

1 [Appointment Of Independent Hearing Officer For Local Enforcement Agency.]

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3 **Ordinance amending the San Francisco Health Code by adding Sections 315, 318, 321,**  
4 **323, 324, 327, 330, 333, 335, 337, 339, and 341 to authorize the appointment of an**  
5 **Independent Hearing Officer from the San Francisco Rent Board to conduct Local**  
6 **Enforcement Agency Hearings brought pursuant to the State Public Resources Code;**  
7 **establish procedures and qualifications for the appointment, and establish hearing**  
8 **procedures, cost recovery, and bases for hearing officer disqualification.**

9 Note: Additions are *single-underline italics Times New Roman*;  
10 deletions are *strikethrough italics Times New Roman*.  
11 Board amendment additions are double underlined.  
Board amendment deletions are ~~strikethrough normal~~.

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

13 Section 1. The San Francisco Health Code is hereby amended by adding Sections  
14 315, 318, 321, 323, 324, 327, 330, 333, 335, 337, 339, and 341 to read as follows:

15 **SEC. 315. LOCAL ENFORCEMENT AGENCY.**

16 *The Environmental Health Section of the San Francisco Department of Public Health is the*  
17 *designated Local Enforcement Agency (LEA) for the permitting, inspection and enforcement of solid*  
18 *waste handling and disposal sites in the City and County of San Francisco under this Article and the*  
19 *California Public Resources Code.*

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21 **SEC. 318. INDEPENDENT HEARING OFFICER APPOINTMENT.**

22 *Hearing Officers employed by or retained by the San Francisco Rent Board who meet the*  
23 *qualifications set forth in Section 324, and who are appointed according to the procedures in Section*  
24 *321, shall serve as the Independent Hearing Officer for all actions brought by the LEA pursuant to the*  
25 *California Public Resources Code.*

1           **SEC. 321. PROCEDURES TO APPOINT HEARING OFFICER.**

2           In order to appoint a hearing officer to hear appeals of owners/operators or other parties  
3 subject to an enforcement or permit action by the LEA pursuant to State law, or those alleging that the  
4 LEA has failed to act as required by State law or regulation, the following procedures are required:

5           (a) Upon a timely request for a hearing under Section 44307 of the California Public  
6 Resources Code, the LEA shall immediately request assignment of an appropriately qualified hearing  
7 officer from the San Francisco Rent Board who shall be available to conduct the hearing not less than  
8 thirty days from the LEA's receipt of the request.

9           (b) The hearing officer shall be selected by the Rent Board pursuant to the qualifications  
10 listed in Section 324.

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12           **SEC. 324. QUALIFICATIONS OF HEARING OFFICER.**

13           An appropriately qualified hearing officer is defined as holding the following qualifications:

14           (a) The hearing officer is in good standing, and employed by, or contracted with, the San  
15 Francisco Rent Board;

16           (b) Has familiarity with administrative hearing procedures; and,

17           (c) Has familiarity with legal procedures.

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19           **SEC. 327. HEARING PROCEDURES.**

20           (a) The administrative hearing to enforce Sections 315 – 341 of this Article and the  
21 California Public Resources Code shall be governed by Section 44310 of the Public Resources Code.

22           (b) A person filing a hearing request pursuant to Public Resources Code Sec. 44310(a)(1)  
23 shall pay a filing fee of \$158.

1           (c) The notice required under Section 44310 to the person filing the request for the  
2 administrative hearing shall inform the person that they may be liable for charges, costs, including  
3 administrative costs, expenses incurred by the Department, reasonable attorneys' fees, fines, and  
4 penalties as provided for in this Article and in the California Public Resources Code. For purposes of  
5 this Article, "person" is defined by Section 40170 of the Public Resources Code.

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7           **SEC. 329. DISQUALIFICATION OF HEARING OFFICER.**

8           The hearing officer is subject to disqualification for bias, prejudice, or interest in the  
9 proceeding. It is not alone or in itself grounds for disqualification, without further evidence of bias,  
10 prejudice, or interest, that the hearing officer:

11           (1) Is or is not a member of a racial, ethnic, religious, sexual, or similar group and  
12 the proceeding involves the rights of that group;

13           (2) Has experience, technical competence, or specialized knowledge of, or has in  
14 any capacity expressed a view on, a legal, factual, or policy issue presented in the proceeding; or,

15           (3) Has as a lawyer or public official participated in the drafting of laws or  
16 regulations or in the effort to pass or defeat laws or regulations, the meaning, effect, or application of  
17 which is an issue in the proceeding.

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19           **SEC. 331. COST RECOVERY.**

20           Any person who is found by the hearing officer to have violated or is in violation of the  
21 requirements of this Article or State law shall be liable to the City for costs incurred in abating the  
22 effects of the violation, taking other remedial action, or imposing and collecting penalties, including  
23 but not limited to administrative costs, costs of issuing an order, inspection costs, and hearing officer  
24 costs. The Controller's Office shall set the amount of actual costs, based on an accounting submitted  
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1 by the Department within ten business days of the hearing.

2 The hearing officer shall require in any order issued under this Section that the responsible  
3 party pay to the City the costs of any inspection or monitoring deemed necessary by the hearing officer  
4 because of the violation.

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6 **SEC. 333. LIENS.**

7 (a) Unless otherwise provided in this Article, all final costs, fees or administrative penalties  
8 assessed against a person for violations of this Article shall be an obligation owed to the City by the  
9 solid waste facilities permit holder and by the owner of the real property on which a solid waste facility  
10 or disposal site is located, provided that both have been given adequate notice of the alleged violations.  
11 Such obligation may be collected by means of the imposition of a lien against the property of the owner  
12 of the property or the person or business against whom the final administrative penalty was assessed.  
13 The City shall mail to the owner of the property and to the person against whom the final amount was  
14 assessed (if different from the owner of the property) a notice of the amounts due and a warning that  
15 lien proceedings will be initiated against the property if the amounts are not paid within 30 days after  
16 mailing of the notice. For purposes of this Article, "facility," "facility operator," "owner of the  
17 property," and "property" have the same meanings as set forth in 14 California Code of Regulations §  
18 18011.

19 (b) Liens shall be created and assessed in accordance with Article XX of Chapter 10 of the  
20 San Francisco Administrative Code (commencing with Section 10.230).

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22 **SEC. 335. DUTIES ARE DISCRETIONARY.**

23 Subject to the limitations of due process and applicable requirements of State or Federal laws,  
24 and notwithstanding any other provisions of this Code, whenever the words "shall" or "must" are used  
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1 in establishing a responsibility or duty of the City, its elected or appointed officers, employees or  
2 agents, it is the legislative intent that such words establish a discretionary responsibility or duty  
3 requiring the exercise of judgment and discretion.

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5 **SEC. 337. REMEDIES NOT EXCLUSIVE.**

6 Remedies under this Article are in addition to and do not supersede or limit any and all other  
7 remedies, civil or criminal.

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9 **SEC. 339. CONFLICT WITH OTHER LAWS.**

10 Notwithstanding any other provisions of this Article, a person is exempted from any provisions  
11 of this Article that conflict with State or Federal laws or regulations to which the person is subject.

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13 **SEC. 341. SEVERABILITY.**

14 If any section, subsection, sentence, clause, or phrase of this Article is for any reason held to be  
15 invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not  
16 affect the validity of the remaining portions of the Article. The Board of Supervisors hereby declares  
17 that it would have passed this Article and each and every section, subsection, sentence, clause, or  
18 phrase not declared invalid or unconstitutional without regard to whether any portion of this Article  
19 would be subsequently declared invalid or unconstitutional.

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21 APPROVED AS TO FORM:  
22 DENNIS J. HERRERA, City Attorney

23 By: \_\_\_\_\_  
24 CECILIA T. MANGOBA  
25 Deputy City Attorney