

1 [Health Code - Private Right of Action for Tourist Hotel Violations of Healthy Buildings Ordinance]

2

3 **Ordinance amending the Health Code to authorize employees of tourist hotels, or the**
4 **labor organizations that represent those employees, to file civil lawsuits against tourist**
5 **hotels or operators for violations of certain cleaning and disease prevention standards**
6 **and practices required in tourist hotels; and authorizing courts to impose appropriate**
7 **legal and equitable relief, including civil penalties, against the defendants in any such**
8 **lawsuits.**

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

13

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

15

16 Section 1. Article 11B of the Health Code is hereby amended by revising Sections
17 625.2 and 625.5, to read as follows; Section 625.3 is reproduced below, without revisions, for
18 informational purposes only:

19

20 **SEC. 625.2. DEFINITIONS.**

21 As used in this Article 11B, the following terms shall have the following meanings:

22

* * * *

23 “Employee” or “Employees” means full-time and part-time employees, casual or on-call
24 employees, or independent contractors and their employees, who perform work as described

25

1 in Section 625.3 at the Covered Establishment, whether employed or hired directly by the
2 Operator of the Covered Establishment or by another entity.

3 “Employee Dining and Break Rooms” means any space designated by the Operator for
4 Employees to take legally or contractually mandated breaks, or other breaks authorized or
5 approved by the Operator.

6 “Employee Representative” means any organization that has a collective bargaining
7 relationship with a Tourist Hotel or Operator and that represents Employees, any organization that the
8 Tourist Hotel or Operator has been formally acknowledged as an employee organization that
9 represents Employees, or any joint council of organizations that includes such organizations and that
10 has as one of its purposes representing such Employees in their relations with a Tourist Hotel.

11 * * * *

12 “Operator” means any person or business entity that employs or hires Employees
13 directly or indirectly to perform work as described in Section 625.3 at a Covered
14 Establishment.

15 * * * *

16 “Tourist Hotel” means any building or Set of Buildings containing six or more guest
17 rooms or suites of rooms intended or designated to be used for commercial tourist use by
18 providing accommodation to transient guests on a nightly basis or longer, as defined in
19 Administrative Code Section 41.4. “Tourist Hotel” does not include a hotel, or any guest rooms
20 or suites within such a hotel, procured, leased, rented, or controlled by the City for the
21 purpose of sheltering people as part of the City’s COVID-19 response or response to any
22 other Contagious Public Health Threat.

23
24 **SEC. 625.3. CLEANING STANDARDS FOR COVERED ESTABLISHMENTS.**
25

1 (a) Each Operator shall establish, implement, and maintain written cleaning and
2 disease prevention standards designed to minimize the risk of transmission of the novel
3 coronavirus that causes COVID-19 or other Contagious Public Health Threats as they arise.

4 (b) Hand washing stations shall be provided on every floor of the Covered
5 Establishment. This requirement does not apply to Tourist Hotels that authorize housekeeping
6 Employees to wash hands in guest rooms.

7 (c) **Disinfectant.** The cleaning and disease prevention standards established under
8 this Section 625.3 shall provide for disinfection of porous and non-porous surfaces using
9 appropriate Disinfectants. If no Disinfectant exists that may be used on porous surfaces
10 effectively or without causing damage to the material, the Operator shall use such other
11 cleaning agent as is appropriate for the material while using a Disinfectant on all other
12 surfaces. Each Operator shall follow the manufacturer's instructions for all cleaning and
13 disinfection products for concentration, application method, and contact time for safe and
14 effective use. Additionally, Employees shall be trained in the proper use of cleaning and
15 disinfection products per the product manufacturer's guidelines and Cal/OSHA safety
16 requirements.

17 (d) **High-contact areas, items, and fixtures.** The cleaning and disease prevention
18 standards established under this Section 625.3 shall identify "high-contact" areas, items, and
19 fixtures with which Employees or guests may be expected to have regular physical contact.
20 These shall include, at a minimum, those areas, items, and fixtures identified in subsections
21 (e) and (f), but shall also include any other high-contact areas, items, and fixtures; provided,
22 however, that subsections (e) and (f) shall not apply to areas of Covered Establishments that
23 are closed to Employees and/or guests.

24 (e) **Regular cleaning and disinfection.** The following high-contact areas, items, and
25 fixtures shall be cleaned and disinfected multiple times daily, and more frequently where

1 appropriate. For some of the matters addressed in subsections (e)(1)-(9), additional
2 requirements apply as stated. Unless otherwise stated, references in this Section 625.3 to
3 “surfaces” do not include ceilings.

4 (1) **Public and Employee areas.** All Frequently Touched surfaces in lobbies,
5 lounges, waiting areas, hallways, handwashing facilities, other public areas or other areas
6 designated for Employees, such as break and locker rooms. Porous surfaces such as
7 carpeted floors, rugs, and drapes, shall be disinfected using Disinfectant identified for the
8 item, or where not, using appropriate cleaners indicated for use on these surfaces.

9 (2) **Elevators.** All Frequently Touched surfaces, internal and external, for
10 elevators, including without limitation elevator buttons and controls, walls, floors, and
11 handrails.

12 (3) **Stairways, stairwells, and escalators.** All Frequently Touched surfaces
13 on stairways, stairwells, and escalators, including without limitation handrails.

14 (4) **Restrooms.** All Frequently Touched surfaces, fixtures, and facilities in
15 public and non-public restrooms, including without limitation sinks, faucets, mirrors, soap
16 dispensers, dryers, paper towel dispensers, toilets, doors, walls and floors of bathroom stalls,
17 toilet paper and paper towel dispensers, door handles, walls, and floors. In addition, hand
18 sanitizer and soap shall be available in all public restrooms.

19 (5) **Meeting rooms.** All Frequently Touched surfaces and objects in meeting
20 rooms and convention spaces, including without limitation walls, floors, table tops, chairs, dry
21 erase boards; also, markers, staplers, tape dispensers, remote controls, table projectors,
22 charging ports, podiums, and microphones and other equipment used for transmitting
23 information to attendees. Regular cleaning and disinfecting shall occur, among other times,
24 during meeting breaks.

1 (6) **Multi-use instruments and items.** Instruments and other items used by
2 multiple individuals such as computer keyboards, touch screens, credit card readers, printers,
3 telephones, light switches, non-disposable restaurant menus, and ice and vending machines.

4 (7) **Doors.** Doors and door handles at all exterior entrances, and door handles
5 at interior entrances regularly accessed by multiple Employees and guests. In addition, each
6 Operator shall have personnel responsible for regularly disinfecting exterior doors. At any time
7 that doors used as a primary public entrance in a Tourist Hotel of 100 rooms or more cannot
8 open automatically or be propped open, the Operator shall assign a gloved employee to open
9 them.

10 (8) **Dining and bar facilities.** All Frequently Touched surfaces and objects in
11 dining areas, including without limitation dining rooms, lunch areas, and restaurants or cafes
12 on the premises that are defined as “Food Facilities” under California Health and Safety Code
13 Section 113789(a), shall be maintained in compliance with the California Health and Code
14 Sections 113700, et seq., or any successor provision.

15 (9) **Shipping and receiving areas.** All Frequently Touched surfaces and
16 objects in shipping and receiving areas, including without limitation waste management areas
17 and loading docks.

18 (f) **Tourist Hotels.** In addition to the requirements of subsection (e), these
19 requirements also apply to Tourist Hotels:

20 (1) All surfaces, items, and furnishings in Tourist Hotel guest rooms (including
21 suite areas) that have been occupied in the preceding 24 hours shall be cleaned and
22 disinfected on a daily basis, unless the guest requests otherwise. Such surfaces include,
23 without limitation, mirrors, desks, table tops, furniture, minibars, interior and exterior door
24 handles, interior door locks, faucets, toilets, light switches, TV remote controls, telephones,
25 keyboards, and touch screens. Porous surfaces such as carpeted floor, rugs, and drapes,

1 shall be disinfected using Disinfectant where available for the item, or where not, appropriate
2 cleaners indicated for use on these surfaces.

3 (2) Towels, bed linens, bed scarves, and bedspreads shall be changed upon
4 the end of each guest's stay in the Tourist Hotel. All dirty linens and laundry shall be cleaned
5 at high temperatures and according to the CDC Guidelines for Environmental Infection Control
6 in Health-Care Facilities.

7 (3) Hand sanitizer dispensers shall be installed in main entrances and exits
8 utilized by Employees and guests and in other open high-contact public areas, including
9 without limitation fitness centers, pools, salons, check-in and check-out counters, lobbies, and
10 lounges, and near elevators and multi-use instruments.

11 (4) Restrooms in occupied Tourist Hotel guest rooms shall be cleaned and
12 disinfected once per day, absent special circumstances requiring more frequent cleaning,
13 unless the guest requests less frequent cleaning/disinfecting.

14 (5) If there is a reasonable basis to believe that a specific guest room was
15 occupied by an individual infected with COVID-19 or any other Contagious Public Health
16 Threat, the Operator must remove the guest room from use for seven days or until the
17 Department confirms that it is safe for re-use. If the Department confirms that the room was
18 exposed to a positive case of COVID-19 or other Contagious Public Health Threat, the guest
19 room must undergo a more stringent sanitization protocol per the CDC "Cleaning and
20 Disinfection for Community Facilities" recommendations, or other protocols as may be
21 deemed appropriate by the Department.

22 (6) A Tourist Hotel may not advise, nor may it offer any incentive, of a financial
23 or other nature, to, any guest to decline guest room cleaning on a daily basis or otherwise
24 relax the standards set forth in this subsection (f). Guests are presumed to elect daily guest
25

1 room cleaning unless the guest affirmatively indicates a preference not to receive daily room
2 cleaning.

3 (g) **Posting of cleaning and disease prevention standards.** Copies of the cleaning
4 and disease prevention standards referenced in subsection (a) shall be posted in areas where
5 Employees regularly receive daily instruction regarding work duties and on bulletin boards
6 where the Operator regularly posts official communications with Employees. Copies of the
7 cleaning and disease prevention standards shall be made available to guests, to Employees,
8 and to Employee bargaining representatives upon request, and shall be translated into any
9 language spoken by 20% or more of Employees at the Covered Establishment. Copies of the
10 cleaning and disease prevention standards shall be submitted electronically to the
11 Department upon request.

12 (h) All Operators shall maintain a compliance log of all cleaning and sanitation
13 performed in compliance with this Section 625.3, and shall make it available to the
14 Department upon request.

15 (i) **Guidance of public health authorities.** Any other relevant guidance regarding
16 cleaning and disease prevention standards issued by the Department, the California
17 Department of Public Health, Cal/OSHA, the Centers for Disease Control, and/or other
18 regulatory agencies, or established pursuant to Executive Order of the Mayor, County Health
19 Officer, Governor, State Health Officer, or President shall be followed by the Covered
20 Establishment. In the event that such guidance recommends providing employees with a
21 notice related to COVID-19 or other Contagious Public Health Threat (for example, a general
22 exposure advisory or a recommendation of quarantine), each Operator shall ensure that all
23 Employees to which such recommendations relate and their bargaining representatives, if
24 any, receive such notice as expeditiously as possible. In the event of a conflict between this
25 Section 625.3 and cleaning and disease prevention standards adopted by one or more of the

1 public health authorities encompassed within this subsection (i), the most stringent standard
2 shall apply.

3
4 **SEC. 625.5. ENFORCEMENT.**

5 (a) As stated in Health Code Section 581, a violation of the cleaning or disinfecting
6 standards established under Section 625.3 shall be considered a nuisance under Section 581,
7 or any successor provision.

8 (b) The Department shall have authority to enforce Section 625.3 under Health Code
9 Sections 594, 595, 596, 596.5, 599, 600, and 610, including by issuance of an order of
10 closure as provided by Health Code Section 596(i)(6), or any successor provision.

11 (c) Any Employee or former Employee may bring a civil action in the San Francisco
12 Superior Court for a violation of Section 625.4, and may be awarded:

13 (1) All actual damages (including, but not limited to, lost pay and benefits) suffered
14 by the Employee, or statutory damages in the sum of \$1,000, for each violation whichever is
15 greater; and

16 (2) Exemplary damages, as authorized under California Civil Code Section 3294,
17 or any successor provision; and

18 (3) The court shall award reasonable attorneys' fees and costs to an Employee
19 who prevails in any such enforcement action.

20 (d) Any Employee of a Tourist Hotel or their Employee Representative may bring a civil action
21 in the San Francisco Superior Court against a Tourist Hotel or an Operator of a Tourist Hotel for
22 violation of subsection 625.3(f), and shall be entitled to such legal or equitable relief as may be
23 appropriate to remedy the violation, including but not limited to:

24 (1) Appropriate injunctive relief;

25 (2) Reasonable attorneys' fees and costs; and

1 (3) Civil penalties up to:

2 (A) \$500 per guest room per day if, within the previous two years before the
3 violation, the Superior Court has not issued a final judgment against the Tourist Hotel or Operator for
4 a separate violation of subsection 625.3(f);

5 (B) \$1,000 per guest room per day if, within the previous two years before the
6 violation, the Superior Court has issued one final judgment against the Tourist Hotel or Operator for a
7 separate violation of subsection 625.3(f);

8 (C) \$2,500 per guest room per day if, within the previous two years before the
9 violation, the Superior Court has issued two final judgments against the Tourist Hotel or Operator for
10 separate violations of subsection 625.3(f); and

11 (D) \$5,000 per guest room per day if, within the previous two years before the
12 violation, the Superior Court has issued more than two final judgments against the Tourist Hotel or
13 Operator in for separate violations of subsection 625.3(f).

14 In determining the civil penalty that is appropriate within the maximum penalties as stated in
15 (A)-(D) above, the court may consider all relevant factors, including without limitation, the
16 egregiousness of the violation; the nature and degree of health or safety risk presented to Employees as
17 a result of the violation; the cost savings, if any, achieved by the Tourist Hotel or Operator as a result
18 of the violation; the size of the dollar amount that would be the maximum civil penalty permitted under
19 (A)-(D), as applicable; and the economic impact of the civil penalty on the Tourist Hotel or Operator.

20 Within ten days after filing a civil action under this subsection (d), an Employee or Employee
21 shall submit a copy of the complaint with the Department. The Department shall maintain a record of
22 complaints it receives and shall report this information to the Board of Supervisors and the Mayor
23 upon request.

24

25

