ORDINANCE NO. ORD-20-0017

AN ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF LONG BEACH AMENDING THE LONG BEACH
MUNICIPAL CODE BY ADDING CHAPTER 8.110
RELATING TO COVID-19 PAID SUPPLEMENTAL SICK
LEAVE; DECLARING THE URGENCY THEREOF; AND
DECLARING THAT THIS ORDINANCE SHALL TAKE
EFFECT IMMEDIATELY

WHEREAS, on January 31, 2020, the United States Secretary of Health
and Human Services declared a public health emergency based on the threat caused by
COVID-19 (also known as the “Coronavirus”); and

WHEREAS, on March 4, 2020, the Governor of California proclaimed a
State of Emergency (Executive Order N-25-20) in California based on the threats to
public health caused by COVID-19; and

WHEREAS, on March 4, 2020, after deep concern by the World Health
Organization and the Federal government, and as a result of the need to proactively slow
the spread of, and combat, COVID-19 in the City of Long Beach, the City Public Health
Officer issued a Declaration of Local Health Emergency and the Acting City Manager
issued a Proclamation of Local Emergency; and

WHEREAS, on March 10, 2020, the City Council of the City of Long Beach
recognized that an emergency did exist and unanimously passed a Resolution ratifying
the City Manager’s Proclamation of a Local Emergency and the Public Health Officer’s
Declaration of Local Health Emergency; and

WHEREAS, on March 11, 2020, the World Health Organization declared
the COVID-19 a pandemic; and

WHEREAS, on March 13, 2020, the President of the United States of
America declared a National Emergency as a result of COVID-19; and

WHEREAS, on March 19, 2020, the Governor of the State of California issued an Order (Executive Order N-33-20) that all individuals living in California stay home or at their place of residence, except as needed to maintain continuity of operations for certain critical infrastructure sectors, to protect the public health of Californians, to mitigate the impact of COVID-19, and to ensure the healthcare delivery system is capable of serving all; and

WHEREAS, on March 24, 2020, in order to mitigate the effects of COVID-19 within the City, the Long Beach Health Officer issued the “Safer at Home” Order to control the affects and spread of COVID-19; and

WHEREAS, on April 1, 2020, the Emergency Paid Sick Leave Act (enacted as part of the Families First Coronavirus Response Act (H.R.6201)) became effective and mandates that certain employers provide their employees with paid sick leave to be used for any of the following COVID-19 related reasons:

- The employee is subject to quarantine or isolation by federal, state or local order due to COVID-19, or is caring for someone who is quarantined or isolated;
- The employee is advised by a health-care provider to self-quarantine as a result of COVID-19 or is caring for someone who is so advised by a health-care provider;
- The employee is experiencing symptoms of COVID-19 and is seeking medical diagnosis; or
- The employee is caring for a minor child because of the child’s school, daycare or childcare provider is closed or unavailable as a result of COVID-19 and the employee is unable to secure an alternative reasonable caregiver; and

WHEREAS, the federal Emergency Paid Sick Leave Act mandates eighty (80) hours of paid sick leave for full-time employees and a proportional provision of paid sick leave hours to part-time employees calculated by taking the average number of
1 hours an employee works over a two (2) week period; and
2 WHEREAS, the federal Emergency Paid Sick Leave Act requires sick leave
to be available immediately regardless of the length of an employee's employment; and
3 WHEREAS, the sick leave requirements of the federal Emergency Paid
Sick Leave Act do not apply to employers with more than five hundred (500) employees,
leaving their employees without the critical protections included in the federal Emergency
Paid Sick Leave Act; and
4 WHEREAS, given the extraordinary health and economic threats caused by
COVID-19 and the need to ensure public health and safety and fair employment practices
during the COVID-19 pandemic the City Council is compelled to act by addressing the
gap created by the federal Emergency Paid Sick Leave Act by extending paid leave to
employees in the City who are employed by businesses with five hundred (500) or more
employees;
5 NOW, THEREFORE, The City Council of the City of Long Beach ordains as
follows:
6
Section 1. Chapter 8.110 is added to the Long Beach Municipal Code to
read as follows:

CHAPTER 8.110
COVID-19 PAID SUPPLEMENTAL SICK LEAVE

8.110.010 Purpose.
As a result of the COVID-19 pandemic and the "Stay at Home" order
issued by California Governor Gavin Newsom and the "Safer at Home"
order issued by the City of Long Beach, both of which were issued to protect
the public health and welfare, many workers in the City of Long Beach are
facing significant job, health and economic insecurity. To ensure public
health and safety and fair employment practices during the economic
upheaval resulting from the COVID-19 pandemic, the City Council is
compelled to enact this Chapter, which sets forth paid supplemental sick
leave requirements for employers not covered by the federal Emergency
Paid Sick Leave Act. By extending supplemental paid sick leave to
employees not protected by the federal Emergency Paid Sick Leave Act,
this Chapter makes it more likely that those employees will be able to care
for themselves and their loved ones and ensure that they and their loved
ones stay home, and thereby minimize the spread of COVID-19 in the
community. This Chapter also addresses the current financial crisis of those
employees in Long Beach not protected by the federal Emergency Paid Sick
Leave Act who are struggling financially due to widespread closures, lack of
access to childcare and elder care, and other workplace disruptions, which
are likely to continue to affect employees after the expiration of the
Governor’s “Stay at Home” order and the City of Long Beach’s “Safer at
Home” order.

8.110.020 Definitions.

For purposes of this Chapter, the following words, whether used in
the singular or plural, have the following meanings:

A. “City” means the City of Long Beach.

B. “Employee” means an individual employed by an Employer
(as defined below) and who performs any work within the geographic
boundaries of the City of Long Beach for such Employer, provided as
follows:

1. The determination of employee status in the
construction industry will be made in accordance with Section 245.5(a)(2) of
the California Labor Code.

2. The determination of employee status for all other
businesses will be made in accordance with Section 2750.3 of the California Labor Code.

C. "Employer" means a person, as defined in Section 18 of the California Labor Code, including a corporate officer or executive, who directly or indirectly, or through an agent or any other person, including through the services of a temporary service or staffing agency or similar entity, employs or exercises control over the wages, hours or working conditions of any Employee.

D. "Federal Emergency Paid Sick Leave Act" means the federal Emergency Paid Sick Leave Act enacted as part of the Families First Coronavirus Response Act (H.R.6201) which became effective on April 1, 2020.

E. "Person" means a person, association, organization, partnership, business trust, limited liability company or corporation.

8.110.030 Covered employers.

This Chapter applies to Employers with five hundred (500) or more employees nationally that are not required, in whole or in part, to provide paid sick leave benefits under the Federal Emergency Paid Sick Leave Act.

8.110.040 Supplemental sick leave requirement.

Employers subject to this Chapter under Section 8.110.030 must provide the paid supplemental sick leave benefit described in this Chapter to its Employees. This benefit is effective immediately on the effective date of this Chapter.

8.110.050 Supplemental sick leave hours.

A. A fulltime Employee is entitled to eighty (80) hours of paid
supplemental sick leave. These hours shall be available on the effective
date of this Chapter.

B. A part-time Employee is entitled to paid supplemental sick
leave hours equal to the number of hours an Employee works on average
over a two (2) week period. These hours shall be available on the effective
date of this Chapter.

8.110.060 Scope of benefit.
Supplemental paid sick leave hours are subject to the requirements
set forth in this Section 8.110.060.

A. An Employee can use paid supplemental sick leave for any of
the following purposes:

1. The Employee is subject to quarantine or isolation by
federal, state or local order due to COVID-19, or is caring for someone who
is quarantined or isolated due to COVID-19;

2. The Employee is advised by a health-care provider to
self-quarantine due to COVID-19 or is caring for someone who is so
advised by a health-care provider;

3. The Employee experiences symptoms of COVID-19
and is seeking medical diagnosis;

4. The Employee is caring for a minor child because the
child's school, daycare, or childcare provider is closed or unavailable
because of COVID-19 and the Employee is unable to secure a reasonable
alternative caregiver.

B. The Employer shall pay the Employee for properly used
supplemental sick leave at the Employee's regular rate of pay up to Five
Hundred Eleven Dollars ($511.00) per day and not to exceed an aggregate
of Five Thousand One Hundred Ten Dollars ($5,110.00). Notwithstanding
the foregoing, the Employer may pay an Employee using supplemental sick leave for a purpose identified in Section 8.110.060(A)(1-4) that relates to care for another person at two-thirds of the employees' regular rate of pay up to Two Hundred Dollars ($200.00) per day and not to exceed an aggregate of Two Thousand Dollars ($2,000.00).

C. For a part-time Employee, the Employer will calculate the amount of paid supplemental sick leave used based on the average number of hours the employee worked per day during the six (6) months immediately preceding the effective date of this Chapter. If an Employee has worked for the Employer for less than six (6) months, then the Employer shall calculate the amount of paid supplemental sick leave an Employee is entitled to based on the average hours the Employer expected the Employee to work per day at time of hire.

D. An Employer may not change any paid time off policies on or after the effective date of this Chapter except to provide additional paid leave.

E. An Employer shall not require an Employee to find a replacement as a condition of approving the paid supplemental sick leave.

F. An Employer may require an Employee to identify the basis for requesting paid supplemental sick leave but shall not require a doctor's note or other documentation for the use of paid supplemental sick leave.

G. An Employer may require the Employee to follow reasonable notice procedures in order to use the paid supplemental sick leave, but only when the need for the paid supplemental sick leave is foreseeable.

H. Employees are not required to exhaust their sick leave or other accrued leave prior to use of the paid supplemental sick leave hours.

I. An Employee is not entitled, under any circumstances, to be paid for unused paid supplemental sick leave. Unused paid supplemental
sick leave will not be available after the sunset of this Chapter and thereafter shall cease to exist unless an Employer extends an Employee's access to such leave.

J. Upon an Employee's separation from employment, an Employer is no longer obligated to provide or pay for any paid supplemental sick leave not used prior to separation.

K. This Chapter provides minimum requirements pertaining to paid supplemental sick leave and shall not be construed to prevent an Employer from providing or advancing additional paid time off to an Employee and shall not be construed to limit the amount of paid time off that may be provided to an Employee.

8.110.070 Exemptions.

A. Employee able to work from home. Nothing in this Chapter is intended to require the provision of paid supplemental sick leave to Employees that can work from home and are healthy enough to do so.

B. Health Care Providers. Employers may exclude Employees that are "health care providers" from the requirements of this Chapter. For purposes of this Section, "health care providers" includes any individual who is capable of providing health care services necessary to combat the COVID-19 public health emergency. To minimize the spread of COVID-19, Employers are encouraged to be judicious when using this definition to exempt "health care providers" from the provisions of this Chapter.

C. Emergency Responders. Employers may exclude Employees that are "emergency responders" from the requirements of this Chapter. For purposes of this Section, "emergency responders" includes those categories of Employees who: (1) interact with and aid individuals with physical or mental health issues, including those who are or may be...
suffering from COVID-19; (2) ensure the welfare and safety of the Long
Beach Community; (3) have specialized training relevant to emergency
response; and (4) provide essential services relevant to people's health and
well-being. To minimize the spread of COVID-19, Employers are
encouraged to be judicious when using this definition to exempt
"emergency responders" from the provisions of this Chapter.

D. Government. This Chapter does not apply to employees of
government agencies working within the course and scope of their public
service employment.

E. Generous Leave. If an Employer has a paid leave or paid
time off policy that provides a minimum of one hundred and sixty (160)
hours of paid leave annually, the Employer is exempt from any obligation to
provide paid supplemental sick leave pursuant to this Chapter for any
Employee that received the more generous paid leave.

8.110.080 Employer offset.

An Employer's obligation to provide paid supplemental sick leave
benefits under this Chapter shall be reduced for every hour an Employer
provided an Employee with paid leave in an amount equal to or greater than
the requirements in Section 8.110.060, not including previously accrued
hours, on or after March 4, 2020, for any of the purposes described in
Section 8.110.060(A)(1-4) or in response to an Employee's inability to work
due to COVID-19.

8.110.090 Enforcement.

An Employee claiming a violation of this Chapter may bring a private
right of action in the Superior Court of the State of California against an
Employer and be awarded:
A. All actual damages (including, but not limited to, back pay and provision of the supplemental paid sick leave unlawfully withheld) suffered by the Employee.

B. Punitive damages, pursuant to California Civil Code Section 3294.

C. Reinstatement to the position the Employee was discharged from in violation of this Chapter.

D. Reasonable attorney’s fees and costs, as determined by the court, if the Employee is the prevailing party in the action.

E. Any other legal or equitable relief the court may deem just and appropriate.

8.110.100 Retaliatory action is prohibited.

No Employer shall discharge, reduce in compensation or otherwise discriminate against any Employee for opposing any practice proscribed by this Chapter, for requesting to use or actually using paid supplemental sick leave under this Chapter, for participating in proceedings related to this Chapter, for seeking to enforce their rights under this Chapter by any lawful means, or for otherwise asserting rights under this Chapter.

8.110.110 Exemption for collective bargaining agreement.

A collective bargaining agreement in place on the effective date of this Chapter may supersede the provisions of this Chapter if it contains COVID-19 related sick leave provisions. When the collective bargaining agreement expires or is otherwise open for renegotiation, the provisions of this Chapter may only be expressly waived if the waiver explicitly states that Employees are waiving the benefits they are legally entitled to pursuant to the City of Long Beach’s COVID-19 Paid Supplemental Sick Leave
Ordinance. If a collective bargaining agreement is in place on the effective date of this Chapter but the agreement does not address COVID-19 related sick leave provisions, the Employer shall comply with this Chapter unless and until the agreement is amended to expressly waive in clear and unambiguous terms set forth in the agreement as described above.

8.110.120 No waiver of rights.

Except for a collective bargaining agreement provision made pursuant to Section 8.110.110, any waiver by an Employee of any or all of the provisions of this Chapter shall be deemed contrary to public policy and shall be void and unenforceable.

8.110.130 Expiration of Chapter.

Following adoption of this Chapter, and every ninety (90) days thereafter, the City Manager shall report back to the City Council and Mayor on the effectiveness of the provisions of this Chapter and whether the provisions of this Chapter are still necessary based on the City's recovery from the health and economic impacts of the COVID-19 pandemic. The City Council will determine the sunset date of this Chapter based on relevant information contained in the ninety (90) day reports.

8.110.140 Coexistence with other available relief for specific deprivations of protected rights.

Except for the rights and remedies provided to employees pursuant to the Federal Emergency Paid Sick Leave Act and California Governor's Executive Order N-51-20, the provisions of this Chapter are in addition to and/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.

8.110.150 Conflicts.

Nothing in this Chapter shall be interpreted or applied to create any power or duty in conflict with any federal or state law.

8.110.160 Severability.

If any section, subsection, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have adopted this ordinance and each and every section, subsection, sentence, clause and phrase thereof not declared invalid or unconstitutional, without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

Section 2. This is an emergency measure and is urgently required for the reasons identified in Section 8.110.010. On that basis this ordinance shall be passed as an emergency measure, to take effect immediately.

Section 3. Pursuant to Section 211 of the City Charter, this ordinance is an emergency ordinance duly adopted by the City Council by a vote of five (5) of its members and shall take effect immediately. The City Clerk shall certify to a separate roll call and vote on the question of the emergency of this ordinance and to its passage by the vote of five (5) members of the City Council of the City of Long Beach, and cause the same to be posted in three (3) conspicuous places in the City of Long Beach, and it shall thereupon take effect and shall be operative immediately.
Section 4. This ordinance shall also be adopted by the City Council as a regular ordinance, to the end that in the event of any defect or invalidity in connection with the adoption of this ordinance as an emergency ordinance, the same shall, nevertheless, be and become effective on the thirty-first (31st) day after it is approved by the Mayor. The City Clerk shall certify to the passage of this ordinance by the City Council of the City of Long Beach and shall cause the same to be posted in three (3) conspicuous places in the City of Long Beach.

I hereby certify that on a separate roll call and vote which was taken by the City Council of the City of Long Beach upon the question of emergency of this ordinance at its meeting of __ May 19 ___, 2020, the ordinance was declared to be an emergency by the following vote:

Ayes: Councilmembers: Zendejas, Pearce, Price,

Supernaw, Mungo, Andrews,

Uranga, Austin, Richardson.

Noes: Councilmembers: None.

Absent: Councilmembers: None.

Recusal(s): Councilmembers: None.

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I further certify that thereafter, at the same meeting, upon a roll call and vote on adoption of the ordinance, it was adopted by the City Council of the City of Long Beach by the following vote:


Noes: Councilmembers: None.

Absent: Councilmembers: None.

Recusal(s): Councilmembers: None.
I further certify that the foregoing ordinance was thereafter adopted on final reading by the City Council of the City of Long Beach at its meeting of ______________, 2020, by the following vote:

Ayes: Councilmembers: ____________________________

Noes: Councilmembers: ____________________________

Absent: Councilmembers: ___________________________

Recusal(s): Councilmembers: _________________________

Approved: 5-22
(Date)

Mayor

Clerk
STATE OF CALIFORNIA       ) ss
COUNTY OF LOS ANGELES    )
CITY OF LONG BEACH       )

Tamela Austin being duly sworn says: That I am employed in the Office of the City Clerk of the City of Long Beach; that on the 21st day of May, 2020, I posted three true and correct copies of Emergency Ordinance No. ORD-20-0017 in three conspicuous places in the City of Long Beach, to wit: One of said copies in the lobby of Civic Chambers; one of said copies in the Main Library; and one of said copies on the front counter of the Office of the City Clerk.

[Signature]

Subscribed and sworn to before me
This 21st day of May 2020.

[Signature]
CITY CLERK