



DEPARTMENT NOTICE

20-083
05/05/20

Enforcement of Public Health Orders (Supersedes 20-064)

Federal, California, and San Francisco authorities have proclaimed a state of emergency in connection with the spread of novel coronavirus ("COVID-19".) COVID-19 is easily transmitted, especially in group settings, and it is essential that the spread of the virus be slowed to protect the ability of public and private health care providers to handle the influx of new patients and safeguard public health and safety.

In San Francisco, on February 25, 2020 the Mayor declared a local emergency relating to COVID-19 under California Government Code Sections 8550 et seq., San Francisco Charter Section 3.100(14) and Chapter 7 of the San Francisco Administrative Code. On March 6, 2020, the City's Health Officer declared a local health emergency under Section 101080 of the California Health and Safety Code. On March 16, 2020, the City's Health Officer issued a Shelter in Place Order. On March 30, 2020, the Mayor issued the Sixth Supplemental Proclamation that restricted operating hours for certain businesses. On March 31, 2020, the City's Health Officer issued Health Officer Order 19-07b, which amended, clarified and extended the Shelter in Place Order through May 3, 2020. On April 29, 2020, the City's Health Officer issued Health Officer Order C19-07c, further amending, clarifying and continuing the Shelter in Place Order through May 31, 2020 (the "SIP Order"). Except as otherwise defined in this Department Notice, initially capitalized terms have the meanings given them in the SIP Order.

As of May 4, 2020, generally, under this SIP Order gatherings of individuals with anyone outside of their household or living unit remain prohibited, with limited exceptions for Essential Activities, Essential Travel, or Outdoor Activities, or to perform work for Essential Businesses, Outdoor Businesses, and government agencies. When people are allowed to leave their homes, they must comply with "Social Distancing Requirements" with anyone outside their household. Under the SIP Order Social Distancing Requirements means: 1) maintaining at least six-foot social distancing from individuals who are not part of the same household or living unit; 2) frequently washing hands with soap and water for at least 20 seconds, or using hand sanitizer that is recognized by the Centers for Disease Control and Prevention as effective in combatting COVID-19; 3) covering coughs and sneezes with a tissue or fabric or, if not possible, into the sleeve or elbow (but not into hands); 4) wearing a face covering when out in public, consistent with the orders of the City's Health Officer; and; and 5) avoiding all social interaction outside the household when sick with a fever, cough, or other COVID-19 symptoms.

But this new SIP Order makes three significant sets of changes that ease restrictions under the prior Health Order.

First, this SIP Order now permits certain Outdoor Businesses to operate outdoors so long as they can do so safely. To qualify as an Outdoor Business, it must have operated primarily outdoors before March 16, 2020 and must provide for at least 6-feet of social distancing and comply with a posted Social Distancing Requirements and Protocols. These outdoor operations are considered low risk because they are outdoors and involve brief and infrequent interactions among individuals. Allowed

Outdoor Businesses include flea markets, car washes, nurseries, and gardening services. For clarity, Outdoor Businesses do not include outdoor restaurants, cafes, or bars.

Second, the SIP Order allows more outdoor recreation activities to occur again so long as they can be done safely, while maintaining social distance, without physical contact, shared equipment or use of high touch areas in recreation facilities. Examples of permissible Outdoor Activities include sunbathing, hiking, golf, skateboarding, and fishing. These activities must be done in compliance with Social Distancing Requirements and Protocols posted on site for any facilities that are used for those activities.

And third, the SIP Order allows all construction to proceed as Essential Business, consistent with the California shelter-in-place order, so long as it is done safely in accordance with specified Construction Project Safety Protocols attached as Appendix B to the SIP Order. Also, commercial as well as residential real estate transactions are allowed to fully resume as Essential Businesses, but with continued restrictions on in-person viewings and appointments, and commercial and residential moves are allowed.

Bars, nightclubs, theaters and movie theaters, and other entertainment venues remain closed for any gatherings. Restaurants, cafes, coffee shops, and other facilities that serve food—regardless of their seating capacity and including outdoor seating areas—remain closed except solely for takeout and delivery service. All gyms and fitness studios remain closed. All hair and nail salons must also remain closed. Facilities that sell food and that provide health care remain open as permitted by the SIP Order.

Portions of the SIP Order does not apply to individuals who are unsheltered but those individuals must abide by Social Distancing Requirements. To the maximum extent feasible, unsheltered individuals must maintain a 12 foot by 12-foot distancing for tents.

No individual who is sick may go to the workplace or be outside that person's residence except as necessary to seek and receive medical care.

Approach to Enforcement

Members may directly enforce health orders under state law, and the SIP Order is such an order. Cal. Health & Safety Code § 101029; Cal. Govt. Code § 41601; Penal Code § 409.5. Members are directed to review the SIP Order. Members may educate, admonish, seek voluntarily compliance, and use enforcement for violations of the SIP Order (“progressive enforcement”). Members issuing citations for violating the SIP Order should cite **SF Admin Code 7.17(b) (misdemeanor for violating a lawful emergency order) and Cal Penal Code § 148 (misdemeanor for willful resisting, delaying, or obstructing the SIP Order), if appropriate.** Members shall comply with Department General Order 5.04, Private Person Arrest and 10.11., Body Worn Cameras.

Businesses:

Members may use **progressive enforcement** for ensuring that businesses that are not Essential Businesses or Outdoor Businesses under the plain meaning of the SIP order are complying with the SIP Order. The SIP Order has a definition of what types of businesses are permitted as Essential Businesses or Outdoor Businesses that can continue to operate.

However, the following types of businesses are clearly prohibited from operating under the SIP Order and immediate citations should be issued:

- Restaurants, cafes, or coffee shops that allow seating (only take out or delivery is allowed)
- Bars, taverns, nightclubs, pool halls, arcades and other entertainment venues
- Theaters and concert halls
- Movie theaters
- Gyms and fitness studios and clubs
- Barbershops, salons, manicurists and “health spas”
- Smoke Shops
- Clothing store
- Any store (i.e., liquor store, convenience store, or similar type of business) that does not sell a “**significant**” amount of essential products. Essential products are unprepared food, canned food, dry goods, non-alcoholic beverages, fresh fruits and vegetables, pet supply, fresh meats, fish, and poultry, as well as hygienic products and household consumer products necessary for personal hygiene or the habitability, sanitation, or operation of residences. These storefronts may stay open **if at least 25% of the occupied floor area** is used for the sale of essential products.

Such businesses are not allowed to have patrons under any circumstances. When contacting such businesses, Members are directed to educate the person in charge of the business who is enabling the violation, provide a copy of the SIP, ask the business to close, and then order all patrons to leave. If the business refuses to comply, Members shall issue a citation (**SF Admin 7.17(b), Cal Penal Code § 148**) and order the business closed. Any time a Member observes one of these businesses is open and makes contact with the business, the Member should document into an incident report that fact and how the situation was resolved (e.g., provided a copy of the Order, the owner agreed to comply and closed the business). If the business remains open or reopens, the Member should seek the guidance from the Member’s Supervisor to close down the business.

The Sixth Supplemental Mayoral Proclamation further limits all small corner/liquor/convenience stores that have less than 5,000 gross square feet of retail space, and sell alcohol under a Type 20-Off Sale Beer & Wine license or a Type 21-Off Sale General license **must close between 8:00 p.m. and 6:00 a.m.**

Essential Businesses and Outdoor Businesses that are permitted to continue to operate under the SIP Order must post and implement a Social Distancing Protocol using a new form that includes a check-box for face coverings, and that includes such measures as limiting the number of customers entering a store so that customers can remain at least 6 feet apart, and ensuring that customers waiting outside remain at least 6 feet apart, among others. Officers should follow **progressive enforcement** and refer the business for further education through 311, to the Community Education and Response Team (CERT). CERT can also accept referrals of cases where it is not clear whether a business is an Essential Business.

Outdoor settings:

Generally, mass gatherings are prohibited. In deciding whether to take law enforcement action, the member shall consider whether the gathering falls into an Essential Activity, including obtaining Essential Services or working for an Essential Business or performing a Governmental Agency Function. If a gathering appears to be for First Amendment activity (such as a protest or

demonstration), Members shall comply with DGO 8.03 (Crowd Control) and DGO 8.10 (Guidelines for First Amendment Activities) but protesters must abide by Social Distancing Requirements.

In outdoor settings, Social Distancing Requirements are mandatory for all people **who are not members of the same household**, which means remaining at least 6 feet apart and following appropriate sanitation practices. In outdoor settings, Members may **use progressive enforcement** to ensure that Social Distancing Requirements are practiced. When contacting individuals, Members shall educate and admonish individuals who are not practicing Social Distancing and take a **practical approach to enforcement**.

Under the Order, many outdoor activities are **allowed**, subject to Social Distancing Requirements:

- Use of open spaces is allowed, so long as socially distancing is practiced by individuals with people outside their own household. This would include beaches, trails, and large fields like soccer fields and baseball fields (provided soccer, baseball and similar activities may not take place among individuals outside of the same household and even then a household sharing a ball or other equipment cannot exceed six people).
- Outdoor recreation activities may occur again so long as they can be done with Social Distancing Requirements between members of different households, and safely, without physical contact, shared equipment or use of high touch areas in recreation facilities. Examples of permissible outdoor activities include sunbathing, picnicking with members of one's own household (but not at picnic tables), horseback riding, hiking, golf, skateboarding, surfing, paddle boarding, fishing, and boating in small craft for one person or solely members of the same household. (Recreational fishing, party boats, or equipment rental—e.g., golf clubs, skate, bike, and boat rental—is not permitted.) These activities must be done in compliance with social distancing and sanitation protocols for any facilities that are used for those activities. Team sports, sports practices, and sports spectating are not allowed.

The following common outdoor activities are **restricted**:

- It is **prohibited** to use outdoor recreational areas and facilities with high-touch equipment or that encourage gathering, including, but not limited to, playgrounds, gym equipment, climbing walls, picnic areas, enclosed dog parks, pools (outdoors or indoors), spas, and barbecue areas. But the use of certain types of outdoor recreational facilities is **allowed**, provided equipment is not shared and there is compliance with Social Distancing Requirements, including golf courses, skate parks, archery ranges, and fly casting ponds.
- Standing in line, for example outside a grocery store, restaurant or soup kitchen with less than 6 feet of space between members of different households;
- Tents without at least 12 feet by 12 feet distancing.

Some situations are appropriate for the use of a dispersal order. This should not be used for homeless individuals.

I am (Title and name) _____, a Police Officer with the San Francisco Police Department. You are not accessing or engaging in essential business or essential activities by standing in (**choice: a park, plaza, sidewalk or street**). I hereby declare that you are in violation of the City's Shelter in Place Order, Admin Code section 7.17(b); Penal Code section 148 and 416. Disperse immediately. If you fail to comply with this dispersal order you will be arrested.

Private gatherings:

Private social gatherings with members outside a household are forbidden, such as parties in private homes or clubs. This poses an immediate risk to health and safety through transmission of COVID-19. Such an event may be an emergency, and where feasible, Members may use the dispersal order and issue citations, if warranted.

Visitors to hospitals, nursing homes, etc.:

There are separate Health Officer Orders in place that prohibit most visitors to hospitals, skilled nursing facilities (SNFs), nursing homes, adult residential facilities (ARFs), and residential care facilities for the elderly (RCFEs). Be aware that a facility might contact you for help with enforcing these visitor prohibitions. If so, the Member should seek guidance from their supervisor.

Construction:

Under the new SIP Order, all construction is allowed, but it must follow safety protocols and other construction regulations. Members may inform the public that the mere fact that construction is occurring does not violate the Order, but complaints about violation of safety protocols, noise, hours of construction or other issues should be referred through 311 to the Department of Building Inspection for investigation. Provide the address and the name of the complainant and contractor, if available.

Other conduct that may violate the SIP Order:

Members may observe or receive reports about other conduct, not described above, that appears to violate the SIP Order, such as a different kind of business that is not an Essential Business or an Outside Business is operating. Members may conduct a preliminary investigation of such other conduct, and educate individuals about the requirements of the SIP Order. Members should not take enforcement action. Members shall document the contact into the incident report.

Incident Reports

Incident reports shall use the following codes:

- 27400 Public Health Order Violation, Notification
- 27401 Public Health Order Violation, After Notification

A notification to the SFPD/DOC shall be made on any enforcement and a copy of the incident report and any supporting documents shall be scanned and electronically sent to the City Attorney's Office at Peter.Keith@sfcityatty.org.

Violation of or failure to comply with the SIP Order is punishable by fine, imprisonment or both under various criminal statutes:

- Cal. Penal Code section 148 makes it a misdemeanor to resist, delay, or obstruct a public officer, in the discharge of his or her duty. Members are authorized to enforce health orders in the discharge of his or her duty.
- Cal. Penal Code section 69 may be charged as a felony for the attempt, by means of any threat or violence, to deter or prevent an executive officer from performing any duty imposed by law, or to knowingly resist, by the use of force or violence, the officer, in the performance

of the officer's duty. Members are authorized to enforce health orders in the performance of his or her duty.

- Cal. Penal Code section 409.5 allows the health officer and SFPD to close an area where a calamity has created an immediate menace to public health.
- S.F. Administrative Code section 7.17(b) makes it a misdemeanor to violate a lawful rule or regulation issued during a local emergency, if such act is likely to imperil the lives or property of City residents or to prevent, hinder or delay the defense or protection thereof.
- California Health and Safety Code sections 120275 and 120295 makes it a misdemeanor to violate certain sections of the Health and Safety Code, including those requiring individuals to comply with health orders to facilitate isolation.


WILLIAM SCOTT
Chief of Police

Per DB 19-156, both sworn and non-sworn members are required to electronically acknowledge receipt and review of this Department Notice in HRMS. Any questions regarding this policy should be made to sfpd.writtendirectives@sfgov.org who will provide additional guidance about the directive.