

ORDINANCE NO. ..
BOARD OF SUPERVISORS, COUNTY OF SAN MATEO,
STATE OF CALIFORNIA

* * * * *

**EMERGENCY ORDINANCE AMENDING THE COUNTY’S EMERGENCY COVID-19
PAID SICK LEAVE ORDINANCE (ORDINANCE NO. 4829) TO CLARIFY THE
ORDINANCE’S INTEGRATION WITH OTHER LAWS AND EXTEND THE
ORDINANCE’S EXPIRATION FROM DECEMBER 31, 2020, TO JUNE 30, 2021**

The Board of Supervisors of the County of San Mateo, State of California, ORDAINS as follows:

SECTION 1. Authority; Declaration of Emergency

The California Constitution, Article XI, Section 7 vests the County with authority to “make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.” Sections 25123(d) and 25131 of the California Government Code authorize the County to enact ordinances for the immediate preservation of the public peace, health, or safety. Moreover, pursuant to the authority set forth in Section 8634 of the Government Code, the Board of Supervisors may promulgate emergency orders and regulations necessary to provide for the protection of life and property.

On March 3, 2020, the San Mateo County Director of Emergency Services issued a proclamation of local emergency in San Mateo County, and the San Mateo County Health Officer declared a local health emergency, due to the introduction in the County of the novel coronavirus, “COVID-19.” Both the Director of Emergency Services and the Health Officer noted that the Centers for Disease Control and Prevention (“CDC”) had stated that COVID-19 is a serious public health threat.

On March 4, 2020, Governor Newsom proclaimed a State of Emergency related to COVID-19 throughout the State of California. On March 13, 2020, the President issued a “Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak.”

On March 10, 2020, the Board of Supervisors (the “Board”) ratified and extended the Director of Emergency Services declaration of local emergency and the Health Officer’s declaration of local health emergency in response to the spread of the novel coronavirus COVID-19. On April 7, 2020, the Board further extended the declaration of local emergency and the declaration of local health emergency indefinitely until the County takes action to terminate the local emergency and local health emergency.

To mitigate the spread of COVID-19, on March 16, 2020, the County's Health Officer issued an Order directing all individuals living in the County to "shelter in place." This Order generally required individuals to remain in their homes through April 7, 2020, and was subsequently revised and extended on March 31, April 29, May 15, May 29, June 4, and June 15, 2020. On June 17, 2020, the County's Health Officer issued an Order stating that the County would be fully harmonized with the State of California's Blueprint for a Safer Economy as to the activities and businesses allowed, and further provided additional behavioral restrictions, namely the practice of social distancing and the mandatory use of face coverings.

As of March 15, 2020, immediately prior to the Health Officer's initial "shelter in place" order, 41 cases of COVID-19 had been identified in the County, and in the seven Bay Area jurisdictions jointly issuing "shelter in place" orders, there were at least 258 confirmed cases and three deaths resulting from COVID-19. As of June 30, 2020, immediately prior to the County's adoption of its Emergency COVID-19 Paid Sick Leave Ordinance, there were 3,311 confirmed cases of COVID-19 and 108 deaths resulting from COVID-19 in the County. As of December 3, 2020, there were 15,217 confirmed cases of COVID-19 and 176 deaths resulting from COVID-19 in San Mateo County alone.

Due to the continuing public health emergency related to COVID-19 and the actions required to respond to the emergency, many workers across the County are and will be unable to work (including telework) due to illness, exposure to others with the coronavirus, business closures, and family and household caregiving obligations related to closures of schools and care facilities, and an inability to secure caregiving assistance. Additionally, due to a continued downturn in economic conditions and in order not to experience a loss of wages, many workers may decide to come into work notwithstanding that they exhibit symptoms of COVID-19 or have contracted COVID-19. These conditions pose a significant threat to the health, safety, and economic well-being of those who live or work in the County.

SECTION 2. Findings and Purpose

On March 18, 2020, President Trump signed into law the Families First Coronavirus Response Act ("FFCRA"), H.R. 6201, which provides emergency paid sick leave to certain employees who are unable to work or telework due to the COVID-19 crisis. The FFCRA, however, exempts employers with 500 or more employees, leaving those employees without the FFCRA's critical protections. On April 16, 2020, Governor Gavin Newsom signed Executive Order N-51-20, which extends paid sick leave benefits for food sector workers impacted by COVID-19.

On July 7, 2020, the Board enacted Ordinance No. 4829, which addressed the emergency paid leave coverage gap created by the FFCRA and Executive Order N-51-20, by extending emergency paid leave to employees working in the unincorporated areas of the County who are employed by businesses with 500 or more employees within the United States, which includes any State of the United States, the District of Columbia, or any Territory or possession of the United States. Ordinance No. 4829 has an expiration

date of December 31, 2020, unless the Board of Supervisors takes an action to extend the Ordinance.

On September 9, 2020, Governor Newsom signed Assembly Bill 1867, which requires private employers with 500 or more employees to provide COVID-19 related supplemental paid sick leave to their employees. Unlike the County's Ordinance, AB 1867 does not require such employers to provide supplemental paid sick leave to workers who need to care for family members who are ill with COVID-19 or experiencing COVID-19 symptoms, or whose senior care providers, schools, or childcare providers are unavailable in response to a public health or other public official's recommendation. AB 1867, however, does allow covered employees to take this supplemental paid sick leave in situations where the employer prohibits employees from working due to COVID-19 transmission concerns. Notably, both Ordinance No. 4829 and AB 1867 contain offset provisions, which allow employees to access supplemental paid sick leave in all covered COVID-19 situations without the risk to the employer of duplicate sick leave entitlements. AB 1867 is in effect until December 31, 2020 or the expiration of any federal extension of the FFCRA, whichever occurs later.

In enacting this Ordinance to amend Ordinance No. 4829, the Board makes the following findings:

- (1) On June 8, 2020, the National Bureau of Economic Research officially declared a recession, noting that the U.S. economy had fallen into a broad contraction not confined to one sector. According to the NBER Committee, the unprecedented magnitude of the decline in employment and production, and its broad reach across the entire economy, warrants the designation of this crisis as a recession. This marks the first U.S. recession since the Great Recession, which began in December 2007 and lasted until June 2009;
- (2) Workers in San Mateo County continue to face significant employment and economic insecurity. According to an October 16, 2020 report from the State of California's Employment Development Department, the unemployment rate in the County was 7.1 percent in September 2020, as compared with an estimated 1.9 percent in September 2019;
- (3) Between September 2019 and September 2020, the total number of jobs in the County decreased by 10.0 percent, with the most severe impacts felt in the industries of leisure and hospitality; trade, transportation, and utilities; and private educational and health services;
- (4) The Centers for Disease Control ("CDC") reports that as of December 4, 2020, the total number of U.S. COVID-19 cases has surpassed 14 million, with 275,386 deaths nationwide. The daily case count in the United States has been growing with alarming speed, with a record 219,187 new cases reported on December 3, 2020. Multiple news outlets have dubbed this increase in cases as the "third wave" of COVID-19, while those in the medical community, including William Hanage,

associate professor of epidemiology at Harvard T.H. Chan School of Public Health, prefer to liken it to a “wildfire.”;

- (5) On November 16, 2020, as COVID-19 cases sharply increased across the country and California, Governor Newsom and state public health officials announced immediate actions to slow the spread of the virus, effectively “pulling an emergency brake” in the Blueprint for a Safer Economy, resulting in 94.1 percent of California’s population in the most restrictive tier, effective November 17, 2020. The Governor further announced that the state will reassess data continuously and move more counties back if necessary. “We are sounding the alarm”, the Governor stated. “California is experiencing the fastest increase in cases of cases we have seen yet – faster than what we experienced at the outset of the pandemic or even this summer. The spread of COVID-19, if left unchecked, could quickly overwhelm our health care system and lead to catastrophic outcomes”;
- (6) The American College of Occupational and Environmental Medicine stated that paid sick leave is recommended to reduce the chances that a worker will come to work with COVID-19;
- (7) In the absence of paid sick leave, many workers facing employment and economic insecurity will make the difficult decision to work when they should be quarantining or isolating themselves at home, posing a significant public health risk;
- (8) Moreover, in the absence of paid sick leave, many workers will have no option other than to send their children to childcare providers or school when those children should be quarantining or isolating themselves at home, thereby posing a significant public health risk; and
- (9) The CDC’s May 2020 Interim Guidance for Businesses and Employers recommends that in order to maintain healthy business operations, employers should implement flexible sick leave policies that are consistent with public health guidance. The CDC further advises that sick leave policies should permit employees to stay home to care for a sick family member or take care of children due to school and childcare closures.
- (10) Given the current and anticipated growth in the number of COVID-19 cases heading into 2021, employees’ need for supplemental paid sick leave will extend past the December 31, 2020, expiration date for County Ordinance No. 4829.
- (11) It is not presently known whether the federal government will extend the expiration date of FFCRA or otherwise take action to provide additional emergency paid sick leave to those covered employees who are unable to work or telework due to the COVID-19 pandemic. Additionally, in the absence of federal action, it is unknown whether the State will take action to extend or otherwise expand the leave protections under AB 1867.

- (12) To the extent that federal, state, or other local legislation would require employers to provide emergency paid sick leave to employees covered by County Ordinance No. 4829 for the reasons set forth in Ordinance No. 4829, it is the intent of this Board to clarify that the emergency paid sick leave provided under such federal, state, or local legislation will offset, and not be added to, the emergency paid sick leave provided under Ordinance No. 4829.

By extending the deadline for the County's Ordinance No. 4829, this measure will address the County's local health emergency in several regards:

- (1) The Local Health Officer's Orders were issued to ensure that the maximum number of people stay at home to slow the spread of COVID-19 to the extent possible. This Ordinance is intended to extend the deadline for employees to utilize the supplemental paid sick leave provided in Ordinance No. 4829, in order to assist employees working in the unincorporated areas of the County so that they will be financially better able to stay home and isolate if exposed to COVID-19, exhibiting symptoms related to COVID-19, or caring for an individual affected by COVID-19. By extending the deadline for employees to access supplemental paid sick leave during the current crisis, this Ordinance will reduce the likelihood that infected employees will report to work, or that any of their infected family members or household members will be out in the community during such period of infection, and will therefore decrease the spread of COVID-19 through interactions with fellow employees or members of the public;
- (2) With the closure of schools by school districts across the Bay Area, as well as limitations of other facilities providing education, childcare, elder care, or other family and household caregiving support, workers in the County are facing significant caregiving impacts. By extending the deadline for employees to access supplemental paid sick leave, this Ordinance makes it more likely that those employees will be able to care for their family and household members and ensure those family and household members stay home, thereby minimizing the spread of COVID-19 in the community;
- (3) This Ordinance will also address the current financial crisis of those employees working in the unincorporated areas of the County who are struggling to make ends meet due to widespread closures, lack of access to childcare and elder care, and other workplace disruptions, which are likely to continue to affect employees through the winter and into 2021 and which would cause such employees to otherwise choose between receiving a paycheck or minimizing the risk of the spread of COVID-19; and
- (4) Due to the significant and extensive impact of COVID-19 on workers in the County, the likelihood of the economic downturn extending through the winter and into 2021, and the current unknown timeframe for production and widespread distribution of an effective vaccine, this Ordinance will provide protection to employees through June 30, 2021.

SECTION 3. Clarification of the Integration of the Emergency Paid Sick Leave Provided by Ordinance No. 4829 with Emergency Paid Sick Leave Required by Other Laws.

Section 7 of Ordinance No. 4829 is hereby amended and restated in its entirety to read as follows:

If, between March 17 to June 30, 2020, an Employer provided additional paid leave specifically for the COVID-19 related purposes set forth in this Ordinance and such additional paid leave was above and beyond an Employee's regular or previously accrued leaves (e.g., sick or personal leaves) ("Voluntary COVID-19 Leave"), or an Employer provides supplemental leave pursuant to the laws of another jurisdiction requiring the provision of additional paid leave specifically for the COVID-19 related purposes set forth in this Ordinance at any time ("Other Required COVID-19 Leave"), the obligation to provide Supplemental Paid Sick Leave under this Ordinance shall be reduced for every hour an Employer allowed an Employee to take the Voluntary COVID-19 Leave or Other Required COVID-19 Leave in an amount equal to or greater than the requirements in Section 4. If an Employer provided Voluntary COVID-19 Leave or Other Required COVID-19 Leave to an Employee at a rate of pay or hourly accrual rate less than that provided in Section 4, then such amounts or hours shall be offset against such rates and hours as the Employee would have received as set forth in Section 4.

With the exception of any Voluntary COVID-19 Leave or Other Required COVID-19 Leave, as defined above, the Supplemental Paid Sick Leave provided by this Ordinance is in addition to and independent of any form of leave (e.g., vacation, sick, or personal leaves) to which an Employee may be entitled to utilize pursuant to the Employer's policies and the inability of an Employee to utilize the Supplemental Paid Sick Leave provided by this Ordinance shall not be construed to disqualify an Employee from utilizing such other forms of leave in accordance with the Employer's policies.

Section 11 of Ordinance No. 4829 is hereby amended and restated in its entirety to read as follows:

With the exception of any offsets provided in Section 7 for Voluntary COVID-19 Leave or Other Required COVID-19 Leave provided under any federal, state, or local laws, including but not limited to, the rights and remedies provided to employees pursuant to the Families First Coronavirus Response Act (H.R. 6201), the California Governor's Executive Order N-51-20, AB 1867, or any extension of such executive order or statutes, the provisions of this Ordinance are in addition to or independent of any other rights, remedies, or procedures available under any other law and do not diminish, alter, or negate any other legal rights, remedies, or procedures available to an Employee.

SECTION 4. Extension of Ordinance No. 4829.

Section 14 of Ordinance No. 4829 is hereby amended and restated in its entirety to read as follows:

This Ordinance shall be in effect until June 30, 2021, unless the Board of Supervisors takes an action to extend this Ordinance.

SECTION 5. Authority.

This Ordinance is approved pursuant to Sections 25123(d) and 25131 of the California Government Code, allowing for ordinances for the immediate preservation of the public peace, health, or safety, as well as Section 8634 of the Government Code, which authorizes ordinances necessary during a local emergency to provide for the protection of life and property.

SECTION 6. Urgency Ordinance.

This Ordinance, as an ordinance enacted for the immediate preservation of the public peace, health, or safety, is an urgency ordinance pursuant to Sections 25123(d) and 25131 of the California Government Code and shall be effective immediately upon its introduction and passage.

* * * * *