 of the Planning Code.

“Online order” means an order placed by a customer through a platform provided by a third-party food delivery service for delivery or pickup within the City.

“Purchase price” means the menu price of an online order. Such term therefore excludes taxes, gratuities and any other fees that may make up the total cost to the customer of an online order.

“Restaurant” shall have the meaning provided in Section 451 of the Health Code.

“Third-party food delivery service” means any website, mobile application or other internet service that offers or arranges for the sale of food and beverages prepared by, and the same-day delivery or same-day pickup of food and beverages from, no fewer than 20 separately owned and operated food service establishments.

(b) The Director of the Office of Economic and Workforce Development, or the Director’s designee, is authorized to implement this Order and issue any necessary guidance or rules consistent with this Order.

(c) This Order shall take effect on April 13, 2020, and shall terminate at such time as the Health Officer amends or terminates the order prohibiting restaurants from offering indoor dining service or that prohibition otherwise expires, so that indoor dining service is then allowed.

(d) A third-party food delivery service shall not be found in violation of this Order if between April 13, 2020 and April 20, 2020, it imposes a fee per online order for the use



of its services that totals more than 15% of the purchase price of such online order, provided it refunds the portion of the fee that exceeds 15% of the purchase price to the covered establishment prior to April 27, 2020.

(e) If a third-party food delivery service charges a covered establishment fees that violate this Order, the covered establishment shall provide written notice to the third-party food delivery service requesting a refund within seven days. If the third-party food delivery service does not provide the refund requested after seven days or the third-party food delivery service continues to charge fees in violation of this Order after the initial notice and seven-day cure period, a covered establishment may enforce this Order by means of a civil action seeking damages and injunctive relief. The prevailing party in any such action shall be entitled to an award of reasonable attorney fees.

DATED: June 13, 2020

A handwritten signature in blue ink that reads "London Breed".

London N. Breed
Mayor of San Francisco

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):

Supervisor Yee

Subject:

Concurring in Actions to Meet Local Emergency - Coronavirus Response

The text is listed:

Motion concurring in actions taken by the Mayor in the Nineteenth Supplement to the Proclamation of Emergency, released on June 13, 2020, to meet the ongoing local emergency related to the novel coronavirus COVID-19 pandemic.

Signature of Sponsoring Supervisor: /s/Norman Yee