



DEPARTMENT NOTICE

20-064
04/10/20

Enforcement of Public Health Orders (Supersedes 20-045)

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.

On March 6, 2020, the City Local Health Officer declared a local health emergency under Section 101080 of the California Health and Safety Code. On March 16, 2020, the Local 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 a Continuing Shelter in Place Order ("SIP Order"), Health Officer Order 19-07b, through May 3, 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 or Essential Travel, or to perform work for Essential Businesses and government agencies. This SIP Order amends the previous order by: (1) When people are allowed to leave their homes, they must comply with Social Distancing with anyone outside their household. (2) Outdoor recreation activities are further limited and additional recreation facilities are closed. (3) The definition of an Essential Businesses is further clarified and limited. Essential businesses must work with skeleton crews and must generally scale down operations that are not considered essential. Businesses that sell food, groceries, or cleaning products combined with non-essential products may continue to operate only if the portion of essential products they sell is a significant part of their business. (4) SIP Order states that individuals who are unsheltered, to the maximum extent feasible, ensure 12' X 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 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 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 Shop or 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. The sale of 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 may 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 that are permitted to continue to operate under the SIP Order are required by 11:59 p.m. on April 3, to post and implement a Social Distancing Protocol 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.

In outdoor settings, Social Distancing is 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 is practiced. When contacting individuals, Members shall educate and admonish individuals who are not practicing Social Distancing and take a **practical approach to enforcement**.

The following common outdoor activities are forbidden:

- Use of outdoor recreational facilities and recreational equipment including golf courses, tennis and pickle ball courts, rock parks, climbing walls, pools, spas, shooting and archery ranges, disc golf, basketball courts, playgrounds, outdoor gym equipment, picnic areas, dog parks, and barbecue areas.
- 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. At this time, the Recreation & Parks Department has **closed Garfield Park, Franklin Park, and South Sunset.**
- Team sports; but members of the same household only may share sports equipment (e.g., play catch or pass a soccer ball).
- Recreational or social gatherings of people not in the same household who fail to practice Social Distancing;
- 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;
- Washing facilities with less than 6 feet of space between members of different households;
- Tents without 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.

Outdoor activity such as walking, jogging, hiking, and bicycling is permitted, provided that Social Distancing is practiced between members of different households.

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. 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:

Complaints about Construction that is not allowed to continue under the SIP Order because it is not an Essential Business 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 non-Essential 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@sfcityatt.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.