

UPDATE: San Francisco's Emergency Ordinance on Cleaning Commercial Office Buildings and Hotels Signed by Mayor and Became Effective July 17, 2020

By [John Epperson](#)

The San Francisco Emergency Ordinance on cleaning commercial office buildings larger than 50,000 square feet and tourist hotels was signed by the Mayor on July 17th, becoming effective immediately upon her signature. As noted in a prior [Buchalter Client Alert](#), there are many problems with this Ordinance and, unfortunately, none of those problems were corrected before it was signed into law. Compliance with the Ordinance will be challenging at best and the lack of clarity on some of the terms makes compliance even more difficult. Many questions about what this Ordinance means for commercial office landlords and tenants have already been raised and, with no further guidance from the City and little lead time, it is now in effect.

The provision that prompted the most questions in the days since the Ordinance was introduced is the one requiring cleaning and disinfecting of "high-contact areas" multiple times per day, with a list of nine areas and items considered high-contact. As the list is very extensive, including stairways, hallways, bathrooms, meeting rooms, etc., doing a proper disinfection multiple times per day of all of these areas is difficult and costly. With many office buildings still mostly unoccupied, presumably only those areas on the list that are actually fully occupied should be considered "high-contact" but the Ordinance is unclear on that point. Furthermore, the Ordinance imposes this burden on "Operators" without distinction whether this means tenants or landlords or both. When trying to implement this Ordinance in the real world of commercial office buildings, there is much remaining to be sorted out.

Another provision attracting questions has been the obligation to assign someone to open exterior doors if the door cannot be opened automatically or be propped open. When many buildings are less than 5% occupied, assigning someone to each exterior door, regardless of amount of use, seems unnecessary, yet the Ordinance does not have language regarding reasonableness or discretion.

The problematic private right of action for employees to bring a lawsuit to enforce the Ordinance remains unchanged, including claims by employees that they were retaliated against for complying with its terms or reporting violations. This conflicts with the existing Cal/OSHA enforcement process and, when combined with the right to recover attorney fees and an Ordinance that is vague and virtually impossible to fully comply with, could lead to frivolous lawsuits.

This ordinance will certainly add costs to landlords and tenants, at a time when the commercial building industry is already reeling from the effects of the Shelter-in-Place orders and tenants unable or unwilling to pay rent. In addition, the City agency responsible for enforcement, the San Francisco Department of Public Health, is already stretched thin and has had little time to develop protocols for enforcement. Of particular concern, a follow-up ordinance has been introduced to make the measures of the Emergency Ordinance permanent, rather than the 60-day term of the emergency ordinance. The Board of Supervisors needs to hear from businesses impacted by these measures to head off the effort to make them permanent.¹

Buchalter attorneys advise clients on complex issues such as these with a broad range of relevant expertise for commercial property owners and managers. Please contact one of the following attorneys with follow up questions or advice.



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¹ The draft ordinance to make these measures permanent is currently assigned to the Land Use and Transportation Committee and could be referred back to the full Board of Supervisors as early as August 13th.