

BOARD of SUPERVISORS



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MEMORANDUM

TO: Christina Varner, Acting Executive Director, Rent Board
Eric D. Shaw, Director, Mayor's Office of Housing and Community
Development

FROM: Erica Major, Assistant Clerk, Land Use and Transportation Committee

DATE: March 16, 2022

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Land Use and Transportation Committee has received the following proposed legislation, introduced by Supervisor Peskin on March 8, 2022:

File No. 220241

Ordinance amending the Building Code to prohibit construction projects in buildings with any residential rental units, where the project would require the suspension of water or utility service to residential tenants, without the property owner providing alternative sources of water and power or reaching agreement with tenants, and to require installation of temporary insulation to mitigate noise and disruption to impacted residential tenants; adopting findings of local conditions under the California Health and Safety Code; and affirming the Planning Department's determination under the California Environmental Quality Act.

If you have 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 or by email at: erica.major@sfgov.org.

cc: Lydia Ely, Mayor's Office of Housing and Community Development
Brian Cheu, Mayor's Office of Housing and Community Development
Maria Benjamin, Mayor's Office of Housing and Community Development
Sheila Nickolopoulos, Mayor's Office of Housing and Community Development

1 [Building Code - Construction That Causes Temporary Suspension of Water or Utility Service
or Excessive Noise]

2 **Ordinance amending the Building Code to prohibit construction projects in buildings**
3 **with any residential rental units, where the project would require the suspension of**
4 **water or utility service to residential tenants, without the property owner providing**
5 **alternative sources of water and power or reaching agreement with tenants, and to**
6 **require installation of temporary insulation to mitigate noise and disruption to**
7 **impacted residential tenants; adopting findings of local conditions under the California**
8 **Health and Safety Code; and affirming the Planning Department's determination under**
9 **the California Environmental Quality Act.**

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

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

18 Section 1. Environmental and Other Findings.

19 (a) The Planning Department has determined that the actions contemplated in this
20 ordinance comply with the California Environmental Quality Act (California Public Resources
21 Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of
22 Supervisors in File No. _____ and is incorporated herein by reference. The Board affirms
23 this determination.

24 (b) Pursuant to Charter Section D3.750-5, the Building Inspection Commission
25 considered this ordinance at a duly noticed public hearing held on _____, 2022.

1 (c) On March 16, 2020, in response to the COVID-19 pandemic, the Governor issued
2 Executive Order N-28-20, finding that local jurisdictions must take measures to preserve and
3 increase housing security and that additional measures may be necessary to protect public
4 health and to mitigate the economic effects of COVID-19.

5
6 Section 2. Findings Regarding Local Conditions. No local findings are required under
7 California Health and Safety Code Section 17958.7 because the amendments to the Building
8 Code contained in this ordinance do not regulate materials or manner of construction or
9 repair, and instead relate to administrative procedures for implementing and enforcing the
10 Code, which are expressly excluded from the definition of a “building standard” by California
11 Health and Safety Code Section 18909(c). Nonetheless, the Board of Supervisors hereby
12 finds that the following local conditions apply to the amendments to the San Francisco
13 Building Code enacted by this ordinance:

14 (a) California Health and Safety Code Sections 17958 and 17958.5 allow the City to
15 make changes or modifications in the requirements contained in the provisions published by
16 the California Building Standards Commission, including the California Building Code, when
17 those changes or modifications are reasonably necessary because of local climatic,
18 geological, or topographical conditions. California Health and Safety Code Section 17958.7
19 provides that before making any such changes or modifications, the governing body must
20 make express findings that such changes or modifications are reasonably necessary because
21 of the specified local conditions, and those findings shall be filed with the California Building
22 Standards Commission.

23 (b) On February 25, 2020, Mayor London Breed proclaimed a state of emergency
24 based on the COVID-19 pandemic (hereinafter referred to as “the emergency”). On March 3,
25 2020, the Board of Supervisors, in Motion No. 200228, concurred in the Proclamation and in

1 the actions taken by the Mayor to meet the emergency. On March 13, 2020, the Mayor issued
2 a Second Supplement to the Proclamation, finding that the emergency is causing severe
3 financial impacts to renters in the City and County of San Francisco, and providing certain
4 protections to those renters who will be unable to pay their rent on time due to the emergency,
5 to avoid the further risks and contamination that will result if they are displaced from their
6 homes.

7 (c) San Francisco is topographically constrained and its built environment occupies
8 most available land. The topography of San Francisco has also led to development of a high
9 density of buildings on small lots, often with crowded occupancy, necessitating special
10 provisions for construction activities that have the potential to impact tenant access to water,
11 power, and quiet enjoyment of their living space.

12 (d) The rental housing stock in the City is unique among California communities with
13 respect to building and population density, unusual topography, and other local conditions.
14 Among other things, San Francisco has a high proportion of renters, including many who live
15 in residential buildings housing large numbers of people. For these reasons, the need for
16 extra measures to help residential tenants prepare for and cope with certain suspensions of
17 water service or other utility service is especially pressing.

18 (e) Pursuant to the applicable California Health and Safety Code sections, the Board of
19 Supervisors finds and determines that the conditions described above constitute a general
20 summary of the most significant local conditions giving rise to the need for additional
21 protections in the Building Code. Further, the Board of Supervisors finds and determines that
22 the proposed protections in this ordinance are reasonably necessary based on these local
23 conditions, and that these conditions justify more restrictive standards applicable to residential
24 tenants in San Francisco.

1 (f) Affordable housing units are less likely than other rental units to be subject to
2 ongoing or elective renovation construction work, and repairs are more likely to be for the
3 purpose of maintaining safe and habitable housing. Further, tenants in affordable housing
4 units, including long-term tenants in that housing, are less likely to be subject to harassment
5 and constructive eviction motivated by a desire to re-rent those units at high market rates.
6 Therefore, affordable housing units have been exempted from the requirements of this
7 ordinance.

8 (g) Section 106A.1.19 of the San Francisco Existing Building Code as added by this
9 ordinance would impose more restrictive standards than apply under the state codes. The
10 more restrictive standards in these sections were previously enacted by the Board of
11 Supervisors as an Emergency Ordinance in Ordinance No. 154-20. Emergency Ordinance
12 No. 154-20 was subsequently reenacted and extended in Board of Supervisors File No.
13 210076. This ordinance would permanently impose these more restrictive standards. The
14 Board of Supervisors finds and determines that these permanent standards are justified by
15 local conditions, including the unique nature of rental housing in San Francisco, and the
16 negative impact of the COVID-19 emergency, which has made matters worse by limiting the
17 resources available to tenants of residential units to cope with interruptions to their access to
18 water and utility services, and warrants these measures to preserve and increase housing
19 security, protect public health, and mitigate the negative impacts of COVID-19.

20
21 Section 3. The Building Code is hereby amended by adding Section 106A.1.19,
22 including also component Sections 106A.1.19.1, 106A.1.19.2, 106A.1.19.3, 106A.1.19.4, and
23 106A.1.19.5, to read as follows:
24
25

1 **106A.1.19. Prohibition of Construction Activities that Suspend Water or Other Utility Service**

2 **Unless an Alternative Source is Provided.** *Except as provided in Section 106A.1.19.4 below, no*
3 *construction may be performed in a building containing any residential rental units, whether or not a*
4 *building permit has been issued prior to the effective date of this Section 106A.1.19, if that construction*
5 *would result in the suspension of water service or other utility service to any residential tenant in the*
6 *building, unless:*

7 *(a) In the event of a water shutoff exceeding two consecutive hours in a single day, the*
8 *property owner provides a commensurate water source to each impacted residential tenant, including*
9 *but not limited to water bottles or gallons of water; or*

10 *(b) In the event of an electricity shutoff exceeding two consecutive hours in a single day,*
11 *the property owner provides a generator or alternative power source that allows internet use to each*
12 *impacted residential tenant.*

13 **106A.1.19.1 Notice to Residential Tenants.** *The property owner shall give each residential*
14 *tenant that will be impacted by water and/or utility service interruption exceeding the time periods*
15 *described in subsections (a) and (b) of this Section 106A.1.19.1 the name and contact information of a*
16 *liaison who can provide information regarding the disruption and respond to tenant concerns, as well*
17 *as advance notice to each impacted residential tenant as follows:*

18 *(a) In the event of an anticipated water or electricity shutoff lasting more than two*
19 *consecutive hours or four non-consecutive hours in a single day, all impacted residential tenants must*
20 *be provided with 72 hours' advance written notice;*

21 *(b) In the event of an anticipated water or electricity shutoff lasting more than two*
22 *consecutive hours or four non-consecutive hours on each of two or more consecutive days, or on each*
23 *of four or more days in a single seven day period, all impacted resident tenants must be provided with*
24 *written notice at least seven days in advance of the first shutoff, and with weekly updates for prolonged*
25 *construction projects.*

1 **106A.1.19.2 Unanticipated Extension of Shutoff Period.** *If over the course of construction the*
2 *need emerges to shut off water or power for more than two hours, construction must pause and may*
3 *only resume pursuant to the notice and alternative accommodations provisions of Sections 106A.1.19*
4 *and 106A.1.19.1; provided, however, that the Department of Building Inspection may authorize the*
5 *construction to continue if a pause would create an imminent safety hazard.*

6 **106A.1.19.3 Use of Equipment or Instruments.** *If the construction described in Section*
7 *106A.1.19 uses equipment or instruments that create noise that would reasonably disturb or annoy*
8 *residential tenants for more than two non-consecutive hours in a single day, the property owner shall*
9 *install temporary insulation to mitigate the resulting noise and disruption to impacted residential*
10 *tenants.*

11 **106A.1.19.4 Exceptions.** *Property owners shall be exempt from the obligations set forth in*
12 *Sections 106A.1.19-106A.1.19.3 above if:*

13 *(a) A property owner and all impacted residential tenants agree to terms other than*
14 *those set forth in Sections 106A.1.19-106A.1.19.3, and the property owner submits an email to an*
15 *address established by the Department of Building Inspection detailing the terms and duration of that*
16 *agreement; or*

17 *(b) All impacted residents reside in a building where 100% of the residential units (1)*
18 *have a maximum affordable purchase price or affordable rent set at 120% of the unadjusted area*
19 *median family income (AMI) determined by the Mayor’s Office of Housing and Community*
20 *Development on an annual basis and derived from the HUD Metro Fair Market Rent Area (HMFA)*
21 *that contains San Francisco; (2) at a rent that shall not exceed 30% of the applicable household*
22 *income limit for a rental unit, or at a purchase price with an annual housing cost that shall not exceed*
23 *33% of the applicable income limit for an owner-occupied unit, as each may be adjusted for household*
24 *size and bedroom count; and (3) for the life of the project or a minimum of 55 years, whichever is*
25 *longer, by a recorded regulatory agreement and consistent with any applicable federal, state or local*

1 government regulatory requirements.

2 **106A.1.19.5 Implementation by the Department of Building Inspection.** The Department of
3 Building Inspection shall implement the requirements of Sections 106A.1.19-106A.1.19.5. Upon finding
4 a first violation, the Department of Building Inspection shall issue a warning to the property owner
5 along with a copy of the requirements of Sections 106A.1.19-106A.1.19.4. After receiving a warning,
6 the property owner shall be required to send an e-mail to an address established by the Department of
7 Building Inspection concurrent with any notice provided to impacted residential tenants under Section
8 106A.1.19.1. Failure to do so shall constitute a separate violation of this Section 106A.1.19.5. For any
9 subsequent violations, the Department of Building Inspection shall issue a Notice of Violation and/or
10 any other applicable citation pursuant to its authority under Chapter 1A of the Building Code.

11
12 Section 4. Preemption. Nothing in this ordinance shall be interpreted or applied so as
13 to create any right, requirement, power, or duty in conflict with Federal or State law. The term
14 “conflict,” as used in this Section 4, means a conflict that is preemptive under Federal or State
15 law.

16
17 Section 5. Severability. If any section, subsection, sentence, clause, phrase, or word
18 of this ordinance, or any application thereof to any person or circumstance, is held to be
19 invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision
20 shall not affect the validity of the remaining portions or applications of the ordinance. The
21 Board of Supervisors hereby declares that it would have passed this ordinance and each and
22 every section, subsection, sentence, clause, phrase, and word not declared invalid or
23 unconstitutional without regard to whether any other portion of this ordinance or application
24 thereof would be subsequently declared invalid or unconstitutional.

1 Section 6. Effective Date. This ordinance shall become effective 30 days after
2 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
3 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
4 of Supervisors overrides the Mayor's veto of the ordinance.

5
6 Section 7. Directions to the Clerk. The Clerk of the Board of Supervisors is hereby
7 directed to forward a copy of this ordinance to the California Building Standards Commission
8 upon final passage as required by state law.

9
10 APPROVED AS TO FORM:
11 DAVID CHIU, City Attorney

12 By: /s/ Peter R. Miljanich
13 PETER R. MILJANICH
14 Deputy City Attorney

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LEGISLATIVE DIGEST

[Building Code - Construction That Causes Temporary Suspension of Water or Utility Service or Excessive Noise]

Ordinance amending the Building Code to prohibit construction projects in buildings with any residential rental units, where the project would require the suspension of water or utility service to residential tenants, without the property owner providing alternative sources of water and power or reaching agreement with tenants, and to require installation of temporary insulation to mitigate noise and disruption to impacted residential tenants; adopting findings of local conditions under the California Health and Safety Code; and affirming the Planning Department's determination under the California Environmental Quality Act.

Existing Law

This ordinance imposes requirements that are very similar to the requirements contained in Emergency Ordinance No. 154-20. Emergency Ordinance No. 154-20 was approved and took effect on August 28, 2020, expired on October 27, 2020, was reenacted on March 12, 2021, and expired on May 12, 2021.

Amendments to Current Law

This ordinance prohibits construction activities that suspend water or electricity service in buildings with residential rental units exceeding two hours unless an alternative source is provided. This ordinance also requires advance notice to tenants of a disruption in utility service or construction involving noise levels over specified limits, including the name and contact information of a person who can respond to tenant concerns. The Department of Building Inspection may authorize the construction to continue without the advance notice if a pause in construction would create an imminent safety hazard. Property owners are exempt from the requirements of the ordinance to provide alternative water or electricity service if the owner and all impacted residential tenants agree to different terms. Buildings with 100% affordable units are also exempt.

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Introduction Form

By a Member of the Board of Supervisors or Mayor

Time stamp
or meeting date

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

- 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 [] inquiries"
- 5. City Attorney Request.
- 6. Call File No. [] from Committee.
- 7. Budget Analyst request (attached written motion).
- 8. Substitute Legislation File No. []
- 9. Reactivate File No. []
- 10. Topic 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 the Imperative Form.

Sponsor(s):

Supervisor Peskin

Subject:

[Building Code - Construction That Causes Temporary Suspension of Water or Utility Service or Excessive Noise]

The text is listed:

Ordinance amending the Building Code to prohibit construction projects in buildings with any residential rental units, where the project would require the suspension of water or utility service to residential tenants, without the property owner providing alternative sources of water and power or reaching agreement with tenants, and to require installation of temporary insulation to mitigate noise and disruption to impacted residential tenants; adopting findings of local conditions under the California Health and Safety Code; and affirming the Planning Department's determination under the California Environmental Quality Act.

Signature of Sponsoring Supervisor:

[Handwritten Signature]

For Clerk's Use Only