



Assessing Legal Authority for Local Health Officers’ and Local Governments’ Responses to COVID-19 in California

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Table of Contents

EXECUTIVE SUMMARY.....2

INTRODUCTION AND BACKGROUND3

LEGAL LANDSCAPE: OVERVIEW OF LOCAL EMERGENCY POWERS4

PAID SICK LEAVE.....7

EVICTIION MORATORIUMS11

ESSENTIAL WORKERS: CLASSIFICATION & CHILDCARE16

CRIMINAL JUSTICE SETTINGS18

SHIFTING FROM RESPONSE TO RECOVERY21

CONCLUSION23

If you have any questions or concerns related to the contents of this memorandum, please contact Derek Carr, Senior Attorney, ChangeLab Solutions at dcarr@changelabsolutions.org or Manel Kappagoda, Vice President of Strategic Initiatives, ChangeLab Solutions, at mkappagoda@changelabsolutions.org.

Executive Summary

With local governments at the forefront of responding to the COVID-19 pandemic in California, it is critical that local governments and local officials such as health officers understand and exercise the full scope of their authority to address the crisis. This includes their authority to engage in core public health activities such as conducting public health surveillance, issuing shelter-in-place orders, and issuing isolation and quarantine orders. It also includes their authority to address the social and economic consequences of COVID-19 through policies aimed at the social determinants of health such as housing and economic security. This memorandum outlines whether, when, and how local governments and local health officers (LHO) in California may exercise their authority under state emergency response laws. This analysis applies only to California and although similarities may exist in other states, understanding the legal landscape requires a state-specific analysis.

Stakeholders requested an assessment of California LHOs' and local governments' legal authority to respond to COVID-19 with respect to essential businesses, criminal justice settings, paid sick leave, and eviction moratoriums. We conclude that subject to certain requirements and limitations, LHOs may take action with respect to essential businesses and criminal justice settings. Additionally, although LHOs may have sufficient authority during the declared emergency to unilaterally adopt measures such as paid sick leave and eviction moratoriums, such action is unprecedented and may lead to legal and political challenges. Local governing bodies (ie, county boards of supervisors and city councils) and, in some instances, local officials designated by a local governing body, may adopt policies such as expanded paid sick leave benefits and eviction moratoriums pursuant to state emergency response laws, state executive orders, and their general police powers. This memorandum does not assess any independent authority held by mayors.

Key Findings

- California state law grants local health officers and local governing bodies substantial authority to respond to declared emergencies, including public health emergencies such as COVID-19. The California state constitution also grants counties and cities the general authority to enact and enforce laws to promote health, safety, and general welfare (ie, "police powers") if those laws do not conflict with state law; these powers exist irrespective of a declared emergency.¹
- Subject to certain requirements and limitations, LHOs may take action with respect to essential businesses and criminal justice settings. Additionally, although LHOs may have sufficient legal authority during the declared emergency to unilaterally adopt measures such as paid sick leave requirements and eviction moratoriums, such action is unprecedented and may present legal and political challenges.
- Pursuant to state emergency response laws, state executive orders, and their general police powers, local governing bodies and, in some cases, officials designated by a local governing body may adopt policies such as expanded paid sick leave benefits and moratoriums on evictions. Ordinances adopted by county boards of supervisors generally apply within only the unincorporated areas of the respective county, but a 1979 opinion from the California Office of the Attorney General concluded that, during a declared emergency, a county board of supervisors may adopt orders and regulations that apply throughout the entire county, including within incorporated cities. However, state attorney general opinions are not binding law and no court has addressed the geographic scope of emergency orders and regulations adopted by a county.

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- State law generally preempts local governments from regulating the *procedural* aspects of evictions; local authority to regulate such procedures depends on the governor's executive order temporarily suspending the otherwise preemptive state law. In contrast, local governing bodies may regulate the *substantive grounds* for eviction under their general police powers. That is, absent the state executive order, local governments may regulate the reasons for which a landlord may seek to evict a tenant but may not regulate the process for such evictions once the landlord establishes a legitimate basis for seeking such eviction.^{2,3,4}
- Based on legal, practical, and political considerations, the safest approach is to adopt separate expanded paid sick leave and eviction moratorium policies in *each* jurisdiction (ie, separate policies for the unincorporated areas of a county and each incorporated city within the county). This approach may also allow for some or all policies to remain in place after the emergency declarations end. If a jurisdiction-by-jurisdiction approach is not feasible, a county boards of supervisors may be able to adopt expanded paid sick leave and eviction moratorium policies that apply throughout the entire county, including within incorporated cities. Finally, although local health officers may be able to unilaterally adopt expanded paid sick leave and eviction moratorium policies, this approach presents the greatest legal and political risks.
- Regardless of whether policies are adopted by a local health officer or a local governing body, it is critical to develop a robust record establishing why the policies are critical to protect public health and safety and how the policies will aid in responding to the COVID-19 emergency.
- Local health officers, local governing bodies, and other stakeholders can leverage acute responses to COVID-19 to build support for and adopt permanent health- and equity-promoting policies that will continue to apply even after emergency declarations are lifted.
 - Although local health officers' authority is more limited outside a declared emergency, they maintain authority to implement measures (eg, physical distancing requirements) necessary to reduce disease transmission and/or prevent a resurgence of cases. They can also leverage their position to advocate for long-term policies addressing the social and structural determinants of health and health equity.
 - Local governing bodies have substantial authority to permanently adopt health- and equity-promoting policies such as expanded paid sick leave benefits and enhanced tenant protections. However, once emergency declarations are lifted, these policies unquestionably must be adopted on a jurisdiction-by-jurisdiction basis rather than a county board of supervisors adopting a single policy applicable in both the unincorporated areas of the county and incorporated cities.

Introduction and Background

With local governments at the forefront of responding to the COVID-19 pandemic in California, it is critical that local governments and local officials such as health officers understand and exercise the full scope of their authority to address the crisis. This includes their authority to engage in core public health activities such as conducting public health surveillance, issuing shelter-in-place orders, and issuing isolation and quarantine orders. It also includes their authority to address the social and economic consequences of COVID-19 through policies aimed at the social determinants of health such as housing and economic security. This memorandum outlines whether, when, and how local governments and local health officers (LHO) in California may exercise their authority under state emergency response laws. This analysis applies only to California and although similarities may exist in other states, understanding the legal landscape requires a state-specific analysis.

Stakeholders requested an assessment of California LHOs' and local governments' legal authority to respond to COVID-19 with respect to essential businesses, criminal justice settings, paid sick leave, and eviction moratoriums. The memo first provides an overview of the legal landscape of state emergency response laws, including who can declare emergencies, the varying legal authorities granted by such declarations, and the scope and applicability of those authorities. Within this legal context, the memo then assesses local health officer and local governing bodies' authority to require employers to provide paid sick leave, adopt eviction moratoriums, classify essential workers, and inspect jails.ⁱ It also offers insights for local health officers, counties, and cities considering adoption of emergency orders or regulations related to these subjects. The memo does not independently assess the authority of local executives (eg, mayors).

Legal Landscape: Overview of Local Emergency Powers

I. Emergency Declarations

State law establishes several types of emergencies—a local emergency, state of emergency, and local health emergency, for example—and specifies the individuals or entities authorized to declare such an emergency. Under the California Emergency Services Act (ESA), a local governing body (ie, a county board of supervisors or city council) may declare a **local emergency**,⁵ which must be reviewed at least once every 60 days.⁶ A local governing body may also designate by ordinance an official⁷ who is authorized to declare a local emergency but the emergency can remain in effect for no more than seven days unless ratified by the local governing body.⁸ A local emergency is defined as,

“[The] existence of conditions of disaster or of extreme peril to the safety of persons and property within the territorial limits of a county, city and county, or city ... which are or are likely to be beyond the control of the services, personnel, equipment, and facilities of that political subdivision and require the combined forces of other political subdivisions to combat....”⁹

The ESA also authorizes the governor to declare a **state of emergency** “in an area affected or likely to be affected” when the governor finds any of the following:¹⁰

ⁱ Portions of our legal analysis are duplicated in multiple sections of this memorandum to assist readers reviewing only the sections applicable to a particular policy.

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- The “existence of conditions of disaster or of extreme peril to the safety of persons and property within the state ... which, by reason of their magnitude, are or are likely to be beyond the control of the services, personnel, equipment, and facilities of any single county, city and county, or city and require the combined forces of a mutual aid region or regions to combat...”;¹¹
- A city mayor, city chief executive, chairman of a county board of supervisors, or a county administrative officer requests a state of emergency declaration;¹² or
- “[L]ocal authority is inadequate to cope with the emergency.”¹³

Finally, state law authorizes the director of the California Department of Public Health or a local health officer to “declare a **local health emergency** in the jurisdiction or any area thereof affected by the threat to the public health” upon, for example, “an imminent and proximate threat of the introduction of any contagious, infectious, or communicable disease....”¹⁴ A local health emergency declared by a local health officer can remain in effect for no more than 7 days unless the county board of supervisors or city council ratifies the emergency, and the board of supervisors or city council must review the emergency declaration at least once every 30 days.¹⁵

II. Local Authority During an Emergency

Following the declaration of a local emergency, state of emergency, or local health emergency, state law grants local governments and particular individuals within local government, such as local health officers, certain authorities necessary to respond to and mitigate the emergency. Executive orders issued by the Governor can also expand or restrict local authority. **Local governments and local health officers cannot act in contravention of state law even during a declared emergency.**¹⁶ Importantly, absent state preemption, local laws generally do not contravene state law if they are *stricter* than state law.

a. Local Health Officer Authority

During a declared **state of emergency** or **local emergency**, state law authorizes local health officers to “take any preventive measure that may be necessary to protect the public health from any public health hazard during any ‘state of war emergency,’ ‘state of emergency,’ or ‘local emergency,’ ... within [their] jurisdiction.”¹⁷ Preventive measures are defined broadly to include the “abatement, correction, removal or any other protective step that may be taken against any public health hazard that is caused by a disaster and affects the public health.”¹⁸

Even in the absence of a declared emergency, state law outlines local health officers’ duties and authority to act “[d]uring an outbreak of a communicable disease, or upon the imminent and proximate threat of a communicable disease outbreak or epidemic that threatens the public’s health.”¹⁹ These duties and authorities include:

- “Promptly notify[ing] and updat[ing] governmental entities within the local health officer's jurisdiction about communicable diseases ... that may affect them, if, in the opinion of the local health officer, action or inaction on the part of the governmental entity might affect outbreak response efforts”;²⁰
- “Mak[ing] any relevant information available to governmental entities, including, but not limited to, the locations of concentrations of cases, the number of residents affected, and the measures that the governmental entities should take to assist with outbreak response efforts”;²¹ and
- “[I]ssu[ing] orders to other governmental entities within the local health officer's jurisdiction to take any action the local health officer deems necessary to control the spread of the communicable disease.”²²

Local health officers' authority is more limited during a declared **local health emergency**. This authority includes, for example, requesting mutual aid from other political subdivisions or state agencies and providing information to "state and local agencies responding to the health emergency or local health emergency or to medical and other professional personnel treating victims of the local health emergency."²³

Orders issued by a local health officer for the purposes of preventing the spread of a contagious, infectious, or communicable disease may be enforced by county sheriffs²⁴ and, in some instances, chiefs of police.²⁵

b. Authority of Local Governing Bodies

The California Emergency Services Act provides that during a local emergency, the governing body of a political subdivision (ie, counties and cities) or local officials designated by the governing body "may promulgate orders and regulations necessary to provide for the protection of life and property."²⁶ When the governor has also declared a state of emergency, local ordinances, orders, and regulations may continue in effect "except as to any provision suspended or superseded by an order or regulation issued by the Governor."²⁷

In short, during a state of emergency, a local government may not exercise their emergency powers in a manner that conflicts with the exercise of the governor's emergency powers. In some instances, the governor's emergency authority includes the ability to suspend the operation of local ordinances, orders, and regulations regardless of whether such local policies predate the declared emergency or were enacted pursuant to the local government's own emergency powers.²⁸ However, local ordinances, orders, and regulations remain valid unless and until the governor either (1) explicitly suspends such ordinances, orders, and regulations;²⁹ or (2) the ordinances, orders, and regulations conflictⁱⁱ with emergency action taken by the governor.³⁰

i. Applicability of County Emergency Orders Within Incorporated Cities

In general, ordinances adopted by county boards of supervisors are applicable within only the unincorporated areas of the county. **Whether California state law allows orders issued by county officials to apply throughout the entire county, including within incorporated cities, during a declared local emergency remains legally untested.** Although we are not aware of any court decisions directly addressing this issue, a 1979 opinion (AG Opinion) from the California Office of the Attorney General concluded that,

"Cities within a county are bound by county rules and regulations adopted by the county pursuant to [state emergency laws] during a county proclaimed local emergency when the local emergency includes both incorporated and unincorporated territory of the county."³¹

Noting that emergencies frequently cross jurisdictional boundaries, the AG Opinion reasoned that state emergency response laws aim to ensure coordination among governments and that this purpose would be undermined if incorporated cities within the county could adopt "different and perhaps even conflicting regulations to apply to the same problem relating to the same emergency in the same county."³² As such, the AG Opinion also concluded that "insofar as measures taken by different levels of government with respect to the same emergency conflict, the measures taken by the agency with the more inclusive territorial jurisdiction (eg,

ⁱⁱ A local ordinance, order, or regulation will conflict with emergency action taken by the governor if the local ordinance, order, or regulation either (1) authorizes conduct that the governor's emergency action prohibits; or (2) prohibits conduct that the governor's emergency action *explicitly* authorizes. In general, a local ordinance, order, or regulation that is *stricter* than the governor's emergency action does not conflict with the governor's emergency action unless the governor's emergency action explicitly prohibits more stringent local action.

county versus a city) must govern.”³³ In short, the AG Opinion concluded that a county order issued in response to a declared local emergency (i) may legally apply within incorporated jurisdictions, and (ii) supersedes conflicting actions taken by the incorporated jurisdiction.

Importantly, state Attorney General opinions are not legally binding, and courts can—and often do—reach contrary conclusions. As such, while courts generally afford such opinions considerable weight and they can help guide decision-making in unsettled areas of law,³⁴ we cannot predict how any particular court would rule on the applicability of specific county emergency orders that purport to apply within incorporated jurisdictions.

Of note, several Bay Area counties—Alameda, Contra Costa, Marin, San Francisco, San Mateo, and Santa Clara—have recently adopted emergency anti-eviction policies applicable throughout the entire geographic boundaries of the counties, including all incorporated cities and unincorporated areas, citing their authority under the California Emergency Services Act and the 1979 AG Opinion. Nevertheless, counties should carefully weigh the benefits of a countywide order against any potential legal risks. For example, a landlord operating within an incorporated city could attempt to challenge a county eviction moratorium that purports to apply within the incorporated city. Counties should also address any potential implementation and enforcement considerations (eg, who will enforce the policy within incorporated cities).

Additionally, it is important to note that even if a county has the authority to adopt and enforce orders within incorporated jurisdictions, such authority is strictly limited to the duration of the local emergency.³⁵

Paid Sick Leave

Subject to limited exceptions,³⁶ existing California state law requires employers to provide employees that have worked for the employer for at least 30 days within the preceding year with paid sick leave.³⁷ The paid sick leave benefits are available regardless of an employee’s immigration status.³⁸ In general, eligible employees must accrue at least one hour of paid sick leave per every 30 hours worked,³⁹ and employees may “use accrued paid sick days beginning on the 90th day of employment.”⁴⁰ Employers may cap accrued paid sick leave to no less than 48 hours or 6 days.⁴¹ Paid sick leave is available for the following purposes:

1. “Diagnosis, care, or treatment of an existing health condition of, or preventive care for, an employee or an employee’s family member.”⁴²
2. “[A]n employee who is a victim of domestic violence, sexual assault, or stalking” when the leave is taken for specified reasons.⁴³

Recent federal legislation and California state executive action related to COVID-19 have enacted additional emergency paid sick leave benefits. At the federal level, the Families First Coronavirus Relief Act (FFCRA) and Coronavirus Aid, Relief, and Economic Security Act (CARES Act) provide emergency paid sick leave benefits for qualifying⁴⁴ part-time and full-time employees in any public agency regardless of size or a private entity with less than 500 employees.⁴⁵ Full-time employees are entitled to 80 hours of paid sick leave and part-time employees are entitled to paid sick leave equaling “the number of hours that they work, on average, over a 2-week period.”⁴⁶ According to the National Employment Law Project, FFCRA does not include any immigration status-related restrictions on eligibility for emergency paid sick leave, meaning the benefits are available to undocumented workers.⁴⁷ Additionally, unlike the California paid sick leave law, employees may use emergency paid sick leave under FFCRA regardless of how long the employee has worked for the employer.⁴⁸ However, FFCRA exempts small businesses, certain health care providers and emergency responders, and certain federal

government workers from the emergency paid sick leave benefits, and those benefits are currently scheduled to expire at the end of the year.^{49,50} It is not yet known if, when, or for how long the benefits will be extended.

An April 16 executive order issued by Governor Newsom established supplemental paid sick leave benefits for food sector workers that meet specified criteria⁵¹ and who work for employers with 500 or more employees.⁵²

a. Authority of Local Health Officers

California state law provides broad authority for local health officers to take preventive measures to protect public health during a declared state of emergency or local emergency.^{53,54} This emergency authority for local health officers is, however, likely narrower than the emergency powers granted to local governing bodies such as city councils and county boards of supervisors. Whereas local governing bodies may take action “necessary to provide for the protection of life and property,”⁵⁵ local health officers may implement only measures that qualify as a “protective step that may be taken against any public health hazard that is caused by a disaster and affects the public health.”⁵⁶ Therefore, whether local health officers can mandate additional paid sick leave policies for the duration of the declared emergency depends on whether:

1. Paid sick leave constitutes a protective step against a public health hazard;
2. The public health hazard was caused by a disaster; and
3. The hazard affects the public health.

Expanded paid sick leave policies likely constitute “a protective step that may be taken against a public health hazard.” Robust research suggests that employees without paid sick leave are more likely to go to work with an infectious illness and that providing paid sick leave reduces the spread of such illnesses.⁵⁷ Based on this evidence, the contagiousness of COVID-19, the need to “flatten the curve,” and the need to protect essential workers, ensuring the availability of paid sick leave likely qualifies as a protective step to protect against the public health hazard of people who are ill continuing to go to work. Additionally, while the state law governing local health officers’ emergency authority does not specifically define “disaster,” the plain meaning of the term is likely sufficiently broad to include the COVID-19 pandemic. It is also axiomatic that the transmission of COVID-19 affects the public health.

In short, a local health officer may reasonably conclude that ensuring the availability of paid sick leave is a protective step against a “public health hazard” (ie, the transmission of COVID-19 by people who continue to work while ill) that was caused by a “disaster” (ie, the COVID-19 pandemic) and the hazard clearly affects the public health. **Therefore, state emergency response laws may provide local health officers with sufficient authority to enact additional paid sick leave requirements for the duration of the declared emergency. However, a local health officer taking such action is without precedent and carries both the risk of litigation and potential political opposition.**

Indeed, even if local health officers possess the authority to unilaterally take action with respect to emergency paid sick leave, it may nevertheless be preferable enact such policies through a county board of supervisors and/or city council. As a position created by the state legislature, local health officers have only those powers expressly granted to them by state law or delegated to them by local governments. This means that whether a local health officer has the authority to enact an emergency paid sick leave policy depends entirely on how a court interprets state emergency response laws. A court likely would invalidate the policy if it found that paid sick leave falls outside the language and intent of the statutes governing local health officers’ emergency

powers. In contrast, a local governing body enacting an emergency paid leave policy can rely on *both* state emergency response laws *and* its inherent police powers under the state constitution, meaning that a court may be less likely to invalidate the policy based solely on its interpretation of state emergency response laws. From a more practical perspective, courts may also view a paid sick leave policy unilaterally enacted by a local health officer—a single, unelected official—less favorably than a policy adopted by an elected governing body.

Considerations and Suggestions for Local Health Officers

Our suggestions for a local health officer seeking to enact an emergency paid sick leave policy pursuant to their own emergency authority include,

1. The local health officer should establish a robust record that clearly: (i) identifies the public health hazard and disaster; (ii) describes how the disaster caused the public health hazard; (iii) explains the public health impact of the hazard; and (iv) articulates how an emergency paid sick leave policy would protect against the public health hazard.
2. The record should also explain: (i) any evidence (eg, research studies) the local health officer relied on to justify the policy; (ii) the local health officer's legal authority to adopt the emergency paid sick leave policy; and (iii) why existing local, state, and/or federal paid sick leave laws are insufficient to address current needs.
3. The emergency policy should include explicit language providing that the policy applies only for the duration of the emergency and will automatically expire upon the termination of said emergency.
4. The emergency policy should include explicit language providing that if a county and/or city has adopted an ordinance or regulation providing greater benefits and/or protections than are available under the local health officer's policy, the greater benefits and/or protections shall apply.
5. The local health officer should proactively consult and work in partnership with county counsel and, as applicable, city attorneys.
6. The local health officer should pursue the emergency paid sick leave policy through a county board of supervisors and/or city councils rather than unilateral action taken by the local health officer.

b. Authority of County Boards of Supervisors and City Councils

Under the California state constitution, counties and cities may enact and enforce “all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.”⁵⁸ A local ordinance conflicts with a state statute if it (1) duplicates the state statute;ⁱⁱⁱ (2) contradicts the statute; or (3) enters an area fully occupied by general law.⁵⁹ With respect to paid sick leave, California state law explicitly provides that it does *not* preempt local laws providing additional benefits and protections,⁶⁰ and several localities in the state have adopted local

ⁱⁱⁱ A local ordinance duplicates state law only when the local ordinance and state law are truly coextensive (ie, identical). *Sherwin-Williams Co. v. City of Los Angeles*, 4 Cal. 4th 893 (1993). Local laws that address the same conduct as state law, but which take a different approach or provide for alternative means of enforcement generally are not deemed duplicative. *See Prime Gas, Inc. v. City of Sacramento*, 184 Cal. App. 4th 697 (2010) (finding that a local law providing for the suspension or revocation of a local tobacco retailer license does not duplicate state laws that “make it a criminal offense, or impose monetary fines or penalties, or suspend or revoke a state license, for selling tobacco products to minors” because the local license is separate from state licenses and “the local suspension or revocation is based on different standards.”) Additionally, “California courts have largely confined the duplication prong of the state preemption test to penal ordinances.” *Fireman's Fund Ins. Co. v. City of Lodi, California*, 302 F.3d 928 (9th Cir. 2002).

ordinances providing such additional benefits.⁶¹ In short, local governments in California may, pursuant to their general regulatory authority, adopt ordinances requiring that employers provide more generous paid sick leave benefits to their employees than is required under state law.

A local governing body may also reasonably conclude that additional paid sick leave benefits are necessary to “provide for the protection of life and property” during the declared COVID-19 local emergency.⁶²

Therefore, pursuant to the California Emergency Services Act, a county and/or city likely may promulgate an emergency order or regulation requiring employers to provide paid sick leave for the duration of the local emergency because such regulations would not contravene state law and are reasonably related to the protection of life and property. Additionally, the 1979 AG Opinion suggests that in enacting the emergency paid sick leave regulation, a county board of supervisors may make the regulation effective throughout the entire geographic territory of the county, including within incorporated cities and unincorporated areas.

Nevertheless, because the AG Opinion is not legally binding and no court has weighed in on a county’s jurisdictional authority over incorporated cities during a declared emergency, it is possible that a county emergency order or regulation purporting to apply within incorporated cities may face legal challenges. It is also important to remain cognizant that any emergency order or regulation will remain in effect *only* for the duration of the declared local emergency and thus does not provide a pathway to permanently guarantee additional paid sick leave benefits. The section “Shifting from Response to Recovery” below outlines opportunities to adopt local laws to permanently expand paid sick leave benefits.

Considerations and Suggestions for County Boards of Supervisors and City Councils

Our suggestions for counties considering an emergency paid sick leave order or regulation applicable in both incorporated cities and unincorporated areas, as well as for cities considering such a regulation, include,

1. Pursuant to California Health and Safety Code § 120175.5(a)(2), the local health officer should issue a recommendation to the county board of supervisors and/or city council on adopting the emergency paid sick leave regulation. The recommendation should identify the specific ways in which the paid sick leave regulation can assist with COVID-19 response efforts, including reducing the spread of COVID-19.
2. The emergency order or regulation should include robust findings that clearly articulate why paid sick leave is necessary to protect life and property during the COVID-19 emergency, including the county’s legal authority to issue the regulation and why existing local, state, and/or federal paid sick leave laws are insufficient to address current needs.
3. The emergency order or regulation should include explicit language providing that the regulation applies only for the duration of the local emergency and will automatically expire upon the termination of said emergency.
4. The local governing body should commit to periodically revisiting the regulation to assess whether the regulation continues to be a necessary response to current conditions. This includes assessing whether the findings cited to justify the policy remain applicable, revising existing findings or adding new findings as necessary.
5. For counties, the emergency order or regulation should include explicit language providing that if an incorporated city has adopted an ordinance or regulation providing greater benefits and/or protections

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than are available under the county's emergency order or regulation, the greater benefits and/or protections shall apply.

6. County officials should coordinate their efforts and the issuance of the emergency order or regulation with officials from the incorporated cities within the county, including by proactively consulting with county counsel and city attorneys.

Eviction Moratoriums

In response to the COVID-19 pandemic, the state and numerous local governments have taken or are considering action to protect housing security for those experiencing health or financial difficulties. Steps taken at the state level include,

- **Executive Order N-28-20:** On March 16, 2020, Governor Newsom issued [executive order N-28-20](#) temporarily suspending state laws which may preempt (ie, prevent) local governments in California from adopting certain restrictions on evictions. Importantly, however, the additional local authority provided by the executive order is limited to instances in which:
 - (1) *"The basis for eviction is nonpayment of rent, or a foreclosure, arising out of a substantial decrease in household or business income (including, but not limited to, a substantial decrease in household income caused by layoffs or a reduction in the number of compensable hours of work, or a substantial decrease in business income caused by a reduction in opening hours or consumer demand), or substantial out-of-pocket medical expenses";* and
 - (2) *"The decrease in household or business income or the out-of-pocket medical expenses ... was caused by the COVID-19 pandemic, or by any local, state, or federal government response to COVID-19, and is documented."*

The order expires on May 31, 2020 and explicitly provides that the executive order does *not* "relieve a tenant of the obligation to pay rent, nor to restrict a landlord's ability to recover rent due."

- **Executive Action N-37-20:** On March 27, 2020, Governor Newsom issued an additional [executive order N-37-20](#), which imposes a limited statewide eviction moratorium for tenants who meet specified requirements, including the inability to pay the full amount of rent because:
 - (1) *"The tenant was unavailable to work because the tenant was sick with a suspected or confirmed case of COVID-19 or caring for a household or family member who was sick with a suspected or confirmed case of COVID-19";*
 - (2) *"The tenant experienced a lay-off, loss of hours, or other income reduction resulting from COVID-19, the state of emergency, or related government response";* or
 - (3) *"The tenant needed to miss work to care for a child whose school was closed in response to COVID-19."*

However, the executive order imposes burdensome obligations on tenants seeking protection, such as providing verifiable documentation of reductions to their income resulting from COVID-19 and/or the policies enacted to mitigate the virus (eg, shelter-in-place orders).

- **Judicial Council Emergency Rules:** On May 6, 2020, the Judicial Council of California adopted an [emergency rule](#) prohibiting state courts from issuing a summons on a complaint for unlawful detainer

(ie, evictions) unless the action “is necessary to protect public health and safety.” A second emergency rule suspended most foreclosure actions unless the action is necessary “to further the public health and safety.” The eviction moratorium will expire 90 days after the governor lifts the state of emergency related to the COVID-19 pandemic, and the foreclosure moratorium will expire 90 days after the governor lifts the COVID-19 emergency declaration.

At the local level, several Bay Area counties—including Alameda, Contra Costa, Marin, San Francisco, San Mateo, and Santa Clara—recently adopted countywide eviction moratorium ordinances that apply within both incorporated cities and unincorporated areas. Some cities, including Oakland, have also adopted emergency ordinances related to evictions and other tenant protections. These local emergency ordinances provide additional protections to those available under either Governor Newsom’s executive orders or the emergency rules adopted by the state Judicial Council. For example:

- Alameda County’s emergency ordinance requires landlords to proactively inform tenants about the eviction moratorium, prohibits landlords and lenders from retaliating against tenants who exercise their rights under the emergency ordinance, and provides additional enforcement mechanisms to ensure landlord and lender compliance.
- Marin County’s eviction moratorium includes provisions to ensure the confidentiality of any medical or financial information a tenant provides to a landlord to document the tenant’s eligibility for the eviction protections. It also explicitly allows the public health officer to issue orders superseding the resolution so long as the order *expressly* indicates an intent to supersede the county resolution (orders issued by the Director or Assistant Director of Emergency Services and ordinances adopted by the Board of Supervisors can likewise supersede the eviction moratorium resolution).
- San Mateo County’s eviction moratorium ordinance provides additional tenant protections following the termination of the state of emergency. This includes a requirement that landlords provide tenants at least 180 days to pay back any delayed rent following the later of either (i) the termination of the state of emergency; or (ii) the expiration of the county’s emergency eviction ordinance. Landlords are also prohibited from charging or collecting late fees from tenants who miss payments due to issues related to COVID-19.
- Santa Clara County’s ordinance also prohibits late fees and provides tenants 120 days from the expiration of the ordinance to pay any past-due rent. The ordinance is set to expire on May 31, 2020.

a. Authority of Local Health Officers

Although most local emergency tenant protections have thus far been enacted through county boards of supervisors and city councils, it is also more likely than not that local health officers have sufficient authority to independently issue an order establishing an eviction moratorium. As discussed in prior sections, California state law provides broad authority for local health officers to take preventive measures to protect public health during a declared state of emergency or local emergency.^{63,64} This includes measures meeting the following criteria: (1) the measure constitutes a protective step against a public health hazard; (2) the public health hazard was caused by a disaster; and (3) the hazard affects the public health.⁶⁵

Orders establishing a moratorium on evictions likely satisfy each of these three criteria. People without permanent housing are at higher risk for health conditions that may require the use of scarce health care

resources. The loss of housing therefore likely qualifies as a “public health hazard” and eviction moratoriums constitute a protective step against the hazard. Moreover, although evictions can result in public health harms at all times and thus not all eviction-related hazards were “caused by” the COVID-19 emergency, the emergency and resulting shelter-in-place orders amplify the potential for such harms and that additional risk is attributable to the COVID-19 pandemic (ie, the disaster). **In short, an emergency eviction moratorium likely constitutes a protective step against a public health hazard (ie, increased risk of transmission, straining of health care resources, general health harms), the public health hazard was, at least in part, caused by a disaster (ie, the COVID-19 pandemic), and the hazard clearly affects the public health. However, a local health officer taking such action is without precedent and carries both the risk of litigation and potential political opposition.**

Indeed, even if local health officers possess the authority to unilaterally take action with respect to an eviction moratorium, it may nevertheless be preferable to enact such policies through a county board of supervisors and/or city council. As a position created by the state legislature, local health officers have only those powers expressly granted to them by state law or delegated to them by local governments. This means that whether a local health officer has the authority to enact an emergency eviction moratorium depends entirely on how a court interprets state emergency response laws. A court likely would invalidate the policy if it found that eviction moratoriums fall outside the language and intent of the statutes governing local health officers’ emergency powers. In contrast, a local governing body enacting an eviction moratorium can rely on *both* state emergency response laws *and* its inherent police powers under the state constitution, meaning that a court may be less likely to invalidate the policy based solely on its interpretation of state emergency response laws. From a more practical perspective, courts may also view an eviction moratorium unilaterally enacted by a local health officer—a single, unelected official—less favorably than a policy adopted by an elected governing body.

Additionally, it is important to note that:

- Although local health officers may possess sufficient authority to adopt eviction moratoriums generally, additional analyses may be necessary to assess such authority with respect to specific provisions within an eviction moratorium policy.
- A local health officer’s authority to adopt certain elements of an eviction moratorium may depend on state executive orders that suspend the operation of otherwise preemptive state laws. A reassessment of local authority will be required when the executive order suspending these state laws expires, is rescinded, or is otherwise modified.

Considerations and Suggestions for Local Health Officers

Our suggestions for a local health officer seeking to enact an emergency eviction moratorium pursuant to their own emergency authority include,

1. The local health officer should establish a robust record that clearly: (i) identifies the public health hazard and disaster; (ii) describes how the disaster caused the public health hazard; (iii) explains the public health impact of the hazard; and (iv) articulates how the eviction moratorium would protect against the public health hazard.
2. The record should also explain: (i) any evidence (eg, research studies) the local health officer relied on to justify the policy; (ii) the local health officer’s legal authority to adopt the emergency eviction

moratorium; and (iii) why existing local, state, and/or federal tenant protections are insufficient to address current needs.

3. The emergency policy should include explicit language providing that the policy applies only for the duration of the emergency and will automatically expire upon the termination of said emergency. The policy should also include language providing that any provision within the policy that relies solely on authority granted by executive order (ie, provisions that state law would otherwise preempt absent the executive order) will cease to apply upon the expiration or rescission of the relevant executive order(s).
4. The emergency policy should include explicit language providing that if a county and/or city has adopted an ordinance or regulation providing greater benefits and/or protections than are available under the local health officer's policy, the greater benefits and/or protections shall apply.
5. The local health officer should proactively consult and work in partnership with county counsel and, as applicable, city attorneys.
6. The local health officer should pursue the eviction moratorium through a county board of supervisors and/or city councils rather than unilateral action taken by the local health officer.

b. Authority of County Boards of Supervisors and City Councils

Under the California state constitution, counties and cities may enact and enforce "all local, police, sanitary, and other ordinances and regulations not in conflict with general laws."⁶⁶ A local ordinance conflicts with a state statute if it (1) duplicates the state statute;^{iv} (2) contradicts the statute; or (3) enters an area fully occupied by general law.⁶⁷ California state law generally preempts certain local laws related to landlord-tenant relations, including, for example, rent control for residential housing with a certificate of occupancy issued after February 1, 1995,⁶⁸ and local ordinances prohibiting landlords from removing specified properties from the rental market.⁶⁹ Additionally, state law generally preempts local governments from regulating the *procedural* aspects of evictions; local authority to regulate such procedures is dependent on Governor Newsom's March 16 executive order (N-28-20) temporarily suspending otherwise preemptive state laws as applied to local ordinances preventing evictions due to reduction in income related to COVID-19.⁷⁰

However, apart from the policies specifically preempted by state law, local governments in California may, pursuant to their general regulatory authority, adopt ordinances providing tenants with additional protections than are available under state law. For example, local governing bodies may regulate the *substantive grounds* for eviction pursuant to their general police powers. That is, absent the state executive order, local governments may regulate the reasons for which a landlord may seek to evict a tenant but may not regulate the process for how such evictions occur once the landlord establishes a legitimate basis for seeking such eviction.^{71,72,73}

^{iv} A local ordinance duplicates state law only when the local ordinance and state law are truly coextensive (ie, identical). *Sherwin-Williams Co. v. City of Los Angeles*, 4 Cal. 4th 893 (1993). Local laws that address the same conduct as state law, but which take a different approach or provide for alternative means of enforcement generally are not deemed duplicative. See *Prime Gas, Inc. v. City of Sacramento*, 184 Cal. App. 4th 697 (2010) (finding that a local law providing for the suspension or revocation of a local tobacco retailer license does not duplicate state laws that "make it a criminal offense, or impose monetary fines or penalties, or suspend or revoke a state license, for selling tobacco products to minors" because the local license is separate from state licenses and "the local suspension or revocation is based on different standards.") Additionally, "California courts have largely confined the duplication prong of the state preemption test to penal ordinances." *Fireman's Fund Ins. Co. v. City of Lodi, California*, 302 F.3d 928 (9th Cir. 2002).

A local governing body may also reasonably conclude that additional eviction protections are necessary to “provide for the protection of life and property” during the declared COVID-19 local emergency.

Therefore, pursuant to the California Emergency Services Act and the governor’s executive order, a county and/or city may promulgate an emergency order or regulation imposing an eviction moratorium for the duration of the local emergency because such regulations would not contravene state law (as modified by the state executive order) and are reasonably related to the protection of life and property. Additionally, the 1979 AG Opinion suggests that in enacting the eviction moratorium regulation, a county board of supervisors may make the regulation effective throughout the entire geographic territory of the county, including within incorporated cities and unincorporated areas. As noted above, several Bay Area counties have already adopted eviction moratoriums that apply both within incorporated cities and unincorporated areas.

Nevertheless, because the AG Opinion is not legally binding and no court has weighed in on a county’s jurisdictional authority over incorporated cities during a declared emergency, it is possible that a county emergency order or regulation purporting to apply within incorporated cities may face legal challenges. It is also important to remain cognizant that any emergency order or regulation will remain in effect *only* for the duration of the declared local emergency and thus does not provide a pathway to permanently expand tenant protections.

Additionally, it is important to note that:

- Although county boards of supervisors and city councils likely possess the authority to adopt eviction moratoriums generally, additional analyses may be necessary to assess such authority with respect to specific provisions within an eviction moratorium policy.
- A county board of supervisors’ or city council’s authority to adopt certain elements of an eviction moratorium may depend on state executive orders that suspend the operation of otherwise preemptive state laws. A reassessment of local authority will be required when the executive order suspending these state laws expires, is rescinded, or is otherwise modified.

Considerations and Suggestions for County Boards of Supervisors and City Councils

Our suggestions for counties considering an eviction moratorium applicable in both incorporated cities and unincorporated areas include,

1. Pursuant to California Health and Safety Code § 120175.5(a)(2), the local health officer should issue a recommendation to the county board of supervisors and/or city council on adopting the eviction moratorium. The recommendation should identify the specific ways in which the eviction moratorium can assist with COVID-19 response efforts, including reducing the spread of COVID-19.
2. The emergency order or regulation should include robust findings that clearly articulate the eviction moratorium is necessary to protect life and property during the COVID-19 emergency, including the county’s or city’s legal authority to issue the regulation and why existing local, state, and/or federal tenant protections are insufficient to address current needs.⁷⁴
3. The emergency order or regulation should include explicit language providing that the regulation applies only for the duration of the local emergency and will automatically expire upon the termination of said emergency. The policy should also include language providing that any provision within the policy that relies solely on authority granted by executive order (ie, provisions that state law would otherwise

preempt absent the executive order) will cease to apply upon the expiration or rescission of the relevant executive order(s).

4. The local governing body should commit to periodically revisit the regulation to assess whether the regulation continues to be a necessary response to current conditions. This includes assessing whether the findings cited to justify the policy remain applicable, revising existing findings or adding new findings as necessary.
5. A county emergency order or regulation should include explicit language providing that if an incorporated city has adopted an ordinance or regulation providing greater benefits and/or protections than are available under the county's emergency order or regulation, the greater benefits and/or protections shall apply.
6. County officials should coordinate their efforts and the issuance of the emergency order or regulation with officials from the incorporated cities within the county, including by proactively consulting with county counsel and city attorneys.

Essential Workers: Classification & Childcare

On March 16, 2020, the federal government issued the President's Coronavirus Guidelines for America.⁷⁵ These guidelines state that people working in a "critical infrastructure industry" as defined by the Department of Homeland Security should try to maintain normal work schedules. On March 19, 2020, the Department of Homeland Security (DHS) released a guidance document that lays out which industries are deemed critical. DHS has updated this guidance document as the pandemic has evolved.⁷⁶ In the guidance document, DHS notes that state and local governments are responsible for defining critical infrastructure industries in their jurisdictions. The federal guidance:

*"is advisory in nature. It is not, nor should it be considered to be, a federal directive or standard in and of itself. Additionally, this advisory list is not intended to be the exclusive list of critical infrastructure sectors, workers, and functions that should continue during the COVID-19 response across all jurisdictions. Individual jurisdictions should add or subtract essential workforce categories based on their own requirements and discretion."*⁷⁷

On March 19, 2020, Governor Newsom issued an order that required all residents of California to stay at home except those working in critical infrastructure industries.⁷⁸ That order incorporated DHS' guidance about critical infrastructure industries. On March 22, 2020, the state public health officer provided more detailed guidance about which industries were considered essential in California and which workers within those industries were "essential critical industry workers."⁷⁹ The guidance does not provide information about a procedure for non-essential businesses to appeal their categorization and remain open.

Some local governments within California issued their own orders before the order and guidance was released at the state level. On March 16, 2020, Health Officers in the Bay Area issued the first shelter-in-place orders in the state. Those orders identified certain businesses as essential businesses and allowed essential workers to continue working. On March 31, 2020, the Bay Area counties issued new orders which clarified the initial orders and extended them through May 3, 2020. These Bay Area orders, which were very similar, define categories of essential businesses (see [San Francisco's Order](#) and [Santa Clara's Order](#)). Although essential businesses are

“strongly encouraged” to remain open, they must scale down operations to their essential components only, maximize the number of employees who work from home, and implement a “Social Distancing Protocol.”

On May 3, 2020, Governor Newsom issued a revised executive order outlining a four-stage framework for relaxing the statewide stay-at-home standards.⁸⁰ Acknowledging that local and regional conditions are likely to vary, the order explicitly provides that local health officers may “establish and implement public health measures within their respective jurisdictions that are more restrictive than, or that otherwise exist in addition to, the public health measures imposed on a statewide basis....”⁸¹ Bay Area counties have likewise continued to revise and extend their local stay-at-home orders, most of which continue to be more restrictive than the statewide order. However, unlike the initial Bay Area county stay-at-home orders, which imposed relatively uniform restrictions, there are greater variations in the scope and applicability of the more recent county orders.

a. Childcare

Across California, licensed childcare facilities are required to close unless they are providing care for children that fall into one of more of these three categories: (1) children of essential workers; (2) children who fall into certain “at-risk” categories;^v and (3) children with disabilities or special healthcare needs. Childcare providers include, but are not limited to, childcare centers and home-based childcare providers. State guidance also provides that a childcare worker may come to an individual’s home to provide childcare so long as they adhere to basic prevention guidelines such as handwashing, physical distancing, and staying home if ill.⁸² On April 4, 2020, Governor Newsom signed [an executive order](#) focused on childcare providers that waived certain program requirements for state-subsidized providers in order to allow them greater flexibility to serve the children of essential workers. The California Department of Education (CDE) and the Department of Social Services (CDSS) then issued a [Management Bulletin](#) to provide guidance to state-subsidized childcare programs. The guidance, which lays out changes to eligibility requirements for families, remains in effect through June 30, 2020, or until the state of emergency has ended.

CDSS has developed [guidance](#) on social distancing practices for providers and local shelter-in-place orders across the state align with the CDSS recommendations. Generally, local orders include the following provisions:

- Childcare providers may only serve children that fall into one of the three categories above.
- Childcare must be carried out in stable groups of ten (10) or fewer. “Stable” means the same ten (10) or fewer children are in the same group each day. Children cannot change from one group to another.
- If more than one group of children is cared for at one site/facility, each group must be in a separate room and these groups cannot mix with each other.
- Each childcare provider must be solely with one group of children.

The Child Care Law Center is a non-profit law center that focuses on childcare issues in California. Their [COVID-19 FAQ](#) provides detailed guidance to families and childcare providers in California about evolving policies related to childcare. The FAQ also notes that local jurisdictions are beginning to allow more children to return to

^v CDE guidance provides that at-risk populations include: (i) “Children who are receiving child protective services or who have been deemed to be at risk of abuse, neglect, or exploitation”; (ii) “Children eligible through the Emergency Child Care Bridge Program for Foster Children”; (iii) “Families experiencing homelessness as defined in Section 11434(a)(2) of Title 42 of the United States Code, known as the McKinney-Vento Homeless Assistance Act”; and (iv) “Children of domestic violence survivors.” <https://www.cde.ca.gov/sp/cd/ci/mb2006.asp>

childcare and recommends reviewing announcements from the relevant local public health officials to determine the status of childcare in your jurisdiction.

b. Authority of Local Health Officers

There is no guidance within the state and local orders about how to add or remove an “essential business” category. That discretion appears to sit with the local health officer under their authority to “take any preventive measure that may be necessary to protect and preserve the public health from any public health hazard during any ... ‘state of emergency,’ or ‘local emergency....’”⁸³ **In short, it is more likely than not that local health officers have the authority to determine which businesses qualify as essential so long as the local health officer’s order is *more stringent* than the Governor’s order** (ie, local health officers likely can prohibit additional categories of businesses from operating even if the state has deemed such businesses essential but they may *not* authorize the operation of businesses that the state has deemed non-essential).^{vi} Because local health officers may not *expand* the state’s classification of essential businesses, they also do not have the authority to expand eligibility for new enrollments at childcare facilities under the state executive order.

Criminal Justice Settings

People living in correctional facilities of any kind are at heightened risk during an infectious disease pandemic due to crowded living conditions; limited facilities for isolation or quarantine; and challenges ensuring a high level of sanitation. Many counties have acknowledged these challenges in the face of the COVID-19 pandemic and are taking steps to address them, although there is not a uniform approach.

a. Relevant State Law and Guidance

State law, executive orders, and guidance from the state supreme court provide guidance for counties on how to respond to the threat COVID-19 poses to people in jail. The key provisions are laid out below:

- [CA Health and Safety Code Section 101045](#) requires the local health officer to inspect the health and safety conditions in county jails and any other public or private detention facilities at least annually. The law specifically notes that the local health officer can make additional investigations of detention facilities as they “determine[]necessary.” This requirement is part of the regular responsibilities of LHOs and does not depend on the declaration of a state of emergency or local emergency.
- [CA Government Code Section 8658](#) allows the person in charge of a county or city jail or other correctional institution to remove inmates in the event of a life-threatening emergency and confine them in another safe location. The person in charge will not be held liable for these actions under these circumstances. Typically, the person in charge is the sheriff.
- [CA Government Code Section 26602](#) is also relevant to the safety of people in jail. It states that the sheriff can execute all orders of the local health officer issued for the purpose of preventing the spread of any contagious or communicable disease. Two counties have issued specific orders to address the needs of inmates in jail and the sheriff is responsible for enforcing these orders.

^{vi} On May 9, 2020, Tesla filed a lawsuit against Alameda County arguing that the statewide stay-at-home order authorized Tesla to resume full operation and preempted the more restrictive county stay-at-home order. The lawsuit has not been resolved as of May 14, 2020, but Governor Newsom has repeatedly noted that stricter local orders may remain in effect.

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- [Executive Order N-36-20](#), issued by Governor Newsom on March 24, 2020, suspends transfers of people convicted of a felony from jail to prison and eliminates parole revocations in many cases.

In addition, on March 20, 2020, the chief justice of the state supreme court issued [an advisory](#) outlining recommendations for how to reduce the danger posed by COVID-19 on justice-involved groups. The recommendations include:

- Revise, on an emergency basis, the countywide bail schedule to lower bail amounts significantly for the duration of the coronavirus emergency, including lowering the bail amount to \$0 for many lower level offenses – for all misdemeanors except for those listed in [Penal Code section 1270.1](#) and for lower-level felonies. This will result in fewer individuals in county jails thus alleviating some of the pressures for arraignments within 48 hours and preliminary hearings within 10 days.
- In setting an adult or juvenile defendant’s conditions of custody, including the length, eligibility for alternative sentencing, and surrender date, the court should consider defendant’s existing health conditions, and any conditions existing at defendant’s anticipated place of confinement that could affect the defendant’s health, the health of other detainees, or the health of personnel staffing the anticipated place of confinement.
- With the assistance of justice partners, identify those persons currently in county jail or juvenile hall custody who have less than 60 days remaining on their jail sentence for the purpose of modifying their sentences to permit early release of such persons with or without supervision or to community-based organizations for treatment.
- With the assistance of justice partners, determine the nature of supervision violations that will warrant “[flash incarceration](#),” for the purpose of drastically reducing or eliminating the use of such an intermediate sanction during the current health crisis.

The Judicial Council of California has also taken several steps related to COVID-19. For example, on May 6, 2020, the council adopted several [emergency rules](#) addressing the impact of COVID-19 on criminal and civil judicial proceedings, several of which implement recommendation made by the chief justice of the state supreme court. Among other policies, the emergency rules:

- Establish an emergency bail schedule to set bail at \$0 for misdemeanors and certain felonies, as well as to apply this emergency bail schedule to persons currently held in county jail custody that are charged with an offense covered by the bail schedule.
- Set bail at \$0 for violations of misdemeanor probation, regardless of whether the arrest is made with or without a bench warrant. For violations of felony probation, parole, post release community supervision, or mandatory supervision, bail must be set in the same amount as bail for the underlying substantive charge of conviction under the emergency bail schedule.
- Requires application of the statewide emergency bail schedule “to every accused person arrested and in pretrial custody and to every person held in pretrial jail custody” by 5:00pm on April 10, 2020.

The Judicial Council’s emergency rules will remain in effect until 90 days after the governor lifts the COVID-19 state of emergency declaration. Notably, however, other measures approved by the Judicial Council appear to undermine some of the guidance and steps taken to mitigate the effects of COVID-19. For example, [a measure adopted on April 6](#):

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- Extends the ten (10) court day period for holding a preliminary hearing and the defendant’s right of release to 30 court days.
- Extends the time period in which a defendant charged with a felony offense shall be taken before a judicial officer from 48 hours to not more than 7 days.

Taken together, the chief justice’s recommendations, measures adopted by the Judicial Council, state law provisions, and the governor’s executive order provide some initial guidance for counties, including local health officers, on immediate actions to address the impact of COVID-19 on people in jail.

b. Summary of Action to Date

California counties are taking different approaches to addressing the needs of people detained in jail during the COVID-19 pandemic. For example, on March 23, 2020, the LA County Board of Supervisors issued [an order](#) requiring the LHO to conduct an immediate assessment of the county’s jails to identify the measures that needed to be taken to prevent the spread of COVID-19. The LHO will work in collaboration with other county agencies and officials, including the Department of Health Services – Correctional Health, the Sheriff’s Department, the Department of Mental Health, and the Office of the Inspector General.

Jurisdiction	Details
Alameda	Santa Rita County Jail is in Alameda County. The sheriff’s department has cut the jail population by 600 people and it is reducing arrests.
Berkeley	Unknown
Contra Costa	Contra Costa County has three detention facilities . The sheriff has reduced arrests and is limiting visits at the jail to reduce the spread of COVID-19.
Marin	Marin County is providing certain inmates with early release .
Napa	Napa County appears focused on sanitation and social distancing within the county jail .
San Francisco	The SF Sheriff’s Department COVID-19 action plan does not provide specific information about adopting an early release protocol but it was developed before the chief justice issued her advisory. News outlets have reported on efforts to reduce the local jail population.
San Mateo	The San Mateo County Sheriff has issued a detailed advisory that lays out the actions the sheriff’s department has taken to address COVID-19 in jails and in the justice-involved population. The sheriff’s department is working with their correctional health department .
Santa Clara	In Santa Clara, there is controversy around the response at county jails . Sheriff deputies are speaking out about the lack of social distancing and sanitation. People within these facilities have been diagnosed with COVID-19 .
Santa Cruz	On March 20, 2020 the LHO of Santa Cruz county issued an order authorizing the sheriff to release persons charged, convicted or accused of non-violent, non-sexual and non-serious offenses. The LHO order includes an order from the presiding judge of the superior court of the county which lays out clearly which inmates are eligible for release and which are not. The Santa Cruz County sheriff’s office also lays out a list of actions that it is taking to protect inmates in the system.

Jurisdiction	Details
Solano	Unknown
Sonoma	In Sonoma County , the sheriff and district attorney are working to release certain individuals with non-violent offenses

At the state level, the Office of Inspector General oversees prisons and is [issuing guidance](#) on COVID-19 for prisons across the state. Different counties have different agencies with responsibility for aspects of service delivery within jails. Some local health departments, such as LADPH, have a division focused on correctional health while others do not. In addition, the ACLU is [taking an active role](#) in advocating for incarcerated individuals during the COVID-19 pandemic and may serve as a resource and an ally in advocating for equitable policies for this population. There has also been [litigation](#) seeking to secure the release of persons currently in detention facilities.

c. Local Health Officer Authority: Considerations and Suggestions

Our suggestions for local health officers seeking to address COVID-19 within detention facilities include:

- Ensure that each county is implementing all the recommendations laid out by the Chief Justice and the Judicial Council to reduce the number of people in county jails.
- Review the approach taken by [Santa Cruz County’s Sheriff Department](#) and the LHO to release inmates and protect inmates and staff. In Santa Cruz, the presiding judge of Superior Court also signed off on the Health Officer’s order. This approach may serve to signify unity across the public health and judicial arms of county government in the context of a public health crisis that affects the jails and the law enforcement community.
- Consider adopting the approach taken in Los Angeles County, where the Board of Supervisors has asked the County Health Officer to conduct an assessment of county jails for the purpose of identifying all necessary and appropriate measures to prevent the spread of COVID-19 in jails and protect incarcerated individuals and staff and then issue additional relevant orders based on that assessment. As discussed earlier, a local governing body enacting emergency measures to release people from jail can rely on both state emergency response laws and its inherent police powers under the state constitution, meaning that a court may be less likely to invalidate the policy based solely on its interpretation of state emergency response laws.
- Work closely with a range of partner agencies including the public defender, the alternative public defender, the district attorney, and the sheriff’s department, as well as non-governmental stakeholders such as advocates for criminal justice reform and prisoner rights organizations.

Shifting from Response to Recovery

Local health officers and local governments must also assess their authority to enact, maintain, and/or expand health- and equity-promoting policies as efforts shift from addressing the acute consequences of COVID-19 to a focus on long-term recovery, including planning for the rescission or expiration of emergency declarations.

a. Non-Emergency Authority of Local Health Officers

As a preliminary matter, local health officers’ direct regulatory authority is substantially more circumscribed outside the context of a declared local and/or state of emergency. Once emergency declarations are lifted, for

example, local health officers will almost certainly lack the legal authority to implement measures such as expanded paid sick leave benefits or enhanced tenant protections. Despite this narrower authority, local health officers can nevertheless continue to play a critical role in long-term recovery efforts. For example, state law provides that,

A “health officer knowing or having reason to believe that any case of [a reportable disease], or any other contagious, infectious or communicable disease exists, or has recently existed, within the [health officer’s] territory,” the health officer must “take measures as may be necessary to prevent the spread of the disease or occurrence of additional cases.”⁸⁴

Local health officers’ authority under this state law is not contingent on an emergency declaration and provides relatively broad authority to implement measures necessary to prevent any current transmission of COVID-19. The statutory language referring to a contagious, infectious, or communicable disease that *recently existed* likely also provides local health officers sufficient authority to implement measures to prevent a resurgence of cases even after active transmission slows. For example, this state statute likely provides local health officers the authority to maintain stay-at-home orders and to impose additional restrictions on or entirely prohibit the operation of businesses, regardless of whether the business is classified as “essential” by the statewide order.

State law also requires local health officers to advise local governments on actions necessary to prevent or respond to a communicable disease outbreak.

“During an outbreak of a communicable disease, or upon the imminent and proximate threat of a communicable disease outbreak or epidemic that threatens the public’s health, a local health officer shall ... Promptly notify and update governmental entities within the local health officer’s jurisdiction about communicable diseases ... that may affect them, if, in the opinion of the local health officer, action or inaction on the part of the governmental entity might affect outbreak response efforts.”⁸⁵

Local health officers can leverage this requirement and their broader “bully pulpit” to make the case for why policies addressing the social and structural determinants of health and health equity, including the economic consequences of COVID-19, are critical to an effective and equitable public health response. Additionally, LHOs can continue to play an active role in investigating the health and sanitary conditions within local jails, a responsibility that falls under LHOs’ general authority and does not depend on any declared emergency.⁸⁶

b. Non-Emergency Authority of Local Governing Bodies

Unlike local health officers, who derive their authority entirely from state and local statutes and regulations, the California state constitution grants local governing bodies (ie, county boards of supervisors and city councils) general police powers to regulate for health and safety.⁸⁷ Whether an emergency declaration is in effect does, however, affect the exact scope, requirements, and limitations on local government authority.

Outside of a declared local or state of emergency, ordinances and regulations adopted by a county board of supervisors do *not* apply within incorporated cities.^{vii} This means that long-term efforts to enact permanent

^{vii} As noted in earlier sections, whether an emergency order or regulation adopted by a county board of supervisors may apply within incorporated cities remains an open legal question. However, regardless of if or how that question is ultimately resolved, it is well established that an ordinance or regulation adopted by a county pursuant to their general police powers (as opposed to their powers under state emergency response laws) does not apply within incorporated cities.

health- and equity-promoting policies will require a jurisdiction-by-jurisdiction approach. For example, while a county board of supervisors has the legal authority to permanently expand paid sick leave benefits,⁸⁸ the policy will apply within only the unincorporated areas of the county; incorporated cities would need to adopt their own paid sick leave ordinances to ensure the benefits remain available after emergency declarations are lifted.

Similarly, local governing bodies must assess the extent to which their authority depends on state executive orders waiving otherwise applicable state law. For example, Governor Newsom's authority to suspend state laws—state statutes that otherwise preempt certain local housing policies, for instance—depends on the existence of a declared state of emergency.⁸⁹ Although local governing bodies may adopt ordinances permanently establishing stronger tenant protections than are available under state law, such ordinances are subject to any limitations imposed by state law once the state of emergency ends and/or the governor's executive order expires. This means, for instance, that the local ordinance may permanently restrict the substantive grounds for which a landlord may seek to evict a tenant, but the local ordinance may not regulate the procedural aspects of eviction once such grounds are established.⁹⁰

Conclusion

Local health officers and local governments in California are on the frontlines of responding to the health, social, and economic consequences of the COVID-19 pandemic. Based on our preliminary research, we conclude that local health officers and local governing bodies possess substantial authority to take meaningful action to address the crisis, including in the areas of essential businesses and workers and criminal justice settings. Although state law may provide local health officers sufficient authority to unilaterally adopt policies related to paid sick leave and tenant protections, such action would be unprecedented and may face both legal and political challenges. In contrast, local governing bodies have the authority to adopt expanded paid sick leave benefits and tenant protections such as eviction moratoriums, subject to certain requirements and limitations. This memorandum outlines the scope and limitations of such authority with respect to these areas, as well as identifies considerations and suggestions for local health officers and/or local governing bodies seeking to adopt one or more of these policies. Importantly, this memorandum addresses legal viability with respect to broad types of regulations and additional analyses may be necessary to assess specific policy proposals.

¹ Cal. Const. Art. 11, § 7 (“A county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.”)

² Fisher v. City of Berkeley, 27 Cal.3d 644 (1986).

³ Rental Hous. Assn. of N. Alameda Cty. v. City of Oakland, 171 Cal. App. 4th 741 (2009) (“Thus, under existing law, municipalities may by ordinance limit the substantive grounds for eviction by specifying that a landlord may gain possession of a rental unit only on certain limited grounds. But they may not procedurally impair the summary eviction scheme set forth in the unlawful detainer statutes and they may not alter the Evidence Code burdens of proof.”) (cleaned up).

⁴ Larson v. City & Cty. of San Francisco, 192 Cal. App. 4th 1263 (2011) (“Municipalities clearly have authority to impose substantive limitations on the grounds for evictions. As the Supreme Court explained in Birkenfeld, this authority is grounded in ‘the police power to impose reasonable regulations upon private property rights to serve the larger public good.’ The ‘elimination of particular grounds for eviction is a limitation upon the landlord’s property rights under the police power, giving rise to a substantive ground of defense in unlawful detainer proceedings.’ ... Locally imposed procedural constraints on the state statutory scheme are, however, in excess of a municipality’s police power to regulate the substantive contours of private property rights and an intrusion upon the state legislative scheme to provide a ‘summary repossession procedure ... intended to be a relatively simple and speedy remedy that obviates any need for self-help by landlords.’”) (cleaned up).

⁵ Cal. Gov. Code § 8630(a).

⁶ Cal. Gov. Code § 8630(c).

⁷ Alameda County, for example, authorizes the director of civil defense and disaster to issue a local emergency proclamation if the county board of supervisors is not in session, Alameda County Municipal Code § 2.118.110(A), and to “[m]ake and issue rules and regulations on matters reasonably related to the protection of life and property.” Alameda County Municipal Code § 2.118.120(A). Santa Clara County provides the same authority to the county’s director of emergency services. Santa Clara County Municipal Code § A8-9(a), (f)(1).

⁸ Cal. Gov. Code § 8630(a), (b).

⁹ Cal. Gov. Code § 8558(c).

¹⁰ Cal. Gov. Code § 8625.

¹¹ Cal. Gov. Code §§ 8558(b), 8625(a).

¹² Cal. Gov. Code § 8625(b).

¹³ Cal. Gov. Code § 8625(c).

¹⁴ Cal. Health & Safety Code § 101080. The same statute outlines additional circumstances in which a health emergency or local health emergency may be declared but these circumstances are not directly relevant to COVID-19 and thus outside the scope of this memorandum.

¹⁵ Cal. Health & Safety Code § 101080.

¹⁶ See 78 Ops. Cal. Atty. Gen. 171 (“The broad powers based on a declaration of local emergency cannot be construed literally to encompass ‘any’ orders, regulations, or preventive measures in violation of state law or policy. ... Accordingly, in the execution of a particular statutory responsibility imposed by [state emergency laws], those charged with their administration must take cognizance of and effectuate, or at least refrain from acting in derogation of, other valid governmental policies.”)

¹⁷ Cal. Health & Safety Code § 101040(a).

¹⁸ Cal. Health & Safety Code § 101040(b).

¹⁹ Cal. Health & Safety Code § 120175.5.

²⁰ Cal. Health & Safety Code § 120175.5(a)(1).

²¹ Cal. Health & Safety Code § 120175.5(a)(2).

²² Cal. Health & Safety Code § 120175.5(b).

²³ Cal. Health & Safety Code § 101085(a)(2), (b).

²⁴ Cal. Health & Safety Code § 101029. *See also* Cal. Gov. Code § 26602 (“The sheriff may execute all orders of the local health officer issued for the purpose of preventing the spread of any contagious or communicable disease.”)

²⁵ Cal Gov. Code § 41601 (“for the execution of all orders of the local health officer issued for the purpose of preventing the spread of any contagious, infectious, or communicable disease, the chief of police has the powers conferred upon sheriffs by general law and in all respects is entitled to the same protection.”)

²⁶ Cal. Gov. Code § 8634.

²⁷ Cal. Gov. Code § 8614(c).

²⁸ For example, on March 21, 2020, Governor Newsom issued an executive order providing that “[a]ny local ordinance, including those relating to noise limitations, is suspended to the extent it restricts, delays, or otherwise inhibits the delivery of food products, pharmaceuticals, and other emergency necessities distributed through grocery stores and other retail or institutional channels, including, but not limited to, hospitals, jails, restaurants, and schools.” Executive Order N-35-20 § 4, available at <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.21.20-EO-N-35-20.pdf>.

²⁹ *See* Cal. Gov. Code §§ 8614(c), 8627.5.

³⁰ Emergency orders and regulations issued by the governor “have the force and effect of law,” Cal. Gov. Code § 8567(a), and thus, consistent with general preemption principles, control over conflicting local ordinances, regulations, and others. *See* Cal. Const. Art. 11, § 7 (“A county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations **not in conflict with general laws.**”) (emphasis added). Additionally, state emergency response laws explicitly note that local ordinances, orders, and regulations remain in effect during a state of emergency “*except as to any provision suspended or superseded by an order or regulation issued by the Governor.*” Cal. Gov. Code § 8614(c).

³¹ 62 Cal. Op. Att’y Gen. 701 (1979).

³² 62 Cal. Op. Att’y Gen. 701 (1979).

³³ 62 Cal. Op. Att’y Gen. 701 (1979).

³⁴ *See* 58 Cal. Jur. 3d State of California § 30.

³⁵ *See* Cal. Civil Code § 8634 (“During a local emergency the governing body of a political subdivision, or officials designated thereby, may promulgate orders and regulations necessary to provide for the protection of life and property...”).

³⁶ Employees ineligible for paid sick leave benefits under California state law include:

1. “An employee covered by a valid collective bargaining agreement if the agreement expressly provides for the wages, hours of work, and working conditions of employees, and expressly provides for paid sick days or a paid leave or paid time off policy that permits the use of sick days for those employees, final and binding arbitration of disputes concerning the application of its paid sick days provisions, premium wage rates for all overtime hours worked, and regular hourly rate of pay of not less than 30 percent more than the state minimum wage rate.”

2. *“An employee in the construction industry covered by a valid collective bargaining agreement if the agreement expressly provides for the wages, hours of work, and working conditions of employees, premium wage rates for all overtime hours worked, and regular hourly pay of not less than 30 percent more than the state minimum wage rate, and the agreement either (A) was entered into before January 1, 2015, or (B) expressly waives the requirements of this article in clear and unambiguous terms. For purposes of this subparagraph, “employee in the construction industry” means an employee performing work associated with construction, including work involving alteration, demolition, building, excavation, renovation, remodeling, maintenance, improvement, repair work, and any other work as described by Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code, and other similar or related occupations or trades.”*
3. *“An individual employed by an air carrier as a flight deck or cabin crew member that is subject to the provisions of Title II of the federal Railway Labor Act (45 U.S.C. Sec. 151 et seq.), provided that the individual is provided with compensated time off equal to or exceeding the amount established in paragraph (1) of subdivision (b) of Section 246.”*
4. *“An employee of the state, city, county, city and county, district, or any other public entity who is a recipient of a retirement allowance and employed without reinstatement into his or her respective retirement system pursuant to either Article 8 (commencing with Section 21220) of Chapter 12 of Part 3 of Division 5 of Title 2 of the Government Code, or Article 8 (commencing with Section 31680) of Chapter 3 of Part 3 of Division 4 of Title 3 of the Government Code.”*

Cal. Labor Code § 245.5(a).

³⁷ Cal. Labor Code § 246(a).

³⁸ <https://legalaidatwork.org/factsheet/coronavirus-faq/>

³⁹ Cal. Labor Code § 246(b)(1). An employer may provide for different accrual amounts “provided that the accrual is on a regular basis so that an employee has no less than 24 hours of accrued sick leave or paid time off by the 120th calendar day of employment or each calendar year, or in each 12-month period.” Cal. Labor Code § 246(b)(3).

⁴⁰ Cal. Labor Code § 246(c).

⁴¹ Cal. Labor Code § 246(j).

⁴² Cal. Labor Code § 246.5(a)(1). For the purposes of California’s paid sick leave law, family member means any of the following:

“(1) A child, which for purposes of this article means a biological, adopted, or foster child, stepchild, legal ward, or a child to whom the employee stands in loco parentis. This definition of a child is applicable regardless of age or dependency status.

(2) A biological, adoptive, or foster parent, stepparent, or legal guardian of an employee or the employee’s spouse or registered domestic partner, or a person who stood in loco parentis when the employee was a minor child.

(3) A spouse.

(4) A registered domestic partner.

(5) A grandparent.

(6) A grandchild.

(7) A sibling.”

Cal. Labor Code § 245.5(c).

⁴³ Cal. Labor Code § 246.5(a)(2). These reasons include:

1. When “an employee who is a victim of domestic violence, sexual assault, or stalking for taking time off from work to obtain or attempt to obtain any relief, including, but not limited to, a temporary restraining order, restraining order, or other injunctive relief, to help ensure the health, safety, or welfare of the victim or his or her child.” Cal. Labor Code § 230(c).
2. When “an employee who is a victim of domestic violence, sexual assault, or stalking for taking time off from work for any of the following purposes: (1) To seek medical attention for injuries caused by domestic violence, sexual assault, or stalking. (2) To obtain services from a domestic violence shelter, program, or rape crisis center as a result of domestic violence, sexual assault, or stalking. (3) To obtain psychological counseling related to an experience of domestic violence, sexual assault, or stalking. (4) To participate in safety planning and take other actions to increase safety from future domestic violence, sexual assault, or stalking, including temporary or permanent relocation.” Cal. Labor Code § 230.1(a).

⁴⁴ Qualifying employees are those who are unable to work or telework because they: “have coronavirus symptoms and are seeking a medical diagnosis; are subject to a federal, state, or local quarantine or isolation order related to coronavirus (including a shelter-in-place order or other general order to stay at home or an order affecting those in particular populations, such as those above a certain age); have been advised to self-quarantine by a health care provider; are caring for a child whose school/childcare has been closed or for whom childcare is unavailable due to coronavirus; or are caring for an individual who is subject to a federal, state, or local quarantine or isolation order related to coronavirus, or who has been advised by a health care provider to self-quarantine due to concerns related to coronavirus.”

<https://www.abetterbalance.org/resources/know-your-rights-the-families-first-coronavirus-response-act-faq/>

⁴⁵ <https://www.abetterbalance.org/resources/know-your-rights-the-families-first-coronavirus-response-act-faq/>

⁴⁶ <https://www.abetterbalance.org/resources/federal-coronavirus-proposal-the-families-first-coronavirus-response-act-h-r-6201/>

⁴⁷ <https://www.nelp.org/publication/faq-immigrant-workers-rights-and-covid-19/>

⁴⁸ <https://www.abetterbalance.org/resources/federal-coronavirus-proposal-the-families-first-coronavirus-response-act-h-r-6201/>

⁴⁹ <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>

⁵⁰ <https://www.abetterbalance.org/resources/federal-coronavirus-proposal-the-families-first-coronavirus-response-act-h-r-6201/>

⁵¹ These criteria are:

1. “The Food Sector Worker is subject to a Federal, State, or local quarantine or isolation order related to COVID-19”;
2. “The Food Sector Worker is advised by a health care provider to self-quarantine or self-isolate due to concerns related to COVID-19”; or
3. “The Food Sector Worker is prohibited from working by the Food Sector Worker’s Hiring Entity due to health concerns related to the potential transmission of COVID-19.”

⁵² <https://www.gov.ca.gov/wp-content/uploads/2020/04/4.16.20-EO-N-51-20.pdf>

⁵³ Cal. Health & Safety Code § 101040(a).

⁵⁴ Cal. Health & Safety Code § 101040(b).

⁵⁵ Cal. Gov. Code § 8634.

⁵⁶ Cal. Health & Safety Code § 101040(a), (b).

⁵⁷ See CityHealth. *Earned Sick Leave Policy Breakdown* (2019).
http://cityhealthdata.org/download/CH_Earned%20Sick_2019_B.pdf.

⁵⁸ Cal. Const. Art. 11, § 7.

⁵⁹ *City of Riverside v. Inland Empire Patients Health & Wellness Ctr., Inc.*, 56 Cal. 4th 729 (2013).

⁶⁰ Cal. Lab. Code § 249(d) (“This article establishes minimum requirements pertaining to paid sick days and does not preempt, limit, or otherwise affect the applicability of any other law, regulation, requirement, policy, or standard that provides for greater accrual or use by employees of sick days, whether paid or unpaid, or that extends other protections to an employee.”).

⁶¹ See, e.g., Oakland Municipal Code Chapter 5.92; Berkeley Municipal Code Chapter 13.100; Emeryville Municipal Code Chapter 5-37.

⁶² The San Francisco Board of Supervisors and the Los Angeles City Council, for example, recently adopted emergency ordinances requiring private employers with 500 or more employees to provide their employees up to 80 hours of paid public health emergency leave if the employee is unable to work for specified reasons related to COVID-19.

⁶³ Cal. Health & Safety Code § 101040(a).

⁶⁴ Cal. Health & Safety Code § 101040(b).

⁶⁵ Cal. Health & Safety Code § 101040(a), (b).

⁶⁶ Cal. Const. Art. 11, § 7.

⁶⁷ *City of Riverside v. Inland Empire Patients Health & Wellness Ctr., Inc.*, 56 Cal. 4th 729 (2013).

⁶⁸ Cal. Civil Code § 1954.52(a).

⁶⁹ Cal. Gov. Code § 7060-7060.7.

⁷⁰ *Fisher v. City of Berkeley*, 27 Cal.3d 644 (1986); *Rental Hous. Assn. of N. Alameda Cty. v. City of Oakland*, 171 Cal. App. 4th 741 (2009); *Larson v. City & Cty. of San Francisco*, 192 Cal. App. 4th 1263 (2011).

⁷¹ *Fisher v. City of Berkeley*, 27 Cal.3d 644 (1986).

⁷² *Rental Hous. Assn. of N. Alameda Cty. v. City of Oakland*, 171 Cal. App. 4th 741 (2009) (“Thus, under existing law, municipalities may by ordinance limit the substantive grounds for eviction by specifying that a landlord may gain possession of a rental unit only on certain limited grounds. But they may not procedurally impair the summary eviction scheme set forth in the unlawful detainer statutes and they may not alter the Evidence Code burdens of proof.”) (cleaned up).

⁷³ *Larson v. City & Cty. of San Francisco*, 192 Cal. App. 4th 1263 (2011) (“Municipalities clearly have authority to impose substantive limitations on the grounds for evictions. As the Supreme Court explained in *Birkenfeld*, this authority is grounded in ‘the police power to impose reasonable regulations upon private property rights to serve the larger public good.’ The ‘elimination of particular grounds for eviction is a limitation upon the landlord’s property rights under the police power, giving rise to a substantive ground of defense in unlawful detainer proceedings.’ ... Locally imposed procedural constraints on the state statutory scheme are, however, in excess of a municipality’s police power to regulate the substantive contours of private property rights and an intrusion upon the state legislative scheme to provide a ‘summary repossession procedure ... intended to be a relatively simple and speedy remedy that obviates any need for self-help by landlords.’”) (cleaned up).

⁷⁴ Recent eviction moratoriums adopted by [Alameda County](#), [Marin County](#), [San Mateo County](#), and [Santa Clara County](#) provide examples of robust legislative findings on legal authority and public health rationale. Marin County also included findings on the county’s public health officer’s recommendation to adopt the eviction moratorium.

⁷⁵ The President’s Coronavirus Guidelines for America. Available at https://www.whitehouse.gov/wp-content/uploads/2020/03/03.16.20_coronavirus-guidance_8.5x11_315PM.pdf

⁷⁶ The Department of Homeland Security’s Cybersecurity and Infrastructure Security Agency (CISA) Guidance on the Essential Critical Infrastructure Workforce. Available at: https://www.cisa.gov/sites/default/files/publications/CISA_Guidance_on_the_Essential_Critical_Infrastructure_Workforce_Version_2.0_Updated.pdf

⁷⁷ The Department of Homeland Security’s Cybersecurity and Infrastructure Security Agency (CISA) Guidance on the Essential Critical Infrastructure Workforce. Available at: https://www.cisa.gov/sites/default/files/publications/CISA_Guidance_on_the_Essential_Critical_Infrastructure_Workforce_Version_2.0_Updated.pdf

⁷⁸ <https://covid19.ca.gov/img/Executive-Order-N-33-20.pdf>

⁷⁹ <https://covid19.ca.gov/img/EssentialCriticalInfrastructureWorkers.pdf>

⁸⁰ <https://www.gov.ca.gov/wp-content/uploads/2020/05/5.4.20-EO-N-60-20-text.pdf>

⁸¹ <https://www.gov.ca.gov/wp-content/uploads/2020/05/5.4.20-EO-N-60-20-text.pdf>

⁸² <https://covid19.ca.gov/stay-home-except-for-essential-needs/>

⁸³ Cal. Health & Safety Code § 101040(a).

⁸⁴ Cal. Health & Safety Code § 120175.

⁸⁵ Cal. Health & Safety Code § 120175.5(a)(1).

⁸⁶ Cal. Health & Safety Code § 101045. County health officers are required to investigate “every county jail, every other publicly operated detention facility in the county, and all private work furlough facilities and programs established pursuant to Section 1208 of the Penal Code.” Similarly, if a city has a city health officer, the city health officer must “investigate health and sanitary conditions of any city jail or detention facility” as the health officer deems necessary.

⁸⁷ Cal. Const. Art. 11, § 7.

⁸⁸ Cal. Lab. Code § 249(d) (“This article establishes minimum requirements pertaining to paid sick days and does not preempt, limit, or otherwise affect the applicability of any other law, regulation, requirement, policy, or standard that provides for greater accrual or use by employees of sick days, whether paid or unpaid, or that extends other protections to an employee.”).

⁸⁹ Cal. Gov. Code § 8571 (providing that the governor may suspend regulatory statutes “[d]uring a state of war emergency or a state of emergency.”)

⁹⁰ Fisher v. City of Berkeley, 27 Cal.3d 644 (1986); Rental Hous. Assn. of N. Alameda Cty. v. City of Oakland, 171 Cal. App. 4th 741 (2009); Larson v. City & Cty. of San Francisco, 192 Cal. App. 4th 1263 (2011).