

BOARD of SUPERVISORS



City Hall  
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## MEMORANDUM

TO: Dr. Grant Colfax, Director, Department of Public Health  
Patrick O'Riordan, Director, Department of Building Inspection

FROM: Erica Major, Assistant Clerk, Land Use and Transportation Committee

DATE: March 24, 2021

SUBJECT: LEGISLATION INTRODUCED

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The Board of Supervisors' Land Use and Transportation Committee has received the following proposed legislation, introduced by Supervisor Safai on March 16, 2021:

**File No. 210288**

**Emergency ordinance to require property owners of high-rise buildings with 50,000 square feet or more of nonresidential floor area that use mechanical ventilation systems, to certify that such systems are operating in compliance with applicable laws; to require businesses operating within those buildings to post certification within their work spaces; and to require the Department of Public Health and Department of Building Inspection to post information on their websites about how to file complaints about noncompliance with workplace ventilation standards, and to coordinate to ensure that all such complaints are inspected within three business days.**

If you have comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102 or by email at: [erica.major@sfgov.org](mailto:erica.major@sfgov.org).

cc: Greg Wagner, Department of Public Health  
Dr. Naveena Bobba, Department of Public Health  
Sneha Patil, Department of Public Health  
Arielle Fleisher, Department of Public Health

1 [Emergency Ordinance - Enforcement of Workplace Ventilation Standards - COVID-19]

2

3 **Emergency ordinance to require property owners of high-rise buildings with 50,000**  
 4 **square feet or more of nonresidential floor area that use mechanical ventilation**  
 5 **systems, to certify that such systems are operating in compliance with applicable laws;**  
 6 **to require businesses operating within those buildings to post certification within their**  
 7 **work spaces; and to require the Department of Public Health and Department of**  
 8 **Building Inspection to post information on their websites about how to file complaints**  
 9 **about noncompliance with workplace ventilation standards, and to coordinate to**  
 10 **ensure that all such complaints are inspected within three business days.**

11 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.  
 12 **Additions to Codes** are in *single-underline italics Times New Roman font*.  
 13 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.  
 14 **Board amendment additions** are in double-underlined Arial font.  
 15 **Board amendment deletions** are in ~~strikethrough Arial font~~.  
 16 **Asterisks (\* \* \* \*)** indicate the omission of unchanged Code  
 17 subsections or parts of tables.

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

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

20 (a) Section 2.107 of the Charter authorizes passage of an emergency ordinance in  
 21 cases of public emergency affecting life, health, or property, or for the uninterrupted operation  
 22 of any City or County department or office required to comply with time limitations established  
 23 by law.

24 (b) On February 25, 2020, Mayor London Breed proclaimed a state of emergency in  
 25 response to the spread of the novel coronavirus COVID-19. On March 3, 2020, the Board of

1 Supervisors concurred in the February 25 Proclamation and in the actions taken by the Mayor  
2 to meet the public health emergency related to COVID-19.

3 (c) The Board of Supervisors hereby finds and declares that an actual emergency  
4 exists that requires the passage of this emergency ordinance to address the COVID-19  
5 pandemic by reducing the likelihood of COVID-19 infection among people who return to work  
6 indoors, including workers who provide janitorial services at hours outside of traditional work  
7 hours.

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9 Section 2. Findings and Purpose.

10 (a) Since March 16, 2020, when the City and County of San Francisco implemented  
11 its first shelter-in-place order to reduce the impact of the virus that causes COVID-19, most  
12 indoor businesses have remained closed. Except for a brief period between October 27 and  
13 November 16, 2020, all non-essential offices have been required to remain closed under  
14 Health Officer Order No. C19-07 (the “Stay-Safer-at-Home Order”) and its subsequent  
15 iterations. The California Department of Public Health along with the San Francisco Health  
16 Officer have also strongly encouraged telework whenever possible, even for essential  
17 business operations.

18 (b) On August 28, 2020, the State of California adopted a four-tiered, color-coded  
19 framework for reopening statewide based on the prevalence of virus transmission in each  
20 county – the Blueprint for a Safer Economy. Except for a brief period in September and  
21 October 2020, San Francisco has remained in either the most restrictive (purple) or the  
22 second-most restrictive (red) tiers. As vaccines for COVID-19 have arrived and become more  
23 available, community transmission of COVID-19 has decreased. As of March 16, 2021, San  
24 Francisco’s current case rates indicate that the City will likely move from the substantial risk  
25 (red) tier into the moderate risk (orange) tier by March 24, 2021, and potentially to the minimal

1 risk (yellow) tier by mid-April 2021. As a result, the San Francisco Health Officer is expected  
2 to soon allow the reopening of non-essential offices in the City.

3 (c) Section 4(i) of the Stay-Safer-at-Home Order requires that all businesses that  
4 are allowed to be open indoors comply with certain ventilation requirements, including that  
5 they: (1) implement as many of the San Francisco Department of Public Health's  
6 recommended ventilation improvements as feasible and (2) keep hand-annotated documents  
7 showing which ventilation improvements were considered and implemented. The Stay-Safer-  
8 at-Home Order also requires all businesses operating indoors that are open to members of  
9 the public to conspicuously post signage, including at all primary public entrances, indicating  
10 which ventilation strategies are used at the facility.

11 (d) The Department of Building Inspection implements and enforces the ventilation  
12 standards for occupiable space in office buildings pursuant to Chapter 4 of the San Francisco  
13 Mechanical Code, Chapter 12 of the San Francisco Building Code, and Section 120.1 of the  
14 California Energy Code. The ventilation standards include: minimum ventilation rates based  
15 on the volume of different interior zones within a building; filter, intake, and exhaust  
16 requirements; a mandate that mechanical ventilation systems in office buildings operate in  
17 compliance with all standards at all times that the building is occupied, and that systems begin  
18 operation and achieve three complete air changes one hour prior to occupation.

19 (e) The virus that causes COVID-19 can be transmitted in the air through aerosols  
20 and the risk of airborne transmission is generally higher indoors. The risk of transmission is  
21 likely to increase as more people return to offices. Therefore, it is essential that indoor  
22 businesses comply with existing ventilation standards and that those standards be enforced in  
23 order to best protect people working or visiting indoor offices. Also, while treatments for  
24 COVID-19 are improving and vaccines have been approved for use, treatments remain limited  
25 and COVID-19 vaccines will not likely be generally available to the majority of the public until

1 mid-2021. The majority of the population remains susceptible to infection. This is especially  
2 true for those workers who spend significant time indoors in enclosed spaces, who often do  
3 not fit into priority categories for vaccination. This emergency ordinance will reduce the risk of  
4 COVID-19 transmission by ensuring compliance with existing ventilation standards applicable  
5 to indoor workplaces.

6  
7 Section 3. Enforcement of Workplace Ventilation Standards.

8 (a) Within five businesses days of the effective date of this emergency ordinance,  
9 the owner and/or operator of each high-rise building, as defined in Section 202 of the San  
10 Francisco Building Code, with 50,000 square feet or more of non-residential floor area that  
11 uses a mechanical ventilation system shall certify that its mechanical ventilation system  
12 complies with applicable requirements and minimum operation time windows—including pre-  
13 occupancy air exchange requirements.

14 (b) Each business operating in those buildings referenced in subsection (a) shall post  
15 information at the entry to the building space in which it operates confirming that that such  
16 certification is complete, and advising occupants of the hours that the ventilation system is set  
17 to operate.

18 (c) The Department of Building Inspection (“DBI”) may issue rules or provide  
19 guidance regarding certification and posting requirements.

20 (d) Within five business days of the effective date of this emergency ordinance, both  
21 the Department of Public Health (“DPH”) and DBI shall post information on their websites  
22 advising the public about this emergency ordinance and how to file complaints relating to  
23 workplace ventilation standards that are within each departments’ jurisdiction. Upon receipt of  
24 such a complaint, DBI and DPH shall coordinate to ensure that the complaint is investigated  
25 within not more than three business days of receipt.

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Section 4. Preemption.

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

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

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

Section 6. Severability.

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

1 Section 7. Effective Date; Expiration.

2 Consistent with Charter Section 2.107, this emergency ordinance shall become  
3 effective immediately upon enactment, and shall expire on the 61st day following enactment  
4 unless reenacted as provided by Section 2.107. Enactment occurs when the Mayor signs the  
5 ordinance, the Mayor returns the ordinance unsigned or does not sign the ordinance within  
6 ten days of receiving it, or the Board of Supervisors overrides the Mayor’s veto of the  
7 ordinance.

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9 Section 8. Supermajority Vote Required.

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

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13 APPROVED AS TO FORM:  
14 DENNIS J. HERRERA, City Attorney

15 By: /s/ Anne Pearson  
16 ANNE PEARSON  
Deputy City Attorney

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## LEGISLATIVE DIGEST

[Emergency Ordinance - Enforcement of Workplace Ventilation Standards - COVID-19]

**Emergency ordinance to require property owners of high-rise buildings with 50,000 square feet or more of nonresidential floor area that use mechanical ventilation systems, to certify that such systems are operating in compliance with applicable laws; to require businesses operating within those buildings to post certification within their work spaces; and to require the Department of Public Health and Department of Building Inspection to post information on their websites about how to file complaints about noncompliance with workplace ventilation standards, and to coordinate to ensure that all such complaints are inspected within three business days.**

### Existing Law

The Department of Building Inspection (“DBI”) implements and enforces the ventilation standards for occupiable space in office buildings pursuant to Chapter 4 of the San Francisco Mechanical Code, Chapter 12 of the San Francisco Building Code, and Section 120.1 of the California Energy Code. The ventilation standards include: minimum ventilation rates based on the volume of different interior zones within a building; filter, intake, and exhaust requirements; a mandate that mechanical ventilation systems in office buildings operate in compliance with all standards at all times that the building is occupied, and that systems begin operation and achieve three complete air changes one hour prior to occupation.

Section 4(i) of the Stay-Safer-at-Home Order requires that all businesses that are allowed to be open indoors comply with certain ventilation requirements, including that they: (1) implement as many of the San Francisco Department of Public Health’s (“DPH”) recommended ventilation improvements as feasible and (2) keep hand-annotated documents showing which ventilation improvements were considered and implemented. The Stay-Safer-at-Home Order also requires all businesses operating indoors that are open to members of the public to conspicuously post signage, including at all primary public entrances, indicating which ventilation strategies are used at the facility.

### Amendments to Current Law

The proposed emergency ordinance would require:

- The owner and/or operator of each high-rise building with 50,000 square feet or more of non-residential floor area that uses a mechanical ventilation system to certify that its mechanical ventilation system complies with applicable requirements and minimum operation time windows—including pre-occupancy air exchange requirements;



- Each business operating in those buildings to post information at the entry to the building space in which it operates confirming that that such certification is complete, and advising occupants of the hours that the ventilation system is set to operate; and
- DPH and DBI to post information on their websites advising the public about this emergency ordinance and how to file complaints relating to workplace ventilation standards that are within each departments' jurisdiction. Upon receipt of such a complaint, DBI and DPH shall coordinate to ensure that the complaint is investigated within not more than three business days of receipt.

### Background

Since March 16, 2020, when the City and County of San Francisco implemented its first shelter-in-place order to reduce the impact of the virus that causes COVID-19, most indoor businesses have remained closed. Except for a brief period between October 27 and November 16, 2020, all non-essential offices have been required to remain closed under Health Officer Order No. C19-07 (the "Stay-Safer-at-Home Order") and its subsequent iterations.

On August 28, 2020, the State of California adopted a four-tiered, color-coded framework for reopening statewide based on the prevalence of virus transmission in each county – the Blueprint for a Safer Economy. Except for a brief period in September and October 2020, San Francisco has remained in either the most restrictive (purple) or the second-most restrictive (red) tiers. As vaccines for COVID-19 have arrived and become more available, community transmission of COVID-19 has decreased. As of March 16, 2021, San Francisco's current case rates indicate that the City will likely move from the substantial risk (red) tier into the moderate risk (orange) tier by March 24, 2021, and potentially to the minimal risk (yellow) tier by mid-April 2021. As a result, the San Francisco Health Officer is expected to soon allow the reopening of non-essential offices in the City.

The virus that causes COVID-19 can be transmitted in the air through aerosols and the risk of airborne transmission is generally higher indoors. The risk of transmission is likely to increase as more people return to offices. Therefore, it is essential that indoor businesses comply with existing ventilation standards and that those standards be enforced in order to best protect people working or visiting indoor offices. Also, while treatments for COVID-19 are improving and vaccines have been approved for use, treatments remain limited and COVID-19 vaccines will not likely be generally available to the majority of the public until mid-2021. The majority of the population remains susceptible to infection. This is especially true for those workers who spend significant time indoors in enclosed spaces, who often do not fit into priority categories for vaccination. This emergency ordinance will reduce the risk of COVID-19 transmission by ensuring compliance with existing ventilation standards applicable to indoor workplaces.

# 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 Ahsha Safai

Subject:

Emergency Ordinance - Enforcement of Workplace Standards

The text is listed:

Emergency ordinance to require property owners of high-rise buildings with 50,000 square feet or more of nonresidential floor area that use mechanical ventilation systems, to certify that such systems are operating in compliance with applicable laws; to require businesses operating within those buildings to post certification within their work spaces; and to require the Department of Public Health and the Department of Building Inspection to post information on their websites about how to file complaints about noncompliance with workplace ventilation standards, and to coordinate to ensure that all such complaints are inspected within five business days.

Signature of Sponsoring Supervisor: 