

COMMISSION ON COMMUNITY INVESTMENT AND INFRASTRUCTURE

RESOLUTION NO. 21-2020

**DELEGATING AUTHORITY TO THE EXECUTIVE DIRECTOR TO ADOPT
SUCCESSOR AGENCY POLICIES DURING THE PUBLIC HEALTH EMERGENCY
CONSISTENT WITH THE COMPENSATION PLAN FOR COVID-19 OF THE CITY
AND COUNTY OF SAN FRANCISCO**

- WHEREAS, The Redevelopment Dissolution Law (Cal. Health & Safety Code §§ 34170 et seq.) terminated redevelopment agencies, established successor agencies, and provided, among other things, that successor agencies are separate from the city or county that initially established a redevelopment agency to which the successor agency succeeded; and,
- WHEREAS, The Redevelopment Dissolution Law authorizes successor agencies to hire employees for purposes of implementing the wind down of redevelopment activities and completing the enforceable obligations of the former redevelopment agency; and,
- WHEREAS, Under Section 34173 (g) of the Health and Safety Code, successor agency employees may be separate from city or county employees and may retain their own collective bargaining status; and,
- WHEREAS, The City and County of San Francisco implemented, by Ordinance No. 215-12 (Oct 4, 2012), the Redevelopment Dissolution Law by establishing a Successor Agency Commission (“Commission”) with broad authority to take any action that the Redevelopment Dissolution Law requires or authorizes and to take any other action that the Commission deems appropriate consistent with Redevelopment Dissolution Law; and,
- WHEREAS, Ordinance No. 215-12 authorized the Commission to hire an Executive Director with the responsibility for the day-to-day management of all the affairs and activities of the Successor Agency (commonly known as the Office of Community Investment and Infrastructure or “OCII”) and further provided that the Commission could delegate to the Executive Director any of the Commission’s duties except for approval of a collective bargaining agreement; and,
- WHEREAS, The Commission has taken various actions as the OCII employer to approve terms and conditions of employment for its employees, including approval of the Personnel Policy (as amended by Resolution No.57-2015 (Sep. 1, 2015)), the Resolution Establishing Classifications of Positions and Compensation Schedules (Resolution No. 21-2019 (July 16, 2019)) and Memoranda of Agreements with the International Federation of Professional and Technical Engineers, Local 21 and with the Service Employees Internal Union, Local 1021 (Resolution Nos. 19-2019 and 20-2019 (July 16, 2019)) (together, the “OCII Employment Policies”); and,
- WHEREAS, The OCII Employment Policies establish, among other things, the terms and conditions for the accrual and use of paid leave, including sick leave, compensatory time, and administrative leave; and,

- WHEREAS, On February 25, 2020, Mayor London Breed issued the Proclamation Declaring the Existence of a Local Emergency (“Mayoral Proclamation”) and subsequently the County Health Officer issued public health orders and the Governor issued emergency orders related to the COVID-19 pandemic. The Mayor has supplemented the Mayoral Proclamation at least twenty-one times. See Mayoral Proclamations, *available at* <https://sfmayor.org/mayoral-declarations-regarding-covid-19>; and,
- WHEREAS, On March 16, 2020, the San Francisco County Health Officer ordered all persons living in San Francisco to shelter at their place of residence (“Shelter-in-Place Order”) with exceptions for certain activities, government functions, and businesses deemed to be “essential;” and,
- WHEREAS, The OCII Executive Director complied with the Shelter-in-Place Order by closing OCII offices on March 17, 2020, determining that OCII employees are not essential employees for purposes of an exception to the Shelter-in-Place Order, and directing OCII employees to work remotely from home; and,
- WHEREAS, On March 17, 2020, the Mayor issued a Third Supplement to the Mayoral Proclamation in which she authorized the City’s Human Resources Director to create a paid leave program for City employees who are not working to mitigate the financial impacts of the emergency; and,
- WHEREAS, On March 18, 2020, federal law was enacted to require certain employers, including OCII, to provide employees with emergency paid leave during the pandemic: the Families First Coronavirus Response Act, Public Law 116–127, (“FFCRA”). The Department of Labor promulgated regulations implementing the FFCRA at 85 Federal Register 19326 (April 6, 2020) (codified at 29 C.F.R. Part 826). *See also* FFCRA: Employer Paid Leave Requirements, *available at* <https://www.dol.gov/agencies/whd/pandemic/ffcra-employee-paid-leave>. The FFCRA regulations became operational on April 1, 2020; and,
- WHEREAS, The FFCRA requires certain private and public employers to provide eligible employees up to 80 hours of paid sick leave at full pay when the employee is unable to work because the employee is subject to a Federal, State, or local quarantine or isolation order related to COVID–19, has been advised by a health care provider to self-quarantine due to concerns related to COVID–19, or is experiencing COVID–19 symptoms and seeking a medical diagnosis. The FFCRA also provides up to 80 hours of paid sick leave at partial (2/3) pay when an employee is unable to work because: 1) the employee needs to care for an individual subject to a Federal, State, or local quarantine or isolation order related to COVID–19 or who has been advised by a health care provider to self- quarantine due to concerns related to COVID–19; 2) the employee needs to care for the employee’s son or daughter whose school or place of care is closed, or whose child care provider is unavailable, due to COVID–19 related reasons; or 3) the employee is experiencing a substantially similar condition, as specified by the Secretary of Health and Human Service (collectively the “FFCRA Leave”); and,

- WHEREAS, The FFCRA also requires covered employers to provide up to twelve weeks of expanded family and medical leave, up to ten weeks of which must be paid at partial pay, up to a specified cap, when an eligible employee is unable to work because of a need to care for the employee's son or daughter whose school or place of care is closed, or whose child care provider is unavailable, due to COVID-19 related reasons ("Enhanced FMLA Leave"); and,
- WHEREAS, The FFCRA applies to OCII employees, who are eligible for FFCRA Leave and Enhanced FMLA Leave until December 31, 2020; and,
- WHEREAS, In response to the Third Supplement to the Mayoral Proclamation, the City's Department of Human Resources established the Compensation Plan for COVID-19, which provides, among other things, City employees with new paid sick leave that is in addition to the FFCRA Leave. The City provides all regularly-scheduled employees an additional 80 hours of new paid sick leave that employees can use for any sick leave related purpose and for school closures ("Additional Sick Leave"). The Additional Sick Leave expires on December 31, 2020. In addition, the maximum accrual limits for City employee vacation leave and floating holiday leave are waived through the duration of the declared emergency. City employees may accrue up to an additional 80 hours over the vacation maximum accrual limit during the emergency and may roll over an additional 80 hours of floating holiday time above the normal rollover limits. ("Expanded Leave Accrual"). The City also provides that employees who exhaust FFCRA Leave, the Additional Sick Leave, and their own sick and vacation leave balances may request an advance of up to an additional 80 hours of sick or vacation leave ("Leave Advancement"). The Compensation Plan for COVID-19 is attached as Exhibit A to this Resolution and is also available at <https://sfdhr.org/sites/default/files/documents/COVID-19/COVID-19-Compensation-Plan.pdf>; and,
- WHEREAS, The Mayor has extended the duration of the Compensation Plan for COVID-19 on several occasions through the following supplements to the Mayoral Proclamation: the Seventh Supplement (March 31, 2020), the Twelfth Supplement (April 30, 2020), the Sixteenth Supplement (May 29, 2020), and the Twenty-First Supplement (June 29, 2020). Under the Twenty-First Supplement, the Compensation Plan for COVID-19 was extended through July 31, 2020; and,
- WHEREAS, The Compensation Plan for COVID-19 does not apply to OCII employees because the City is not their employer and they are not subject to the City Charter, Civil Service rules, and other local laws applicable to City employees. OCII employees are subject to OCII Employment Policies and have their own collective bargaining units separate from the City's; and,
- WHEREAS, The Successor Agency, and its predecessor, the former Redevelopment Agency, have had a long-standing practice of conforming, to the extent consistent with applicable state law, OCII Employment Policies to City policies, particularly in the areas of compensation and paid leave; and,
- WHEREAS, The OCII Executive Director has existing authority under Section IV. E. of the Personnel Policy to provide to an employee up to thirty days (240 hours) of paid administrative leave if the Executive Director determines that the leave is in the best interests of the Successor Agency ("OCII Administrative Leave"); and,

WHEREAS, On April 22, 2020, the OCII Executive Director authorized the use of OCII Administrative Leave for OCII employees under the same terms and conditions that the City established for its Additional Sick Leave and Leave Advancement. In addition, the Executive Director noted that she would seek future Commission approval to provide employees with Expanded Leave Accrual. Memorandum, N. Sesay, Executive Director, to OCII Staff, Re: OCII's Compensation Plan for COVID-19 (April 22, 2020); and,

WHEREAS, The OCII Executive Director now seeks Commission authorization: to adopt, to the extent consistent with applicable law, leave policies that are consistent with the City's Compensation Plan for COVID-19, as amended from time to time; to ratify actions that the OCII Executive Director has previously taken in implementing OCII Employment Policies to conform to the Compensation Plan for COVID-19; and to take other steps during the public health emergency that are necessary to implement leave policies consistent with City policies; and,

WHEREAS, Authorizing and ratifying employment policies consistent with certain City policies is an administrative activity of OCII and is not a project as defined by Section 15378 (b) (5) of the California Environmental Quality Act Guidelines. NOW THEREFORE BE IT

RESOLVED, The Commission delegates to the Executive Director the authority to adopt, on a temporary basis during the COVID-19 pandemic and subject to applicable law, employment policies in substantial conformance to the City's Compensation Plan for COVID-19 (May 20, 2020), as amended from time to time, and attached hereto as Exhibit A; and be it further

RESOLVED, The Commission authorizes all actions heretofore taken by the Executive Director to implement and interpret existing OCII Employment Policies in a manner that substantially conforms to the City's Compensation Plan for COVID-19; and be it further resolved

RESOLVED, The Commission authorizes the Executive Director to take all necessary actions, to the extent permitted under applicable law, to adopt and implement policies and procedures consistent with this Resolution.

I hereby certify that the foregoing resolution was adopted by the Commission at its meeting of July 21, 2020.

Commission Secretary

Exhibit A: OCII Compensation Plan for COVID-19

Compensation Plan for COVID-19*Last Updated on 5/20/20; 5:00 pm*

During the COVID-19 public health emergency, the City is committed to maintaining City employee income security to the fullest extent possible, and to providing additional resources to employees who are providing front-line services during the emergency.

Accordingly, as authorized in Mayor Breed's Supplemental Proclamation dated March 31, 2020, the Human Resources Director and the Director of Transportation for SFMTA service critical employees are implementing the following emergency leave and benefit policy changes, effective April 1, 2020. These policies are subject to continuing review and updates for the duration of the public health emergency. The following are summary provisions; DHR will issue updated guidance to City departments soon.

1. **Federal Emergency Paid Sick Leave.** The City will implement the Emergency Paid Sick Leave provisions under the federal Families First Coronavirus Response Act (FFCRA) for all employees. Full-time employees are eligible for up to 80 hours of paid sick leave for specified COVID-19 related purposes, including school closures; the City will use a specific pay code for this federal sick leave (i.e., pay code "ESP"). Part-time employees are eligible for a prorated number of hours. These paid sick leave hours are subject to the daily and aggregate caps set in the FFCRA. Under the FFCRA, eligible employees may also request Family and Medical Leave Act (FMLA) leave for COVID-19 related school closures.
2. **Integration.** Employees eligible for compensation through workers compensation/4850 pay and other third-party benefits like SDI and unemployment insurance must use those benefits and integrate them into the City-provided compensation. Employees using paid compensation under the FFCRA may affirmatively opt out of integration with other benefits.
3. **Additional City Paid Sick Leave Allocation.** The City shall provide all regularly scheduled employees an additional 80 hours of new paid sick leave that employees can use for any sick leave related purpose (i.e., not limited to COVID19 related reasons) and for school closures. Part-time employees receive a prorated number of hours. Employees hired on or after April 2, 2020 are not eligible for these additional sick pay hours. The City will use a specific pay code for this additional sick leave (e.g., pay code 'COV'). This additional sick leave expires on December 31, 2020.
4. **City Leave Advancement.** If employees exhaust their FFCRA Emergency Paid Sick Leave, the additional 80 hours of sick leave from the City, and their own leave balances, then regularly scheduled employees may still request to advance up to an additional 80 hours of sick or vacation leave under the City's current leave advance program. Employees may credit the additional sick leave under (3) above toward any already advanced sick pay in lieu of foregoing sick pay accruals until the City has recovered the hours advanced.
5. **Paid Leave Caps.** For regularly scheduled employees who are near the maximum accruals for vacation and floating holiday but who cannot take time off during the public health emergency, the City will waive vacation leave and floating holiday caps through the duration of the declared emergency. Employees can accrue up to an additional 80 hours over the vacation maximum accrual limit over the duration of the emergency. Part-time employees can accrue a prorated number of hours. When the emergency ends, employees must use vacation and reduce their balance below the maximum accrual by December 31, 2021. Employees can roll over an additional 80 hours of

floating holidays above the normal roll over limit for FY20-21 and FY21-22. Additionally, in-lieu legal holidays earned in the current fiscal year may be carried over to the following fiscal year.

6. Compensatory Time for Salaried ("Z" Symbol) Employees.

- a. **Employees Eligible for Compensatory Time.** The City will waive compensatory time caps for salaried employees so that those employees can earn up to an additional 80 hours above any compensatory caps for the extra work they perform during the public health emergency. Part-time employees are eligible for a prorated number of hours. Compensatory time is not subject to cash out for salaried employees. Any compensatory time earned above the compensatory time caps must be used by December 31, 2021.
- b. **Employees Not Eligible for Compensatory Time.** For MEA Miscellaneous and other employees who are not eligible to earn compensatory time, the City will allow those employees to earn up to 80 hours of compensatory time on an hour for hour basis for work during this emergency for hours worked in excess of their regular work week. Part-time employees are eligible for a prorated number of hours. Compensatory time is not subject to cash out for salaried employees. Any compensatory time earned must be used by December 31, 2021.

7. Employees Working in the Workplace or Field.

- a. **Paid Administrative Leave.** For employees performing essential services who must remain in the workplace, the City will provide paid administrative leave if those employees are diagnosed with COVID-19, have symptoms consistent with COVID-19 infection, or must isolate/quarantine pursuant to direction of a healthcare provider or order from a federal, state or local official. For purposes of eligibility for paid administrative leave only, the City will presume these employees became exposed or sick in the workplace. Employees must use their FFCRA Emergency Paid Sick Leave and additional City Paid Sick Leave (COV) first and can supplement with this paid administrative leave or other available benefits (see (2) above).
 - b. **Additional Floating Holidays.** For regularly scheduled employees performing essential services who must remain in the workplace, the City will provide 8 hours of floating holidays (FHP) for every 40 hours of regularly scheduled hours worked (WKP) in the workplace (i.e., 0.2 FHP hours for every hour of WKP), up to a maximum of 80 hours of floating holiday over the duration of the emergency. Part-time employees are eligible for a prorated number of hours. The City will credit these floating holiday hours in the first full pay period after the end of the emergency. As with other floating holidays, these hours are not subject to cash out.
- 8. Furloughed Employees per Shelter in Place Order.** The City will continue to provide paid furlough for employees who are available to work but who are not required to work in the workplace providing essential services and who cannot perform their work remotely. This benefit will remain in effect through May 31, 2020.