

1 [Public Works Code - Water Service Submetering For Multifamily Residential Buildings]

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3 **Ordinance amending the Public Works Code to require owners of multifamily**  
 4 **residential buildings to provide submeters to measure water service provided to**  
 5 **tenants; and affirming the Planning Department's determination under the California**  
 6 **Environmental Quality Act.**

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

11

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

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14 Section 1. Environmental Findings.

15 The Planning Department has determined that the actions contemplated in this

16 ordinance comply with the California Environmental Quality Act (California Public Resources  
 17 Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of  
 18 Supervisors in File No. \_\_\_\_ and is incorporated herein by reference. The Board affirms this  
 19 determination.

20 Section 2. The Public Works Code is hereby amended by adding Article 4.4, consisting  
 21 of Sections 151.1 – 151.15, to read as follows:

22 **ARTICLE 4.4. WATER SERVICE SUBMETERING**

23 **SEC. 151.1. PURPOSE.**

24 The purposes of Article 4.4 are:

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1           (a) To encourage the conservation of water in multifamily residential rental buildings through  
2 means within either the landlord’s or the tenant’s control; and

3           (b) To ensure that practices involving the submetering of dwelling units for water service are  
4 just and reasonable, and include appropriate safeguards for both tenants and landlords.

5 **SEC. 151.2. DEFINITIONS.**

6           For purposes of Article 4.4, the following terms shall be defined as follows:

7           “Billing agent” means a person or entity who contracts to provide submetering services,  
8 including billing, to a Landlord.

9           “Landlord” means an owner of residential rental property. “Landlord” does not include a  
10 tenant who rents all or a portion of a dwelling unit to one or more subtenants. “Landlord” does not  
11 include a common interest development, as defined in Section 4100 of the California Civil Code, as  
12 amended from time to time.

13           “Property” means real property containing two or more dwelling units that receives water  
14 service through a single master meter.

15           “Ratio utility billing system” means the allocation of water and sewer costs to tenants based on  
16 the square footage, occupancy, or other physical features of a dwelling unit.

17           “Rental agreement” means a legally binding arrangement for use and occupancy of a dwelling  
18 unit, including a fixed-term lease.

19           “Renting” means paying for the use and occupancy of a dwelling unit owned by a Landlord,  
20 including leasing, whether on a periodic or fixed-term basis.

21           “SFPUC” means the San Francisco Public Utilities Commission.

22           “Submeter” means a device that measures water consumption of an individual rental unit  
23 within a multiunit residential structure or mixed-use residential and commercial structure, and that is  
24 owned by the Landlord and operated by the Landlord or the Landlord’s agent. As used in this section,  
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1 “multiunit residential structure” and “mixed-use residential and commercial structure” mean real  
2 property containing two or more dwelling units.

3 “Water service” includes any charges, whether presented for payment on SFPUC bills, tax  
4 bills, or bills from other entities, related to water treatment, distribution, or usage, including, but not  
5 limited to, water, sewer, stormwater, flood control, and water treatment charges.

6 **SEC. 151.3. MANDATORY WATER SERVICE SUBMETERING**

7 (a) A Landlord of a Property consisting of new multiunit residential or mixed-use residential  
8 and commercial dwelling units for which an application for a Water Service connection, or more than  
9 one connection, is submitted to the SFPUC after January 1, 2017, shall install Submeters and measure  
10 the quantity of water supplied to each individual dwelling unit, in accordance with the requirements of  
11 this Article 4.4.

12 (b) The Landlord shall ensure that each Submeter complies with all laws and regulations  
13 governing the approval of submeter types or the installation, maintenance, reading, billing, and testing  
14 of Submeters, including, but not limited to, the San Francisco Plumbing Code.

15 (c) This section does not require SFPUC to fund or assume responsibility for ensuring  
16 compliance with any law or regulation governing the approval of Submeter types or the installation,  
17 maintenance, reading, billing, and testing of Submeters and associated onsite plumbing.

18 **SEC.151.4. SUBMETER INSPECTION AND MAINTENANCE.**

19 (a) All Properties that use Submeters to separately bill tenants for Water Service shall ensure:

20 (1) The Submeter is inspected, tested, and verified for commercial purposes pursuant to  
21 law, including, but not limited to, Section 12500.5 of the California Business and Professions Code.

22 (2) The Submeter installation conforms to all laws, including, but not limited to,  
23 regulations established pursuant to Section 12107 of the California Business and Professions Code.

1           (3) The Submeter for a dwelling unit measures only water that is supplied for the exclusive  
2 use of the particular dwelling unit, and only to an area within the exclusive possession and control of  
3 the tenant of the dwelling unit.

4           (4) The Submeter is capable of being accessed and read by the tenant of the dwelling unit  
5 and read by the Landlord without entering the dwelling unit. A Submeter installed before January 1,  
6 2017, may be read by the Landlord after entry into the unit, in accordance with this Article 4.4.

7           (5) Each Submeter is reinspected and recalibrated within the time limits specified in law or  
8 regulation.

9           (6) All plumbing fixtures and fittings within each dwelling unit conform to all laws  
10 regarding water conservation.

11           (b) This section does not require SFPUC to assume responsibility for ensuring compliance with  
12 any law or regulation governing installation, certification, maintenance, and testing of Submeters and  
13 associated onsite plumbing.

14 **SEC. 151.5. TENANT NOTIFICATION.**

15           Before executing a Rental Agreement, a Landlord who intends to charge a tenant separately  
16 from rent for Water Service in a Property with submeters shall clearly disclose the following  
17 information to the tenant, in writing, in at least 10-point type, which may be incorporated into the rental  
18 agreement:

19           (a) That the tenant will be billed for Water Service separately from the rent.

20           (b) An estimate of the monthly bill for Water Service for units at the Property based on either of  
21 the following:

22           (1) The average or median bill for Water Service for comparative units at the Property  
23 over any three of the past six months.

24           (2) The amount of the bill based upon average indoor water use of a family of four of  
25 approximately 200 gallons per day, and including all other monthly charges that will be assessed.

1 Estimates for other gallons per day may also be included. The estimate shall include a statement that  
2 the average family of four uses about 200 gallons of water each day.

3 (c) The due dates and payment procedures for bills for Water Service.

4 (d) An email address and a toll-free telephone number or a local telephone number for the  
5 tenant to contact with questions regarding the Water Service billing and the days and hours for regular  
6 telephone service at either number.

7 (e) That the monthly bill for Water Service may only include the following charges:

8 (1) Payment due for the amount of usage as measured by the submeter, charged at the  
9 same rate for commodity usage by the SFPUC.

10 (2) Payment of a portion of the fixed fee charged by the SFPUC for Water Service.

11 (3) A fee for the Landlord's or Billing Agent's costs in accordance with paragraph (3) of  
12 subdivision (a) of Section 151.5.

13 (4) Any late fee, with the amounts and times assessed, in compliance with Section 151.13.

14 (f) A statement that the tenant shall notify the Landlord in writing of any leaks, drips, or other  
15 problems with the water system, including problems with water-saving devices, and that the Landlord  
16 is required to investigate, and, if necessary, repair these problems.

17 (g) A statement that the Landlord shall provide any of the following information if asked by the  
18 tenant:

19 (1) The location of the Submeter.

20 (2) The calculations used to determine a monthly bill.

21 (3) The date the Submeter was last certified for use, and the date it is next scheduled for  
22 certification.

23 (h) A statement that if the tenant believes that the Submeter reading is inaccurate or the  
24 submeter is malfunctioning, the tenant shall first notify the Landlord in writing and request an  
25 investigation. A tenant shall be provided with notice that if an alleged Submeter malfunction is not

1 resolved by the Landlord, a tenant may contact the local county sealer and request that the Submeter  
2 be tested. Contact information for the county sealer shall be included in the disclosure to the tenant.

3 **SEC. 151.6. TENANT BILLING CALCULATION.**

4 (a) As part of the regular bill for Water Service, a Landlord shall only bill a tenant for the  
5 following Water Service:

6 (1) A charge for volumetric usage, which may be calculated in any the following ways:

7 (A) The amount shall be calculated by first determining the proportion of the tenant's  
8 usage, as shown by the Submeter, to the total usage as shown by the SFPUC's billing. The dollar  
9 amount billed to the tenant for usage shall be in that same proportion to the dollar amount for usage  
10 shown by the SFPUC's billing.

11 (B) If the SFPUC charges for volumetric usage based on a tiered rate schedule, the  
12 Landlord may calculate the charge for a tenant's volumetric usage as described in subparagraph (A)  
13 or the Landlord may instead divide each tier's volume evenly among the number of dwelling units, and  
14 the rate applicable to each block shall be applied to the consumption recorded for each dwelling unit.

15 (C) If the SFPUC charges the Property rates on a per-dwelling unit basis, the tenants  
16 may be charged at those exact per unit rates.

17 (2) Any recurring fixed charge for Water Service billed to the Property by the SFPUC that,  
18 at the Landlord's discretion, shall be calculated by either of the following:

19 (A) The tenant's proportion of the total fixed charges charged to the Property. The  
20 tenant's proportion shall be based on the percentage of the tenant's volumetric water use in relation to  
21 the total volumetric water use of the entire Property, as shown on the Property's water bill during that  
22 period.

23 (B) Dividing the total fixed charges charged to the Property equally among the total  
24 number of residential units and nonresidential units at the Property.

1           (3) A billing, administrative, or other fee for the Landlord's and Billing Agent's costs,  
2 which shall not to exceed five (5) dollars, as adjusted pursuant to this section 151.6. Beginning January  
3 1, 2018, the maximum fee authorized by this paragraph may be adjusted each calendar year by the  
4 Landlord, no higher than a commensurate increase in the Consumer Price Index based on a California  
5 fiscal year average for the previous fiscal year, for all urban consumers, as determined by the State  
6 Department of Finance.

7           (4) A late charge as assessed pursuant to Section 151.14.

8           (b) If a Submeter reading for the beginning or end of a billing period is, in good faith, not  
9 available, the Landlord shall bill the tenant according to Section 151.13.

10          (c) This section does not prohibit a Landlord or the Billing Agent from including any other  
11 lawful charges, including rent, on the same bill.

12          **SEC. 151.7. SUBMETER READING AND BILLING REQUIREMENTS.**

13          (a) Submeters shall be read within three days of the same point in each billing cycle.

14          (b) Payments shall be due at the same point in each billing cycle. A tenant may agree in writing  
15 to receive a bill electronically. A tenant may rescind authorization for electronic delivery of bills at any  
16 time. A tenant shall not be required to pay a bill electronically.

17          (c) A bill shall include and separately set forth the following information:

18                 (1) The Submeter reading for the beginning date and ending date of the billing cycle, the  
19 dates read, and the indicated consumption as determined by subtracting the amount of the beginning  
20 date Submeter reading from the amount of the ending date Submeter reading. If the unit of measure is  
21 in something other than gallons, the indicated consumption shall be expressed in gallons.

22                 (2) The amounts charged pursuant to subdivision (a) of Section 151.5.

23                 (3) The rate or rates charged for the volumetric charge per unit of measure.

24                 (4) The amount, if any, due from the previous month's bill.

25                 (5) The amount, if any, due from bills prior to the previous month's bill.

1 (6) The late fee, if any, imposed on amounts specified in paragraph (4) or (5).

2 (7) The total amount due for the billing period.

3 (8) The due date for the payment.

4 (9) If a late fee is charged by the Landlord, a statement of when the late fees would apply.

5 (10) The procedure to contact the Landlord or Billing Agent with questions or concerns  
6 regarding the bill. Upon request of the tenant, the Landlord or Billing Agent shall respond in writing to  
7 any questions or disputes from the tenant. If a Billing Agent is used, the name of the Billing Agent shall  
8 be disclosed. The tenant shall be provided a mailing address, email address, telephone number, which  
9 shall be either a toll-free or a local number, and the time of regular telephone hours for contact  
10 regarding billing inquiries.

11 (11) A statement that the Landlord or Billing Agent is not the water purveyor that includes  
12 the name of the SFPUC as the agency providing the Water Service to the master meter.

13 (d) Notwithstanding paragraphs (4) and (5) of subdivision (c) of this section 151.7, a separate  
14 bill may be provided for past due amounts if past due amounts are not included on the current month's  
15 bill.

16 **SEC. 151.8. BILLING AT BEGINNING AND END OF TENANCY.**

17 (a) At the beginning of a tenancy, a Submeter shall be read after the tenant takes possession. If  
18 the regular reading occurs less than five days prior to the tenant taking possession, that reading may  
19 be substituted to establish usage. If the Submeter is manually read, the first bill may be estimated based  
20 on the rate established in subdivision (b) of Section 151.13.

21 (b) For a Water Service bill at the end of a tenancy, the submeter shall be read within five days  
22 of the end of the tenancy, if possible. If the Submeter cannot be read within five days of the end of a  
23 tenancy, the bill amount for the final month shall be based on the bill amount for the previous month.

24 (c) The Landlord may deduct an unpaid Water Service bill from the security deposit upon the  
25 ending of a tenancy.



1     **SEC. 151.9. NONRECOVERY OF LANDLORD PENALTIES**

2             *Unless a penalty is solely the result of a tenant's failure to comply with state or local water use*  
3 *regulations or restrictions, or both, regarding wasting of water, a Landlord shall not charge, recover,*  
4 *or allow to be charged or recovered, fees incurred by the Landlord from the SFPUC, Billing Agent, or*  
5 *any other person for any deposit, disconnection, reconnection, late payment by the Landlord, or any*  
6 *other penalty assessed against the Landlord. This section shall not prevent a Landlord from charging a*  
7 *tenant for the tenant's late payment of any bill.*

8     **SEC. 151.10. SUBMETER AND BILLING DATA RETENTION.**

9             *The Landlord shall maintain and make available in writing, at the tenant's written or electronic*  
10 *request, within seven days after the request, the following:*

11             *(a) The date the Submeter was last inspected, tested, and verified, and the date by which it will*  
12 *be reinspected, tested, and verified under law, if available. If this information is not available, the*  
13 *Landlord shall disclose that the information is not available.*

14             *(b) The data used to calculate the tenant's bill, as follows:*

15             *(1) The most recent water bill for the Property's master water meter showing the recurring*  
16 *fixed charge for Water Service billed to the Property by the SFPUC, and the usage charges for the*  
17 *Property, including any amounts subject to tiered rates.*

18             *(2) Any other bills for Water Service for the Property.*

19             *(3) The number of units in the Property.*

20             *(4) If not shown on the bill for the Property, the per unit charges for volumetric water*  
21 *usage, including any amounts subject to tiered rates.*

22             *(5) The formula used to calculate the charge for the tenant's volumetric water usage.*

23             *(c) The location of the Submeter.*

1     **SEC. 151.11. PLUMBING LEAKS AND FAILURES.**

2             (a) If a tenant notifies the Landlord in writing, or the Landlord otherwise becomes aware of a  
3 leak, a drip, or a running toilet, or that a Submeter reading indicates constant or abnormal high water  
4 usage, the Landlord shall investigate and, if warranted, plumbing or Submeter problem.

5             (b) A tenant shall not remove any water fixtures or water conservation devices that have been  
6 installed by the Landlord.

7             (c) If the plumbing or Submeter problem remains uncorrected for one month after tenant  
8 notification, no further volumetric usage charges may be imposed on the tenant until the plumbing or  
9 Submeter problem is corrected.

10    **SEC. 151.12. LANDLORD RIGHT OF ENTRY.**

11             The Landlord may enter a dwelling unit as follows:

12             (a) For the purpose of installing, repairing, testing, reading and maintaining a Submeter, or for  
13 the purpose of repairing or testing any water fixture suspected by the Landlord or reported by the  
14 tenant to be in need of repair.

15             (b) Notice and time of such an entry shall be given to the tenant in writing.

16    **SEC. 151.13. LACK OF AVAILABLE SUBMETER DATA.**

17             (a) If a monthly Submeter reading necessary to measure volumetric usage is unavailable, the  
18 tenant may be charged 75 percent of the average amount billed for volumetric usage for the last three  
19 months for which complete billing information is available. The adjustment shall be disclosed on the  
20 bill.

21             (b) If no complete billing information is available for the prior three months, the volumetric  
22 usage charge shall be deemed to be fifty cents (\$0.50) per day that the data is not available.

23             (c) If monthly Submeter readings are unavailable for more than six months, no further  
24 volumetric usage charges may be imposed on the tenant until the Submeter readings become available.

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1 **SEC. 151.14. LATE PAYMENT FEES.**

2 (a) A tenant may be charged a late fee for any Water Service bill not paid 25 days after mailing  
3 or other transmittal of the bill. If the 25th day falls on a Saturday, Sunday, or holiday, the late fee shall  
4 not be imposed until the day after the first business day following the 25th day.

5 (b) A late fee of up to seven dollars (\$7) may be imposed if any amount of a bill remains unpaid  
6 after the time described in subdivision (a) of this section 151.13. A late fee of up to ten dollars (\$10)  
7 may be imposed in each subsequent bill if any amount remains unpaid. If any partial payments are  
8 made, they shall be credited against the bill that has been outstanding the longest.

9 (c) If a Water Service bill remains unpaid for more than 25 days after mailing or transmittal,  
10 the Landlord may deduct the amount of the unpaid bill from the tenant's security deposit.

11 (d) If a Water Service bill remains unpaid for 55 days after mailing or transmittal, the  
12 nonpayment shall constitute a curable material breach of the lease. The Landlord shall have the right  
13 to terminate the tenancy in accordance with applicable law.

14 (e) Water Service charges under this chapter shall not constitute rent.

15 (f) The Water Service to a dwelling unit shall not be shut off or otherwise interfered with by the  
16 Landlord for any reason, including nonpayment of a bill. Notwithstanding the foregoing, a Landlord or  
17 the Billing Agent may temporarily shut off Water Service to a dwelling unit or the Property in order to  
18 make repairs, replacements of equipment, or to perform other maintenance at the property.

19 **SEC. 151.15. EXEMPTION.**

20 This Article 4.4 shall not apply to any Property defined as group housing under Planning Code  
21 section 102.

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1 Section 3. Effective and Operative Dates. This ordinance shall become effective 30  
2 days after enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor  
3 returns the ordinance unsigned or does not sign the ordinance within ten days of receiving it,  
4 or the Board of Supervisors overrides the Mayor's veto of the ordinance.

5 APPROVED AS TO FORM:  
6 DENNIS J. HERRERA, City Attorney

7 By: \_\_\_\_\_  
8 JOHN RODDY  
9 Deputy City Attorney

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