



DENNIS J. HERRERA  
City Attorney

ANNE PEARSON  
Deputy City Attorney

Direct Dial: (415) 554-4706  
Email: Anne.Pearson@sfgov.org

## MEMORANDUM

**TO:** Honorable Mayor London N. Breed  
Members, Board of Supervisors  
Grant Colfax, M.D., Director of Health  
Tomás Aragón, M.D., DrPH, County Health Officer  
Members, Health Commission

**FROM:** Anne Pearson, Deputy City Attorney  
Bradley Russi, Deputy City Attorney

**DATE:** March 24, 2020

**RE:** Process for Board of Supervisors Action on Emergency Orders

---

### SUMMARY

In response to questions posed to our office during and after the March 17, 2020 Board of Supervisors meeting, in this memorandum we describe the authority of the Mayor, the Board of Supervisors, and the Health Officer to take swift action to address the local emergency arising from the novel coronavirus (COVID-19) pandemic, and the checks and balances between the Mayor and the Board of Supervisors that exist to ensure that short-term emergency policies and programs are sound and reflect a coordinated strategy to protect the residents of San Francisco in extraordinary times.

As discussed in more detail below, the Mayor may declare a local emergency and the Health Officer may declare a local health emergency, and the Board of Supervisors must concur in each such declaration within seven days. Once the Mayor has declared a local emergency, the Mayor may issue orders taking actions to address that emergency, subject to concurrence by the Board. An order may include a single action or the Mayor may choose, for purposes of expediency, to combine multiple actions addressing different subjects in a single order. The Board of Supervisors may concur with some actions, and reject others, but the Board of Supervisors may not otherwise edit or add to the actions ordered by the Mayor. The Health Officer may also issue orders relating to the local health emergency. These orders, unlike orders by the Mayor, do not require Board of Supervisors concurrence, nor do they depend on the declaration of a local health emergency if those orders address the dangers posed by a communicable or infectious disease. The Mayor's declaration of emergency remains in effect for the duration of the emergency until rescinded by the Mayor or by motion of the Board of Supervisors. Similarly, the Health Officer's declaration of a local health emergency remains in effect for the duration of the emergency, until terminated by the Board of Supervisors. Typically, state law requires the Board of Supervisors to review the ongoing need for a local emergency every 60 days, and a local health emergency every 30 days, but the Governor has suspended the renewal requirements during the COVID-19 pandemic by Executive Order.

During an emergency the Board of Supervisors may enact emergency ordinances to address the emergency. Emergency ordinances expire within 60 days, may revise select provisions of the Charter, and may be enacted more quickly than non-emergency ordinances.

**MEMORANDUM**

TO: Honorable Mayor London N. Breed  
Members, Board of Supervisors  
Grant Colfax, M.D., Director of Health  
Tomás Aragón, M.D., DrPH, County Health Officer  
Members, Health Commission

DATE: March 24, 2020

PAGE: 2

RE: Process for Board of Supervisors Action on Emergency Orders

---

**BACKGROUND**

On February 25, 2020, Mayor London N. Breed issued a proclamation declaring a local emergency to exist in connection with the imminent spread within the City of novel coronavirus (COVID-19). Within seven days, as required by law, the Board of Supervisors concurred in the declaration of emergency and in the actions taken by the Mayor to meet the emergency. Since then, the County Health Officer has declared there to be a local health emergency, and the Board of Supervisors also ratified that emergency within seven days as required by law. The Health Officer has issued multiple orders to protect and promote health by reducing the rate at which COVID-19 is transmitted. Those Health Officer orders do not require Board of Supervisors ratification. The Mayor has issued three supplements to her initial proclamation of emergency to authorize actions to assist residents and businesses during the emergency, and suspend local laws where necessary. And the Board of Supervisors has taken legislative action to address the health emergency, including through the introduction of emergency ordinances. For the duration of the COVID-19 pandemic, the Governor has suspended the requirement that Board of Supervisors reaffirm the declarations of emergency at regular intervals.

**BOARD CONCURRENCE IN MAYORAL DECLARATIONS OF EMERGENCY**

Under state law, a local emergency may be declared by the governing body of a local jurisdiction, or by an official designated by ordinance. Cal. Govt. Code § 8630(a). San Francisco has exercised this power in Charter § 3.100(14) and Administrative Code §§ 7.1 and 7.6, vesting the Mayor with the power to declare local emergencies.

If the local emergency is declared by the Mayor, then the Board of Supervisors, as the City's governing body, must ratify the declaration within seven days in order for the declaration to remain in effect. Cal. Govt. Code § 8630(b). If the Board of Supervisors takes no action within seven days, then the Mayor's declaration of emergency terminates at the end of the seventh day and any authority that is contingent upon such a declaration (e.g. the authority to provide mutual aid) expires at that time.

**BOARD CONCURRENCE IN MAYORAL ORDERS REGARDING ACTIONS TAKEN TO MEET AN EMERGENCY**

State law further provides that during a local emergency, the governing body or officials designated, may promulgate orders necessary for the protection of life and property. *Id.* § 8634. In San Francisco, the Mayor is vested with the power to "direct the personnel and resources of any department, command the aid of other persons, and do whatever else the Mayor may deem necessary to meet the emergency." Charter § 3.100(14). As a check on this power, the actions the Mayor takes to meet the emergency are subject to concurrence by the Board of Supervisors. *Id.* The Mayor can decide to address a single subject in an order or address multiple subjects in an order.

Although the Charter requires that the Mayor seek the concurrence of the Board of Supervisors in actions taken to meet a declared emergency "as soon as reasonably possible," neither state nor local law establish a deadline by which the Board must act. Therefore, an order

## MEMORANDUM

TO: Honorable Mayor London N. Breed  
Members, Board of Supervisors  
Grant Colfax, M.D., Director of Health  
Tomás Aragón, M.D., DrPH, County Health Officer  
Members, Health Commission

DATE: March 24, 2020

PAGE: 3

RE: Process for Board of Supervisors Action on Emergency Orders

---

issued by the Mayor under a declaration of emergency remains in effect until such time as the Board acts, by motion, either to concur or reject.

Under the Charter, the Board's concurrence is required for a mayoral order to remain in effect. And as noted above, the Charter requires the Board to concur both in the Mayor's declaration of emergency and in the individual actions the Mayor takes to meet the emergency. Therefore, in considering a mayoral order where the Mayor decides to include more than one action, the Board may concur in each of the actions taken in the order or, instead, the Board may reject the actions taken in the order. The Board may also concur in some actions and reject others. For example, if a mayoral order includes five discrete actions taken to meet the emergency, the Board may concur in three of those actions, and decline to concur in the remaining two actions. This conclusion also follows from the ability of the Mayor to submit five separate orders for concurrence, each with an individual action, instead of a single order for expediency.

If the Board concurs in some of the proposed actions and rejects others, the Board's action changes the substance of the order, which has an effect similar to an amendment of the whole order. But while the Charter authorizes the Board to concur or reject in each action, it does not authorize the Board to revise the order to modify the actions or include different or additional actions. If the Board wishes to change an action ordered by the Mayor, it must reject the action in its entirety – similar to the role the Board plays regarding proposed contracts under Charter Section 9.118 or proposed General Plan amendments under Section 4.105. The Mayor may then decide to submit a new order with changes that are acceptable to the Board. Or, in some instances, the Board may choose to pursue its policy goal through an emergency ordinance that is subject to a different process, described below.

#### **POWER OF THE HEALTH OFFICER**

Under state law, a local Health Officer may declare a local emergency whenever there is an imminent and proximate threat of the introduction of any contagious, infectious, or communicable disease, chemical agent, noncommunicable biologic agent, toxin, or radioactive agent. Cal. Health & Safety Code § 101080. A local health emergency declared by the Health Officer does not remain in effect for a period in excess of seven days unless it has been ratified by the Board of Supervisors. *Id.*

Upon declaring a local health emergency, a local Health Officer may take a number of specific steps, including but not limited to, disclosing information to state or local agencies responding to the local health emergency and gathering technical information relating to the local emergency as necessary to protect the public health. *Id.* § 101085. A Health Officer may also take any preventive measure that may be necessary to protect and preserve the public health from any public health hazard during the local emergency. *Id.* § 101040. Although the Board of Supervisors must ratify the Health Officer's initial declaration of emergency, the Board is not required to ratify the Health Officer's orders during an emergency. In contrast to the Board's role in reviewing the Mayor's emergency orders, the Board does not have authority to approve or

## MEMORANDUM

TO: Honorable Mayor London N. Breed  
Members, Board of Supervisors  
Grant Colfax, M.D., Director of Health  
Tomás Aragón, M.D., DrPH, County Health Officer  
Members, Health Commission

DATE: March 24, 2020

PAGE: 4

RE: Process for Board of Supervisors Action on Emergency Orders

---

reject each of the Health Officer's orders, which may remain in effect for the duration of the emergency, or for a shorter period as determined by the Health Officer.

Also, whenever the county Health Officer has reason to believe that any case of any contagious, infectious or communicable disease exists, or has recently existed, within the territory under his or her jurisdiction, the Health Officer may take any measures as may be necessary to prevent the spread of the disease or occurrence of additional cases. *Id.* § 120175. The Health Officer's exercise of this authority is separate from, and not contingent upon, the Health Officer's declaration of a local health emergency or the Mayor's declaration of an emergency, and does not require Board ratification.

#### THE BOARD'S LEGISLATIVE POWER IN AN EMERGENCY

Charter Section 2.107 authorizes the Board to enact an emergency ordinance "in cases of public emergency that affect life, health, property, or for the uninterrupted operation of any City or County department or office required to comply with time limits established by law." Emergency ordinances differ from ordinary ordinances most significantly as to the speed with which they may be enacted and take effect. Emergency ordinances require only one reading, rather than two, and take effect immediately, rather than after the 30-day referendum period applicable to most ordinances. Charter §§ 2.105, 2.107. As a check upon this power, the Charter requires a two-thirds vote of the Board for passage and provides for the automatic expiration of the measure after 60 days. *Id.* § 2.107.

Emergency ordinances are subject to the ordinary mayoral veto and Board override process. Although an emergency ordinance takes effect immediately, the Mayor would still have 10 days to veto the ordinance, as provided in Charter Section 3.103. If the Mayor vetoes the emergency ordinance, then the ordinance becomes ineffective upon the exercise of the veto unless the Board overrides the veto by a two-thirds vote.

An emergency ordinance must contain: (1) a declaration setting forth the existence of the emergency; (2) a clear and concise description of the emergency; and (3) an explanation of how the measures in the ordinance will address the emergency. *Id.* By express provision of the Charter, an emergency ordinance may also supersede specific sections of the Charter, contrary to the general rule that ordinances must conform to provisions of the Charter, so long as the suspension is necessary to address the emergency. An emergency ordinance may not levy taxes; grant, renew or extend a franchise; regulate the rate charged by any public utility for its services; set salaries; issue bonds; or buy, sell or lease land. *Id.*

#### ENDING EMERGENCIES

Local law authorizes the Mayor to terminate a local emergency. Admin. Code § 7.6(a)(1). The Board of Supervisors may also terminate a local emergency by withdrawing its concurrence of an emergency declared by the Mayor, and must do so at the earliest possible date that conditions warrant. Cal. Govt. Code § 8630(d). Normally, a mayoral declaration of emergency must be reviewed by the Board of Supervisors every 60 days until a decision is made to terminate the emergency, Cal. Govt. Code § 8630(b), but Governor Newsom, by Executive

## MEMORANDUM

TO: Honorable Mayor London N. Breed  
Members, Board of Supervisors  
Grant Colfax, M.D., Director of Health  
Tomás Aragón, M.D., DrPH, County Health Officer  
Members, Health Commission

DATE: March 24, 2020

PAGE: 5

RE: Process for Board of Supervisors Action on Emergency Orders

---

Order, has suspended that legal requirement here as to the COVID-19 pandemic. So the Mayor's recent declaration of emergency will remain in effect indefinitely for the duration of the emergency until rescinded by the Mayor or rejected by the Board by motion withdrawing its concurrence.

When the Health Officer declares a local health emergency, state law typically requires the Board of Supervisors to review the need for continuing the local health emergency every 30 days, and to proclaim the termination of the local health emergency at the earliest possible date that conditions warrant the termination. Cal. Govt. Code § 101080. The Governor has also suspended that requirement here by Executive Order. Therefore, the local health emergency relating to the COVID-19 pandemic will also continue indefinitely for the duration of the emergency until terminated by the Board.