

File No. 161110

Committee Item No. 12

Board Item No. 11

**COMMITTEE/BOARD OF SUPERVISORS**

**AGENDA PACKET CONTENTS LIST**

Committee: Budget & Finance Committee

Date November 30, 2016

Board of Supervisors Meeting

Date December 6, 2016

**Cmte Board**

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| <input type="checkbox"/>            | <input type="checkbox"/>            | Resolution                                   |
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| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Legislative Digest                           |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Budget and Legislative Analyst Report        |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Youth Commission Report                      |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Introduction Form                            |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Department/Agency Cover Letter and/or Report |
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| <input type="checkbox"/>            | <input type="checkbox"/>            | Grant Information Form                       |
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| <input type="checkbox"/>            | <input type="checkbox"/>            | Contract/Agreement                           |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Form 126 – Ethics Commission                 |
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**OTHER (Use back side if additional space is needed)**

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Completed by: Linda Wong Date November 22, 2016

Completed by: Linda Wong Date December 1, 2016

FILE NO. 161110

ORDINANCE NO.

1 [Police Code - Choice of Communications Services Providers in Multiple Occupancy Buildings]

2  
3 **Ordinance amending the Police Code to prohibit owners of multiple occupancy**  
4 **buildings from interfering with the choice of communications services providers by**  
5 **occupants, establish requirements for communications services providers to obtain**  
6 **access to multiple occupancy buildings, and establish remedies for violation of the**  
7 **access requirement.**

8 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.  
9 **Additions to Codes** are in *single-underline italics Times New Roman font*.  
10 **Deletions to Codes** are in *strikethrough-italics Times New Roman font*.  
11 **Board amendment additions** are in double-underlined Arial font.  
12 **Board amendment deletions** are in ~~strikethrough Arial font~~.  
13 **Asterisks (\* \* \* \*)** indicate the omission of unchanged Code  
14 subsections or parts of tables.

15 Be it ordained by the People of the City and County of San Francisco:

16 Section 1. Findings

17 (a) San Francisco has long been recognized as a technology leader. San  
18 Franciscans expect that the communications services they receive at their residences and  
19 offices meet modern standards. San Franciscans also expect to be able to choose among  
20 different providers. The ability to choose among providers benefits all San Franciscans by  
21 incentivizing providers to offer the best services at the lowest prices.

22 (b) There are a handful of different entities offering communications services in San  
23 Francisco, though several of these provide service only in limited areas. Many San  
24 Franciscans can choose between at least two service providers, but some customers have  
25 only one option for service. This is particularly true for occupants of residential and

1 commercial multiple occupancy buildings. It is common in such buildings for property owners  
2 to allow only one provider to install the facilities and equipment necessary to provide services  
3 to occupants.

4 (c) While state and federal laws prohibit providers from entering into exclusive  
5 access agreements with property owners, nothing in state or federal law directly regulates  
6 property owners. The City and County of San Francisco can use its police power to facilitate  
7 opportunities for access to multiple occupancy buildings by communications services  
8 providers to ensure that enable occupants of multiple occupancy unit buildings to can obtain  
9 communications services from the providers of their choice, while respecting the rights of  
10 property owners.

11  
12 Section 2. The Police Code is hereby amended by adding Article 52, consisting of  
13 Sections 5200 to ~~5216~~ 5218, to read as follows:

14  
15 **ARTICLE 52:**

16 **OCCUPANT'S RIGHT TO CHOOSE A COMMUNICATIONS SERVICES PROVIDER**

17 **SEC. 5200. DEFINITIONS.**

18 *For purposes of this Article 52:*

19 *"City" means the City and County of San Francisco.*

20 *"Communications services" means: (a) video service as that term is defined in California*  
21 *Public Utilities Code § 5830(s); (b) telecommunications services certificated by the California Public*  
22 *Utilities Commission under California Public Utilities Code § 1001; or (c) services provided by a*  
23 *telephone corporation as that term is defined in California Public Utilities Code § 234. Nothing in*  
24 *this definition is intended to limit the types of services that a communications services provider*  
25 *accessing a multiple occupancy building pursuant to this Article 52 may provide to occupants.*

1           "Communications services provider" means a person that: (a) has obtained a franchise to  
2 provide video service from the California Public Utilities Commission under California Public Utilities  
3 Code § 5840; (b) has obtained a certificate of public convenience and necessity from the California  
4 Public Utilities Commission under California Public Utilities Code § 1001 to provide  
5 telecommunications services; or (c) is a telephone corporation as that term is defined in California  
6 Public Utilities Code § 234. In addition, a communications services provider must have obtained a  
7 Utility Conditions Permit from the City under Administrative Code Section 11.9.

8           "Existing wiring" means both home run wiring and cable home wiring, as those terms are  
9 defined by the Federal Communications Commission in 47 C.F.R. § 76.800(d) and 47 C.F.R. § 76.5(l)  
10 respectively, except that those terms as used herein shall apply only to the home run wiring or cable  
11 home wiring owned or controlled by a property owner.

12           "Just and reasonable compensation" means the "fair market value" of the impact on the  
13 multiple occupancy building as that term is defined in California Code of Civil Procedure § 1263.320.

14           "Multiple occupancy building" means: (a) an apartment building, apartment complex, or any  
15 other group of residential units located upon a single premises or lot, provided that such multiple  
16 dwelling unit contains at least four separate units; and (b) a multi-tenant building used for business  
17 purposes that has separate units occupied by at least four different persons. Hotels, guesthouses, and  
18 motels, consisting primarily of guest rooms and/or transient accommodations, are not multiple  
19 occupancy buildings. Multiple occupancy buildings include properties that are rented to tenants,  
20 owned and occupied by individual owners, or occupied by shareholders/tenants of a cooperative.

21           "Occupant" means a person occupying a unit in a multiple occupancy building.

22           "Person" means any natural person or an entity including but not limited to a corporation or  
23 partnership.

24           "Property owner" means a person that owns a multiple occupancy building or controls or  
25 manages a multiple occupancy building on behalf of other persons.

1           "Request for service" means an expression of interest from an occupant received by a  
2 communications service provider either by mail, telephone or electronic mail. A contact between an  
3 occupant and a communications services provider through a sign-up list contained on the provider's  
4 website will be deemed a request for service once the communications services provider confirms the  
5 request either by telephone or electronic mail.

6  
7           **SEC. 5201. NO INTERFERENCE BY PROPERTY OWNER.**

8           (a) No property owner shall interfere with the right of an occupant to obtain  
9 communications services from the communications services provider of the occupant's choice.

10           (b) A property owner interferes with the occupant's choice of communications services  
11 provider by, among other things, refusing to allow a communications services provider to install the  
12 facilities and equipment necessary to provide communications services or use any existing wiring to  
13 provide communications services as required by this Article 52.

14  
15           **SEC. 5202. NO DISCRIMINATION BY PROPERTY OWNER AGAINST OCCUPANT.**

16           No property owner shall discriminate in any manner against an occupant on account of the  
17 occupant's requesting or obtaining communications services from the communications services  
18 provider of the occupant's choice.

19  
20           **SEC. 5203. APPLICABILITY.**

21           All property owners as defined in Section 5200 are covered by this Article 52. A property  
22 owner that, as of the effective date of this Article, has an agreement with a communication services  
23 provider that purports to grant the communications services provider exclusive access to the property  
24 a multiple occupancy building and/or the existing wiring to provide services is not exempt from the  
25 requirements of this Article.

1                    **SEC. 5204. REQUEST TO INSPECT A MULTIPLE OCCUPANCY BUILDING.**

2                    (a) Prior to issuing a notice of intent to provide service under Section 5205 of this Article  
3 52, a communications services provider shall inspect a multiple occupancy building to determine the  
4 feasibility of providing services to one or more occupants.

5                    (b) A communications services provider shall request in writing that the property owner  
6 allow it to inspect the property for the purpose of providing service. Such request shall be sent to the  
7 property owner by registered mail at least 14 days before the proposed date for the inspection. The  
8 request may be sent by electronic mail instead, but the 14-day period shall not commence until the  
9 communications services provider is able to confirm that the property owner actually received the  
10 electronic mail communication.

11                    (c) A request for an inspection shall include, but need not be limited to, the following:

12                    (1) A statement that the communications services provider: (A) is authorized to  
13 provide communications services in the City; (B) has received a request for service from one or more  
14 occupants; (C) when inspecting the property, will conform to such reasonable conditions as the  
15 property owner deems necessary to protect the safety, functioning, and appearance of the property and  
16 the convenience and well-being of the occupants; and (D) will indemnify, defend, and hold harmless  
17 the property owner for any damage caused by the inspection.

18                    (2) A description of: (A) the communications services to be offered to occupants;  
19 and (B) the facilities and equipment the communications services provider anticipates installing  
20 to be installed on the property, (if known); (C) the square footage generally required for the  
21 provider's facilities and equipment; and (D) the estimated electrical demand of the provider's  
22 facilities and equipment.

23                    (3) The date and time the communications services provider proposes to inspect the  
24 property.

1                   (4) A statement that the property owner has until three days before the proposed  
2 inspection date to notify the communications services provider in writing either that:

3                   (A) The property owner will not allow the communications services provider  
4 to provide services on the property. In this case, the property owner shall set forth the reasons for its  
5 refusal and whether any of those reasons are permitted by Section 5206 of this Article 52; or

6                   (B) The property owner will allow the communications services provider to  
7 inspect the property. In this case, the property owner shall identify any reasonable conditions that the  
8 communications services provider must follow during the inspection in order to protect the safety,  
9 functioning, and appearance of the property and the convenience and well-being of the occupants.

10                   (5) A reference to and a copy of this Article 52.

11  
12                   **SEC. 5205. NOTICE OF INTENT TO PROVIDE SERVICE.**

13                   (a) A communications services provider that intends to provide communications services to  
14 one or more occupants shall send a notice of intent to the property owner at least ~~14~~ 30 days before  
15 the proposed installation date. The notice of intent shall be sent by registered mail or electronic mail.  
16 If the notice of intent is sent by electronic mail, the ~~14~~ 30-day period shall not commence until the  
17 communications service provider is able to confirm that the property owner actually received the  
18 electronic mail communication.

19                   (b) A notice of intent to provide communications services shall include, but need not be  
20 limited to, the following information:

21                   (1) A statement that the communications services provider: (A) is authorized to  
22 provide communications services in the City; (B) has received a request for service from one or more  
23 occupants, including the unit number of each such occupant; (C) when installing, operating,  
24 maintaining or removing its facilities and equipment from the property, will conform to such  
25 reasonable conditions as the property owner deems necessary to protect the safety, functioning, and

1 appearance of the property and the convenience and well-being of the occupants; (D) will pay the  
2 property owner just and reasonable compensation for its use of the property, and the proposed amount  
3 of such just and reasonable compensation to be paid as required by Article 52 of the Police Code; and  
4 (E) will indemnify, defend, and hold harmless the property owner for any damage caused by the  
5 installation, operation, maintenance, or removal of its facilities from the property.

6 (2) (A) A description of: (A) the communications services to be offered to occupants;  
7 and (B) the facilities and equipment to be installed on the property; and (B) a full set of the  
8 communications services provider's detailed plans and specifications for any work to be  
9 performed and facilities and equipment to be installed in or on the property, including any  
10 required utility connections and the electrical demand of any facilities and equipment to be  
11 installed.

12 (3) The dates and times the communications services provider proposes to start and  
13 complete the installation.

14 (4) A statement that the property owner has until five days before the proposed  
15 installation start date to notify the communications services provider in writing either that:

16 (A) The property owner will not allow the communications services provider  
17 to provide services on the property. In this case, the property owner shall set forth the reasons for its  
18 refusal and whether any of those reasons are permitted by Section 5206 of this Article 52; or

19 (B) The property owner will allow the communications services provider to  
20 provide services on the property, but disagrees with the amount of the just and reasonable  
21 compensation the communications services provider has proposed. In this case, the property owner  
22 shall state the amount of just and reasonable compensation the property owner will require; and, in  
23 either the case of (A) or (B), the property ownersowner shall state:



1                   (C) Such reasonable conditions the communications services provider must  
2 follow during the installation to protect the safety, functioning, and appearance of the property and the  
3 convenience and well-being of the occupants.

4                   (5) A reference to and a copy of this Article 52.

5  
6                   **SEC. 5206. PERMITTED REFUSAL OF ACCESS.**

7                   (a) Nothing in this Article 52 shall be construed to require a property owner to allow a  
8 communications services provider to access its property to inspect the property where the  
9 communications services provider has failed or refused to agree to the property owner's request that  
10 the provider comply with any conditions on accessing the property contained in a notice pursuant to  
11 Section 5207 of this Article.

12                   (b) Nothing in this Article 52 shall be construed to require a property owner to allow a  
13 communications services provider to access its property to install the facilities and equipment that are  
14 necessary to offer services to occupants where:

15                   (1) The communications services provider is not authorized to provide  
16 communications services in the City;

17                   (2) The communications services provider cannot verify that one or more occupants  
18 of the multiple occupancy building have made a request for services;

19                   (3) The property owner can show that physical limitations at the property prohibit  
20 the communications services provider from installing ~~the installation of~~ facilities and equipment  
21 in existing space that are necessary to provide communications services and/or from using  
22 existing wiring to provide such ~~by the communications services provider;~~

23                   (4) The communications services provider has not agreed to the property owner's  
24 request that the provider comply with any conditions on accessing the property contained in a notice  
25 from the property owner issued pursuant to Section 5207 of this Article 52; or

1           (5) The communications services provider's proposed installation of facilities  
2 and equipment in or on the property would: (A) have a significant, adverse effect on any  
3 historically or architecturally significant elements of the property; (B) disturb any existing  
4 asbestos or lead-paint in or on the property; (C) have a significant, adverse effect on the  
5 continued ability of existing communications services providers to provide services on the  
6 property; (D) cause undue damage to the property; or (E) impair the use of the property for  
7 the continued provision of any existing essential services; or

8           (6) The property owner and communications services provider have not reached an  
9 agreement concerning any just and reasonable compensation to the property owner for allowing the  
10 communications services provider to install, operate, and maintain facilities and equipment on its  
11 property as required by Section 5208 of this Article 52.

12  
13           **SEC. 5207. PERMITTED LIMITATIONS ON ACCESS.**

14           (a) A property owner that grants a communications services provider access to its property  
15 to either inspect the property or install facilities and equipment on the property to be used to  
16 offer communications services to occupants may require the communications services provider,  
17 when inspecting, installing, operating, maintaining, or removing its facilities and equipment  
18 from the property, to conform to such reasonable conditions as the property owner deems necessary  
19 to protect the safety, functioning, and appearance of the property and the convenience and well-being  
20 of the occupants during the inspection.

21           (b) A property owner that grants a communications services provider access to its  
22 property to install facilities and equipment on the property to be used to offer communications  
23 services to occupants may require the communications services provider, when installing,  
24 operating, maintaining, or removing its facilities and equipment from the property to:

1           (1) Conform to such reasonable conditions as the property owner deems  
2 necessary to protect the safety, functioning, and appearance of the property and the  
3 convenience and well-being of the occupants;

4           (2) Provide a certificate of insurance evidencing coverages generally  
5 required by the property owner for contractors performing comparable work at the property;

6           (3) Demonstrate that any contractors installing facilities and equipment on  
7 the property are licensed;

8           (4) Obtain any permits that might be required to install facilities and  
9 equipment on the property;

10          (5) Accept responsibility for the cost: (A) to install any electrical facilities  
11 needed to serve the facilities and equipment installed by the provider; and (B) of any  
12 electricity to be used by those facilities and equipment;

13          (6) Allow the property owner to inspect the communication services  
14 provider's installation and construction of any facilities and equipment for compliance with the  
15 San Francisco Building Code and generally acceptable construction standards; and

16          (7) Remove its facilities and equipment and restore any area of the property  
17 occupied by the communications services provider to its prior condition when: (A) those  
18 facilities and equipment are no longer being used to provide communications services to any  
19 occupant; or (B) any access agreement between the property owner and the communication  
20 services provider has expired or been terminated.

21          ~~(b)~~(c) A property owner that has received an inspection request under Section 5204(a) of this  
22 Article 52 or an installation notice under Section 5205(b) of this Article shall notify the  
23 communications services provider in writing at least five days before the inspection or installation of  
24 any conditions authorized under subsection subsections (a) or (b) that the communications services

1 provider must comply with while inspecting the property or installing facilities or equipment on the  
2 property.

3  
4 **SEC. 5208. JUST AND REASONABLE COMPENSATION.**

5 (a) —A property owner is entitled to just and reasonable compensation from a  
6 communications service services provider that obtains access to a multiple occupancy building  
7 from a property owner pursuant to this Article 52 for installing, operating, and maintaining on  
8 its property the facilities and equipment necessary to provide communications services to  
9 occupants.

10 (b) ~~—In accordance with Section 5205(b)(4) of this Article 52, a property owner shall~~  
11 ~~notify a communications services provider in writing at least five days before the proposed~~  
12 ~~installation date if the property owner disagrees with the amount of the just and reasonable~~  
13 ~~compensation that the communications services provider has proposed to pay. The property~~  
14 ~~owner shall include in such notice the amount of just and reasonable compensation the~~  
15 ~~property owner will require the communications services provider to pay.~~

16  
17 **SEC. 5209. NOTICE OF VIOLATION.**

18 (a) A communications services provider or occupant that believes that a property  
19 owner has failed to comply with the requirements of this Article 52 shall notify the property  
20 owner in writing that: (1) the property owner is in violation of this Article; and (2) unless the  
21 property owner agrees to come into compliance with this Article within 10 days the  
22 communications services provider or occupant may take action against the property owner  
23 pursuant to Section 5211 of this Article.

1           **(b)**    The notice required by subsection (a) shall: (1) describe the manner in which the  
2 property owner is in violation of this Article 52; and (2) identify any actions the property owner  
3 is required to take to come into compliance with this Article.

4           **(c)**    No communications services provider or occupant may enforce the  
5 requirements of this Article 52, as permitted under Section 5211, unless and until the  
6 communications services provider or occupant has complied with subsection (a).

7  
8           **SEC. 5210. ENFORCEMENT BY THE CITY ATTORNEY.**

9           *The City Attorney may institute a civil proceeding in the San Francisco Superior Court on*  
10 *behalf of the City, for injunctive and monetary relief, including civil penalties as specified more fully in*  
11 *Section 5212 5213 of this Article 52, to enforce this Article against a property owner that has violated*  
12 *this Article.*

13  
14           **SEC. 5211. ENFORCEMENT BY COMMUNICATIONS SERVICES PROVIDERS AND**  
15 **OCCUPANTS.**

16           **(a)**    Except as stated in subsection (b), any A communications services provider or  
17 occupant of a multiple occupancy building where the property owner has refused to allow the  
18 communications services provider to provide service may institute a civil proceeding to enforce this  
19 Article 52 in San Francisco Superior Court against such property owner for injunctive and monetary  
20 relief.

21           **(b)**    Prior to filing a civil proceeding in accordance with subsection (a), the communications  
22 services provider or occupant shall: (1) comply with the notice requirements contained in Section  
23 5209 of this Article 52, and (2) notify the City Attorney in writing of its intent to proceed against a  
24 property owner.

1           (c) Subject to subsection (d), a ~~No~~ communications service services provider or  
2 occupant that has complied with subsection (b) may commence such a proceeding until at least 30  
3 days after this notice has been ~~was~~ sent to the City Attorney.

4           ~~(e)~~(d) If the City Attorney institutes a civil proceeding against the property owner before or  
5 during the 30-day notice period, then no communications services provider or occupant may file a  
6 proceeding under subsection (a). If the City Attorney institutes a civil proceeding after the 30-day  
7 notice period has elapsed, any communications services provider or occupant that provides the notice  
8 required under subsection (b) may file a separate civil proceeding.

9           ~~(d)~~(e) The City Attorney shall notify any person submitting a notice under subsection (b) that  
10 the City Attorney has instituted a civil proceeding or decided not to institute a civil proceeding.

11  
12           **SEC. 52115212. ATTORNEYS' FEES AND COSTS.**

13           (a) A court may award reasonable attorneys' fees and costs to the City if it obtains  
14 injunctive relief under Section ~~5209~~ 5210 of this Article 52 or to any person who obtains injunctive  
15 and monetary relief under Section ~~5210~~ 5211 of this Article.

16           (b) If a court finds that any action brought under this Article 52 is frivolous, the court may  
17 award the property owner reasonable attorneys' fees and costs.

18           (c) If a proceeding brought against a property owner under this Article 52 concerns  
19 a multiple occupancy building that contains fewer than 25,000 square feet of space available  
20 for occupants to rent or own, the attorneys' fees and costs recoverable against the property  
21 owner pursuant to subsection (a), or recoverable against a person commencing the action  
22 pursuant to subsection (b), shall be limited to \$5,000.

23  
24           **SEC. 52125213. CIVIL PENALTIES.**

1           (a) Any property owner that violates this Article 52 may be liable for a civil penalty not to  
2 exceed \$500 for each day such violation is committed or continues. Such penalty shall be assessed and  
3 recovered in a civil action brought in the name of the people of the City by the City Attorney.

4           (b) In assessing the amount of a civil penalty, a court may consider any of the relevant  
5 circumstances, including, but not limited to, the following:

6                   (1) The number of occupants affected by the violation;

7                   (2) The number of communications services providers affected by the violation;

8                   (3) Whether the property owner has violated this Article 52 at other properties;

9                   (4) The amount of revenues the property owner receives from any existing  
10 communications services providers serving the property;

11                   (5) Whether the property owner has a legitimate reason for refusing access to its  
12 property by the communications services provider; and

13                   (6) The net assets and liabilities of the property owner, whether corporate or  
14 individual.

15           (c) Any civil penalty under subsection (a) will start to accrue following the  
16 completion of the notice required by Section 5209 of this Article 52.

17  
18           **SEC. 52135214. STATUTE OF LIMITATIONS.**

19           (a) After satisfying the preconditions for filing suit under Section 5210 of this  
20 Article 52, any person so authorized under Section 5210 may institute a court proceeding by a  
21 communications services provider or occupant to enforce this Article 52 against a property owner.  
22 Such proceeding must be brought within 180 days of the communications services provider or  
23 occupant completing the notice requirements contained in Sections 5209 and 5211 of this  
24 Article. of the earliest of the following occurrences:

1           ~~—— (1) —— The receipt of notice from the property owner refusing to allow a~~  
2 ~~communications services provider to enter the premises for an inspection;~~

3           ~~—— (2) —— The date the property owner was required by Section 5204(e)(4) of this~~  
4 ~~Article to object to a request for an inspection if the property owner does not respond to the~~  
5 ~~request;~~

6           ~~—— (3) —— The receipt of notice from the property owner refusing to allow the~~  
7 ~~communications services provider to enter the premises to provide communications services~~  
8 ~~to occupants or use existing wiring to provide service to occupants; or~~

9           ~~—— (4) —— The date the property owner was required by Section 5205(b)(4) of this~~  
10 ~~Article to object to a notice of intent to provide communications services if the property owner~~  
11 ~~does not respond to the notice.~~

12           ~~(b) The City Attorney may institute a court proceeding to enforce this Article 52 within 180~~  
13 ~~days of the City Attorney receiving written notice that a property owner has violated this Article.~~

14  
15           **SEC. 52145215. EXTENSIONS OF TIME.**

16           Any of the deadlines set forth in Sections 5204, 5205, 5207, or 5209 of this Article 52  
17 may be extended by agreement between a communications services provider or occupant  
18 and property owner, as applicable.

19  
20           **SEC. 5216. UNDERTAKING FOR GENERAL WELFARE.**

21           In enacting or implementing this Article 52, the City is assuming an undertaking only to  
22 promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an  
23 obligation for breach of which it is liable in money damages to any person who claims that such breach  
24 proximately caused injury.



1           **SEC. 52155217. SEVERABILITY.**

2           If any section, subsection, sentence, clause, phrase, or word of this Article 52, or any  
3 application thereof to any person or circumstance, is held to be invalid or unconstitutional by a  
4 decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining  
5 portions or applications of the ordinance. The Board of Supervisors hereby declares that it would have  
6 passed this Article, and each and every section, subsection, sentence, clause, phrase, and word not  
7 declared invalid or unconstitutional, without regard to whether any other portion of this Article or  
8 application thereof would be subsequently declared invalid or unconstitutional.

9  
10           **SEC. 52165218. NO CONFLICT WITH FEDERAL OR STATE LAW.**

11           Nothing in this Article 52 shall be interpreted or applied so as to create any requirement,  
12 power, or duty in conflict with any federal or state law.

13  
14           Section 3. Effective Date. This ordinance shall become effective 30 days after  
15 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the  
16 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board  
17 of Supervisors overrides the Mayor's veto of the ordinance.

18  
19  
20 APPROVED AS TO FORM:  
21 DENNIS J. HERRERA, City Attorney

22  
23 By:  \_\_\_\_\_  
24       WILLIAM K. SANDERS  
       Deputy City Attorney



**LEGISLATIVE DIGEST**

[Police Code - Choice of Communications Services Providers in Multiple Occupancy Buildings]

**Ordinance amending the Police Code to prohibit owners of multiple occupancy buildings from interfering with the choice of communications services providers by occupants, establish requirements for communications services providers to obtain access to multiple occupancy buildings, and establish remedies for violation of the access requirement.**

Existing Law

Not applicable.

Amendments to Current Law

The ordinance establishes the right of occupants of residential multiple dwelling units and commercial office buildings ("multiple occupancy buildings") to choose among providers of communications services by prohibiting property owners from either: (i) interfering with the choice of communications services providers by occupants; and/or (ii) denying communications services providers access to wiring within the building.

The ordinance: (i) establishes a procedure for a communications services provider to obtain access to multiple occupancy buildings and existing wiring to provide communications services; (ii) requires communications services providers to pay property owners just and reasonable compensation for access to their properties; (iii) specifies those circumstances under which it would be proper for a property owner to refuse a communications services provider request for access to its property; and (iv) allows the City Attorney, the occupant, or the communications services provider to enforce the ordinance in court.

The ordinance applies to state video service providers and telecommunications services providers. Only these types of providers have the right under both state and City law to use the public right-of-way to provide communications services to their customers.

Background Information

Many occupants of residential and commercial multiple occupancy buildings are unable to choose between service providers because in some such buildings property owners allow only one provider to install the facilities and equipment necessary to provide services to occupants.

State and federal regulatory agencies have adopted policies that promote competition among service providers, believing that this competition will benefit all consumers by incentivizing

lower costs and better service. As the Federal Communications Commission (“FCC”) has noted, “contractual agreements granting . . . exclusivity to cable operators harm competition and broadband deployment and . . . any benefits to consumers are outweighed by the harms of such [agreements].” *In the Matter of Exclusive Service Contracts for Provision of Video Services in Multiple Dwelling Units & Other Real Estate Developments, Report & Order & Further Notice of Proposed Rulemaking*, 22 FCC Rcd 20235, at 20236 (2007), affirmed, *National Cable & Telecommunications Association v. FCC*, 567 F.3d 659 (D.C. Cir. 2009) (“FCC Decision”).)

In 1998, the California Public Utilities Commission (“CPUC”) prohibited telecommunications carriers from “entering into any type of arrangement with private property owners that has the effect of restricting the access of other [telecommunications] carriers to the owners’ properties or discriminating against the facilities of other carriers.” Decision 98-10-058, *Order Instituting Rulemaking on the Commission’s Own Motion into Competition for Local Exchange Service*, 82 CPUC 2d 510, 1998 WL 1109255 (CPUC 1998).

In 2007, the FCC prohibited cable television providers from executing contracts with property owners that contained exclusivity clauses and from enforcing existing contracts containing those clauses. *FCC Decision*, 22 FCC Rcd at 20235.<sup>1</sup>

In *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982), the United States Supreme Court considered a New York City law mandating that property owners allow cable television providers to install their facilities and equipment on their properties. The Supreme Court decided that this use of plaintiff’s property required payment of just and reasonable compensation. This ordinance requires communications services providers to pay property owners just and reasonable compensation for the use of their properties.

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<sup>1</sup> Pursuant to that decision, the FCC promulgated certain regulations to ban exclusive contracts. See 47 C.F.R. § 76.2000.

## Wong, Linda (BOS)

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**From:** Board of Supervisors, (BOS)  
**Sent:** Tuesday, November 29, 2016 2:10 PM  
**To:** Farrell, Mark (BOS); Wong, Linda (BOS)  
**Subject:** FW: Ordinance 161110  
**Attachments:** SF Letter.pdf

**Importance:** High

**From:** Willey, Linda [mailto:lwilley@camdenliving.com]  
**Sent:** Tuesday, November 29, 2016 2:01 PM  
**To:** Mark. <Farrell@sfgov.org>; Peskin, Aaron (BOS) <aaron.peskin@sfgov.org>; Tang, Katy (BOS) <katy.tang@sfgov.org>; BreedStaff, (BOS) <breedstaff@sfgov.org>; Kim, Jane (BOS) <jane.kim@sfgov.org>; Yee, Norman (BOS) <norman.yee@sfgov.org>; Wiener, Scott <scott.wiener@sfgov.org>; Campos, David (BOS) <david.campos@sfgov.org>; Cohen, Malia (BOS) <malia.cohen@sfgov.org>; Avalos, John (BOS) <john.avalos@sfgov.org>; Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>; Mar, Eric (BOS) <eric.mar@sfgov.org>  
**Subject:** Ordinance 161110  
**Importance:** High

Please see attached letter from Michael Brown, Western Division Vice President for Camden Property Trust. Michael is presently past President for the Orange County Chapter of IREM and sits on various national committees with IREM. He has held various Board Director positions in California with the Tri-County and San Diego Apartment Associations as well as the Apartment Association of California Southern Cities. Presently, he is an advisor on the board of the UC Irvine Paul Merage School of Real Estate. Michael Brown is a Certified Property Manager (CPM) and an Accredited Residential Manager (ARM).

**Linda Willey**  
Camden  
Director of Ancillary Services  
11 Greenway Plaza, Suite 2400  
Houston, TX 77046  
T 713-354-2512  
[camdenliving.com](http://camdenliving.com) | NYSE: CPT



November 29, 2016

Supervisor Mark Farrell  
City Hall  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco, CA 94101-4689

Dear Supervisor Farrell,

On behalf of Camden Property Trust, I would like to express concern over proposed Ordinance/File 161110, which was introduced on October 18, 2016. While assumed to be well intentioned, I believe the ordinance could have a substantial impact on innovation and investment in broadband infrastructure and its deployment across San Francisco. Along with other apartment owners and operators Camden has led the charge to increase access for residents to high speed, reliable internet at a reasonable cost.

Camden Property Trust is one of the largest publicly traded multifamily companies in the United State and owns interests in and operates 151 properties containing 52,506 apartment homes. Our portfolio presently includes 12 communities located in Los Angeles/Orange County and San Diego/Inland Empire and we continue to explore opportunities in additional CA markets. We feel the Ordinance would impact the value of the real estate in the San Francisco market and provide little incentives for Camden to pursue acquisition or development in this area.

If enacted, Ordinance 161110 as proposed would terminate a property owners' ability to control access to their building and allow for unrestricted access to the property by any internet service provider that is requested by a resident. The ordinance disincentives providers from upgrading wiring that facilitates internet service in lieu of waiting for the property owner or another provider to install the necessary infrastructure before serving that property. Additionally, uncontrolled access to the property, which allows for countless providers at one location, has the potential to limit the economic benefit of serving or investing infrastructure in a property- especially those where expected returns are already lower, such as affordable housing properties, senior living communities or smaller buildings.



The reality of apartment design is that there is limited space available for necessary communications equipment and there are limitations on how much wiring and equipment that can be housed on site. Facilitating access or space for two to three providers is challenging and comes with significant cost to property owners. Eliminating an owner's right to cap the number of service providers on site and the ensuing increase in space requirements will cause an unmanageable system that would potentially harm owners and residents. Lastly, the proposed ordinance does not address existing contractual obligations of property owners and service providers. Mandating access to the property by any requesting ISP will wreak legal and operational issues for all parties and harm the very consumers this legislation is intended to benefit.

While I commend you for your attempts to expand high quality broadband to San Francisco residents of San Francisco, I would urge you and your colleagues to amend Ordinance 161110 to align it with the realities faced by property owners and residents.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Brown". The signature is fluid and cursive, with a long horizontal stroke extending to the left.

Michael Brown  
Western Division Vice President  
949-427-4690  
[MCBrown@camdenliving.com](mailto:MCBrown@camdenliving.com)

cc: Members of the San Francisco Board of Supervisors; Clerk of the Board of Supervisors





## Wong, Linda (BOS)

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**From:** Board of Supervisors, (BOS)  
**Sent:** Thursday, December 01, 2016 2:30 PM  
**To:** Wong, Linda (BOS)  
**Subject:** FW: Ordinance / File 161110  
**Attachments:** Letter to Board of Supervisors (12-1-16).pdf

**From:** Alaine Walsh [mailto:Alaine\_Walsh@avalonbay.com]  
**Sent:** Thursday, December 01, 2016 2:20 PM  
**To:** Farrell, Mark (BOS) <mark.farrell@sfgov.org>; Mar, Eric (BOS) <eric.mar@sfgov.org>; Peskin, Aaron (BOS) <aaron.peskin@sfgov.org>; Tang, Katy (BOS) <katy.tang@sfgov.org>; BreedStaff, (BOS) <breedstaff@sfgov.org>; Kim, Jane (BOS) <jane.kim@sfgov.org>; Yee, Norman (BOS) <norman.yee@sfgov.org>; Scott.Weiner@sfgov.org; Campos, David (BOS) <david.campos@sfgov.org>; Cohen, Malia (BOS) <malia.cohen@sfgov.org>; Avalos, John (BOS) <john.avalos@sfgov.org>; Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>  
**Subject:** Ordinance / File 161110

Dear Board of Supervisors,

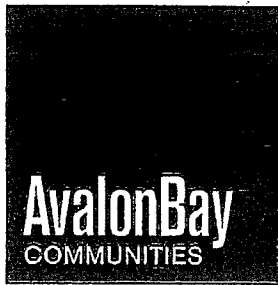
Please see attached for a letter from AvalonBay Communities, Inc. regarding Ordinance / File 161110. We appreciate you considering the attached as you contemplate further action on Ordinance 161110.



**Alaine Walsh**  
Vice President,  
Corporate & Investment Services  
**Phone:** 703.317.4632  
**Cell:** 703.622.0239  
[awalsh@avalonbay.com](mailto:awalsh@avalonbay.com)

NOTICE: This message, including any attachments, is proprietary to AvalonBay Communities, Inc., intended solely for the use of the individual or entity to whom it is addressed and may contain information designated as internal use, confidential, and/or attorney-client privileged work product doctrine information. If you are not the intended recipient, any disclosure, copying, distribution, or use of the contents of this message are prohibited. If you have received this email in error, please destroy it and notify the sender immediately.

December 1, 2016



Dear Supervisor Farrell,

I write today to applaud your efforts, along with those of your colleagues on the San Francisco Board of Supervisors, to expand access to high quality broadband services for all residents. For decades, apartment owners and operators across San Francisco and the nation have led the charge to increase access for residents to high speed, reliable internet and appreciate the powerful tool it serves in people's lives. Additionally, I write to express concern over proposed Ordinance/File 161110, which was introduced on October 18, 2016. While well intentioned, I believe the ordinance could have a chilling effect on innovation and investment in broadband infrastructure and its deployment across San Francisco.

If enacted, Ordinance 161110 as proposed would terminate a property owner's ability to control access to their building and allow for unfettered access to the property by any internet service provider that is requested by a resident. In concept, this proposal would seem to allow for increased choice and competition, yet in reality implementation could have the exact opposite effect. First and foremost, the proposed ordinance fails to acknowledge that apartment owners across San Francisco and the country offer choice, when possible, of more than one communications provider to residents. This is a realization by apartment owners that high speed internet is a demanded amenity and critical to a property's ultimate desirability. Secondly, the ordinance disincentivizes providers from making critical investments in wiring that facilitates internet service of all kinds in lieu of waiting for the property owner or another provider to install the necessary infrastructure before serving that property. Even further, uncontrolled access to the property, which allows for countless providers at one location, has the potential to limit the economic benefit of serving or investing infrastructure in a property—especially those where expected returns are already lower, such as affordable housing properties or smaller buildings.

Additionally, the reality of apartment operations is that there is only so much space available for necessary communications equipment. Older buildings, and many space constricted urban buildings such as those across San Francisco, are limited in how much wiring and equipment that can be housed on site. Facilitating access or space for two to three providers is challenging enough and comes with great cost to property owners. Eliminating an owner's right to cap the number of service providers on site and the ensuing increase in space requirements will cause an unruly and unmanageable system that ultimately harms both owners and residents. Lastly, the proposed ordinance does not address existing contractual obligations of property owners and service providers. Mandating access to the property by any requesting ISP will wreak legal and operational headaches upon all parties and harm the very consumers this legislation is intended to benefit.

Again, I sincerely applaud you for your work on this issue and your attempts to expand high quality broadband to all residents of San Francisco. It is a shared goal that we have in common. I would urge you and your colleagues to amend Ordinance 161110 to align it with the realities faced by property owners so that residents of our properties and across San Francisco are able to reap the benefits of the power of unfettered access to high quality broadband.

Sincerely,

A handwritten signature in black ink, appearing to read "Leo S. Horey".

Leo S. Horey

Executive Vice President and Chief Administrative Officer

cc: Members of the San Francisco Board of Supervisors; Clerk of the Board of Supervisors



**SAN  
FRANCISCO  
CHAMBER OF  
COMMERCE**

*File # 161110  
Received in Committee  
1/20/14  
Jm*

November 30, 2016

The Honorable Mark Farrell  
San Francisco Board of Supervisors  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco, CA 94102

RE: File No. 161110 Choice of Communications Services Providers

Dear Supervisor Farrell:

The San Francisco Chamber of Commerce, representing over 2,500 local businesses, appreciates the opportunity you gave us and other organizations to discuss the issues around internet access to both commercial and residential multi-unit buildings and your pending Police Code amendment requiring building owners to allow greater access to services for tenants.

Like so much in the world of technology, methods for providing communications access are evolving at a very fast pace. We recognize that there are many providers in today's market place, with more to come. However, any local mandate must take into consideration existing service contracts, building infrastructure, especially in older buildings, and the remaining value of the wiring systems installed by long-time service providers.

In addition to the amendments we understand you will be offering at today's Budget and Finance Committee meeting, we urge you to include the following:


- 1) SEC. 5202: Add: Notwithstanding the foregoing, it shall not be deemed discrimination for a property owner to require payment (which may be incorporated in rent) from an occupant associated with the provision of bulk-rated communications service that the property owner obtains on an exclusive or nonexclusive basis from a communications services provider for all occupants of a property, whether or not the occupant uses the service.
- 2) SEC. 5203: All property owners as defined in Section 5200 are covered by this Article 52. A property owner that, as of the effective date of this Article, has an agreement with a communications services provider that grants the communications services provider exclusive access to the existing wiring to provide services shall continue such exclusive access to wiring for the remaining term of the existing contract.
- 3) SEC. 5204 (b): Amend "14 days" to "30 days".

- 4) SEC. 5204 (c) (3): Add “..and an amount the provider will reimburse the property owner for the owner’s time and expense in providing access for such inspection, not to exceed two hours of time, including the time of the property owner’s management company, engineer and/or riser management company.”
- 5) SEC. 5205 (b) (4): Amend “five days” to “thirty days”.
- 6) SEC. 5206 (b) (3): Add “..in existing space, including risers, basements, rooftops, utility closets, etc., that are necessary...”
- 7) SEC. 5206 (b) (7) (new subsection): The requesting commercial occupant (i) occupies less than the greater of three percent (3%) of the rentable square footage of the building or 3,000 square feet or (ii) has less than two (2) years remaining on the term of such occupant’s lease or occupancy agreement.
- 8) SEC. 5206 (b) (8) (new subsection): “The creditworthiness, financial strength and general reputation of the communications provider is not reasonably satisfactory to the property owner based on the services to be provided, the compensation to be paid or the past credit, customer service, construction and public reputation of the provider.”
- 9) SEC. 5207 (c): Amend “five days” to “thirty days”.
- 10) SEC. 5208: A property owner is entitled to just and reasonable compensation from any communications service provider that obtains from the property owner access to the occupants of a multiple occupancy building pursuant to this Article.

These amendments merely ensure that investments made by a service provider remain the property of that provider during a contractual period and that building owners retain existing contractual relationships. They do not prevent other providers from accessing tenants where such access is feasible. They also ensure that property owners may continue to operate pursuant to existing contracts and this legislation is not attempting to nullify contracts that are not in violation of the public health and welfare.

We look forward to working with you and the Budget and Finance Committee to craft legislation that meets both your goal of expanded access for communication service providers while protecting the rights of building owners.

Sincerely,



Jim Lazarus  
Senior Vice President of Public Policy

cc. Supervisor Katy Tang, Supervisor Norman Yee



File # 16-1110  
Received in Committee  
11/30/16  
Jm

November 30, 2016

**Comments of Electronic Frontier Foundation Re: Choice of Communications Services  
Providers in Multiple Occupancy Buildings**

The Electronic Frontier Foundation supports the proposed ordinance because of the need to safeguard competition in the ISP market. Competition enhances free speech and affordable Internet access for San Francisco residents.

A person's ISP has tremendous power to monitor and capitalize on their Internet traffic, and to shape how easy it is for them to access different kinds of information or particular sites and applications. Major national telecom providers have already taken steps to favor their own video platforms over competitors', in spite of federal rules protecting net neutrality. And they are fighting for deregulation that would allow them to collect and sell more private information about their customers.

Competition provides an important check on such abuses, and San Francisco renters should not be cut off from alternative ISPs.

Respectfully submitted,

---

Kit Walsh  
Staff Attorney  
Electronic Frontier Foundation



BOARD of SUPERVISORS



City Hall  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco 94102-4689  
Tel. No. 554-5184  
Fax No. 554-5163  
TDD/TTY No. 554-5227

## MEMORANDUM

TO: Toney D. Chaplin, Acting Chief of Police, Police Department  
Jon Givner, Deputy City Attorney, Office of the City Attorney  
Mohammed Nuru, Director, Public Works  
Tom Hui, Director, Department of Building Inspection  
John Rahaim, Director, Planning Department

FROM: Erica Major, Assistant Clerk, Public Safety and Neighborhood Services  
Committee, Board of Supervisors

DATE: October 25, 2016

SUBJECT: LEGISLATION INTRODUCED

---

The Board of Supervisors' Public Safety and Neighborhood Services Committee has received the following proposed legislation, introduced by Supervisor Farrell on October 18, 2016:

**File No. 161110**

**Ordinance amending the Police Code to prohibit owners of multiple occupancy buildings from interfering with the choice of communications services providers by occupants, establish requirements for communications services providers to obtain access to multiple occupancy buildings, and establish remedies for violation of the access requirement.**

If you have any comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

c:  
Christine Fountain, Police Department  
Frank Lee, Public Works  
William Strawn, Department of Building Inspection  
Scott Sanchez, Planning Department  
Lisa Gibson, Planning Department  
AnMarie Rodgers, Planning Department  
Aaron Starr, Planning Department  
Joy Navarrete, Planning Department  
Jeanie Poling, Planning Department

# Introduction Form

By a Member of the Board of Supervisors or the Mayor

RECEIVED  
BOARD OF SUPERVISORS  
SAN FRANCISCO

2016 OCT 18 PM 4:01  
Time stamp  
or meeting date

I hereby submit the following item for introduction (select only one):

BY \_\_\_\_\_

- 1. For reference to Committee. (An Ordinance, Resolution, Motion, or Charter Amendment)
- 2. Request for next printed agenda Without Reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning "Supervisor [ ] inquires"
- 5. City Attorney request.
- 6. Call File No. [ ] from Committee.
- 7. Budget Analyst request (attach written motion).
- 8. Substitute Legislation File No. [ ]
- 9. Reactivate File No. [ ]
- 10. Question(s) submitted for Mayoral Appearance before the BOS on [ ]

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission       Youth Commission       Ethics Commission
- Planning Commission       Building Inspection Commission

Note: For the Imperative Agenda (a resolution not on the printed agenda), use a Imperative Form.

Sponsor(s):

Supervisor Mark E. Farrell

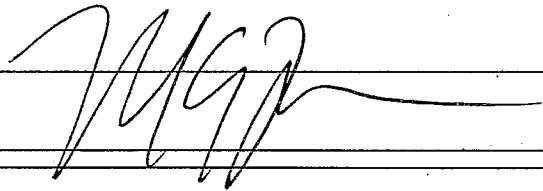
Subject:

Police Code - Choice of Communication Service Provider in Multiple Occupancy Buildings

The text is listed below or attached:

Attached.

Signature of Sponsoring Supervisor: \_\_\_\_\_



For Clerk's Use Only:



President, District 5  
BOARD of SUPERVISORS



BOS-11, OB, PSNS, B&F,  
Leg. Dep.; Dep City Atty  
City Hall

1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco 94102-4689  
Tel. No. 554-7630  
Fax No. 554-7634  
TDD/TTY No. 544-5227

London Breed

**PRESIDENTIAL ACTION**

Date: November 17, 2016

To: Angela Calvillo, Clerk of the Board of Supervisors

Madam Clerk,

Pursuant to Board Rules, I am hereby:

Waiving 30-Day Rule (Board Rule No. 3.23)

File No. \_\_\_\_\_  
(Primary Sponsor)

Title. \_\_\_\_\_

Transferring (Board Rule No. 3.3)

File No. 161110 Farrell  
(Primary Sponsor)

Title. Police Code - Choice of Communications Serv

From: Public Safety & Neighborhood Services Committee

To: Budget & Finance Committee

Assigning Temporary Committee Appointment (Board Rule No. 3.1)

Supervisor \_\_\_\_\_

Replacing Supervisor \_\_\_\_\_

For: \_\_\_\_\_ Meeting  
(Date) (Committee)

London Breed, President  
Board of Supervisors

2016 NOV 21 AM 10:50  
Clerk of the Board of Supervisors

## Major, Erica (BOS)

---

**From:** Major, Erica (BOS)  
**Sent:** Tuesday, October 25, 2016 11:29 AM  
**To:** Chaplin, Toney (POL); Givner, Jon (CAT); Nuru, Mohammed (DPW); Hui, Tom (DBI); Rahaim, John (CPC)  
**Cc:** Fountain, Christine (POL); Lee, Frank (DPW); Strawn, William (DBI); Sanchez, Scott (CPC); Gibson, Lisa (CPC); Rodgers, AnMarie (CPC); Starr, Aaron (CPC); Navarrete, Joy (CPC); Poling, Jeanie (CPC)  
**Subject:** REFERRAL FYI (161110) Police Code - Choice of Communications Services Providers in Multiple Occupancy Buildings  
**Attachments:** 161110FYI.pdf

Greetings:

This matter is being forwarded to your department for informational purposes. If you have any comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

Thank you for your attention.

**ERICA MAJOR**

**Assistant Clerk**

Board of Supervisors

1 Dr. Carlton B. Goodlett Place, City Hall, Room 244 San Francisco, CA 94102

Phone: (415) 554-4441 | Fax: (415) 554-5163

[Erica.Major@sfgov.org](mailto:Erica.Major@sfgov.org) | [www.sfbos.org](http://www.sfbos.org)



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*Disclosures: Personal information that is provided in communications to the Board of Supervisors is subject to disclosure under the California Public Records Act and the San Francisco Sunshine Ordinance. Personal information provided will not be redacted. Members of the public are not required to provide personal identifying information when they communicate with the Board of Supervisors and its committees. All written or oral communications that members of the public submit to the Clerk's Office regarding pending legislation or hearings will be made available to all members of the public for inspection and copying. The Clerk's Office does not redact any information from these submissions. This means that personal information—including names, phone numbers, addresses and similar information that a member of the public elects to submit to the Board and its committees—may appear on the Board of Supervisors website or in other public documents that members of the public may inspect or copy.*