

File No. 110348

Committee Item No. 3
Board Item No. 5

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Public Safety

Date: October 6, 2011

Board of Supervisors Meeting

Date: 10/25/11

Cmte Board

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| <input type="checkbox"/> | <input type="checkbox"/> | Resolution |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Ordinance |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Legislative Digest |
| <input type="checkbox"/> | <input type="checkbox"/> | Budget Analyst Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Legislative Analyst Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Introduction Form (for hearings) |
| <input type="checkbox"/> | <input type="checkbox"/> | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/> | <input type="checkbox"/> | MOU |
| <input type="checkbox"/> | <input type="checkbox"/> | Grant Information Form |
| <input type="checkbox"/> | <input type="checkbox"/> | Grant Budget |
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| <input type="checkbox"/> | <input type="checkbox"/> | Contract/Agreement (Approved as to Form) |
| <input type="checkbox"/> | <input type="checkbox"/> | Award Letter |
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OTHER (Use back side if additional space is needed)

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| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Notice of Public Hearing</u> |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Biodetector Registration Cost Worksheet</u> |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Referrals</u> |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Presentation</u> |

Completed by: Andrea S. Ausberry

Date September 28, 2011

Completed by: _____

Date _____

An asterisked item represents the cover sheet to a document that exceeds 25 pages. The complete document is in the file.

1 [Health Code - Biological Agent Detector Registration and Fees]

2
3 **Ordinance amending the San Francisco Health Code by adding Article 35 to create a**
4 **registration scheme, fees, and other requirements for Biological Agent Detectors.**

5 Note: Additions are *single-underline italics Times New Roman*;
6 deletions are *strikethrough italics Times New Roman*.
7 Board amendment additions are double underlined.
Board amendment deletions are ~~strikethrough normal~~.

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

9 Section 1. The San Francisco Health Code is hereby amended by adding Article 35, to
10 read as follows:

11 **SEC. 3500. FINDINGS AND STATEMENT OF PURPOSE.**

12 (a) Commercial vendors are promoting Biological Agent Detectors that have not been
13 scientifically validated to companies and institutions in San Francisco.

14 (b) "A single system that exhibits high specificity for detection of biological agents in the
15 environment currently does not exist as a commercially available item." (Director of Homeland
16 Security, Guide for the Selection of Biological Agent Detection for Emergency First Responders, March
17 2005. 3.2) A lack of high specificity causes an unacceptably high rate of false alarms in biological
18 agent detectors.

19 (c) According to a joint statement by the Federal Bureau of Investigations, Director of
20 Homeland Security, and the Centers for Disease Control, "Currently, there are no definitive field tests
21 for identifying biological agents. Additional field testing can mislead response efforts by providing
22 incorrect or incomplete results, and destroy limited materials critical for definitive laboratory testing
23 required to facilitate any appropriate public health and law enforcement response." (Federal Bureau
24 of Investigation/ Director of Health Services / Centers for Disease Control Coordinated Document:
25 Guidance on Initial Responses to a Suspicious Letter / Container – November 2, 2004)

1 (d) Biological Agent Detectors that are commercially available have not been scientifically
2 validated or approved for use by the Centers for Disease Control & Prevention (CDC).

3 (e) The currently available technology and protocols to confirm the presence or absence of
4 a bioterrorism attack are not well developed, which may result in prolonged and unnecessary closure
5 of the identified facility and nearby buildings. (United States Government Accountability Office,
6 Report to the Chairman, Subcommittee on National Security, Emerging Threats, and International
7 Relations, House Committee on Government Reform, House of Representatives. Anthrax detection:
8 Agencies need to validate sampling activities in order to increase confidence in negative results.
9 March 2006)

10 (f) A false alarm of a possible bioterrorism attack may cause civil unrest, business
11 disruptions, prolonged facility closure, and mental health consequences.

12 (g) Prolonged closure of facilities and adjacent buildings to perform environmental
13 sampling may cause extended work stoppage and significant financial loss to businesses.

14 (h) An estimated cost to the City and County of San Francisco in responding to a false
15 alarm of a Biological Agent Detector is over \$700,000 per incident, with an additional \$200,000 for
16 each additional day of emergency response and restoration activities. The costs may include
17 decontamination, environmental sampling, law enforcement, laboratory testing, public health
18 surveillance, and facility restoration.

19 (i) The City and County of San Francisco has a response plan for the federal Director of
20 Homeland Security Biowatch program that continuously collects air samples to test for key
21 bioterrorism agents and uses a CDC-coordinated Laboratory Response Network for testing and
22 confirmation. The Laboratory Response Network program has been scientifically validated by the
23 CDC.

1 (j) Emergency responders of the City and County of San Francisco use a Suspicious
2 Substance Response Plan. With guidance from this response plan, emergency responders
3 systematically assess the threats, potential risks, and the appropriate screening tests. If determined to
4 be appropriate, the emergency responders or the Federal Bureau of Investigations (FBI) would collect
5 the substance for testing at the CDC-coordinated Laboratory Response Network (LRN) reference
6 laboratory at the California Department of Public Health. Using scientifically validated testing
7 procedures, the LRN can produce reliable and validated test results within several hours.

8 (k) The San Francisco Director of Public Health and health professionals use medical and
9 public health surveillance to detect any cases of bioterrorism.

10 (l) For these reasons, the City and County of San Francisco strongly discourages the
11 purchase and use of Biological Agent Detectors by public institutions and businesses in San Francisco.

12 (m) If the National Science & Technology Council develops national equipment performance
13 standards for biological agent detectors, the Department of Public Health shall make recommendations
14 to the Board of Supervisors regarding whether to amend or repeal this legislation.

15 **SEC. 3501. DEFINITIONS.**

16 (a) "Biological Agent" means any microorganism, including bacteria, virus, infectious
17 substance or toxin, whether engineered or naturally occurring, or any component of such micro-
18 organism, bacteria, virus, infectious substance or toxin, capable of causing death, disease or other
19 biological malfunction in a living organism.

20 (b) "Biological Agent Detection Facility Response Plan" means a plan developed and
21 written to respond to a positive detection from a Biological Agent Detector including, but not limited
22 to: emergency coordinators and contact information, notification protocol, evacuation procedures, air
23 handling shutdown procedures, if relevant, procedures for collection of information on potentially
24 exposed Persons, coordination with City agencies for any decontamination or post-exposure
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1 prophylaxis procedures, confirmation of Biodetector results procedures, plan training and
2 maintenance, and device maintenance.

3 (c) "Biological Agent Detector" or "Biodetector" means a device or equipment that tests for
4 a biological agent that may be used for a terrorism attack, and includes both mobile and fixed position
5 devices. Biological Agent Detectors include only devices that identify pathogenic Biological Agents by
6 genus or species (e.g. Bacillus anthracis, Francisella tularensis, Brucella sp.), or specific toxin (e.g.
7 ricin). This definition does not include screening devices to determine the presence of protein or
8 biological materials.

9 (d) "Biological Agent Detector User" or "Detector User" means a Person who owns and
10 deploys a Biological Agent Detector.

11 (e) "Certificate of Registration" means a certificate issued to a Biological Agent User under
12 this Article.

13 (f) "Chief" means the Chief of the San Francisco Fire Department and his or her designee.

14 (g) "City" means the City and County of San Francisco.

15 (h) "Director" means the Director of the San Francisco Department of Public Health or his
16 or her designee.

17 (i) "False Alarm" means an event where a Biological Agent Detector signals a positive
18 detection and follow up lab confirmation at a CDC approved Laboratory Response Network reference
19 lab does not confirm the presence of a biological agent.

20 (j) "Fixed Position" means stationary and cannot be relocated readily.

21 (k) "Mobile" means capable of moving or being moved readily.

22 (l) "Person" means an individual, trust, firm, joint stock company, corporation,
23 partnership, association, but not a State or Federal governmental entity or agency.

1 (m) "Tax Collector" means the Office of the Treasurer and Tax Collector of the City and
2 County of San Francisco.

3 **SEC. 3502. CERTIFICATE OF REGISTRATION REQUIRED.**

4 Any Person who possesses or deploys a Biological Agent Detector shall for each building,
5 obtain and keep current a Certificate of Registration with the Director. The Certificate of Registration
6 shall identify each Biological Agent Detector possessed or deployed at the building.

7 **SEC. 3503. APPLICATION FOR CERTIFICATE OF REGISTRATION.**

8 (a) Every Person who is required to obtain a Certificate of Registration under this Article
9 shall obtain a Certificate of Registration by filing a written application and Facility Response Plan
10 with the Director upon forms furnished by the Director for that purpose, certifying that the Facility
11 Response Plan meets the requirements of this Article, and paying the required fees. Every Person who
12 intends to deploy a mobile Biodetector at more than one building must submit a Facility Response Plan
13 for each building where the Biodetector User plans to deploy the device.

14 (b) Every Person who installs a Biodetector and where such an installation requires
15 alteration of the building's structure, including but not limited to the fire alarm, electrical, plumbing, or
16 communication systems, may be required to secure the necessary permits from the San Francisco
17 Department of Building Inspection or the San Francisco Fire Department, as appropriate. In addition,
18 the applicant for a Registration of Certification shall install and operate a Biodetector in compliance
19 with all applicable laws and regulations.

20 **SEC. 3504. INVESTIGATION AND ACTION ON APPLICATION.**

21 (a) Upon receipt of an application, the Director may coordinate approval of the application
22 with other directors of City departments. The Director may also request additional information from
23 the applicant as needed to assess the application, including information regarding compliance with all
24 applicable laws and regulations.

1 **(b) Applicants may be required to meet with the Director and other appropriate City**
2 **agencies in order to coordinate potential emergency responses to an alarm indicated or transmitted by**
3 **a Biological Agent Detector.**

4 **(c) If the application is denied, the Director shall so notify the applicant, including the**
5 **reason(s) for the denial.**

6 **SEC. 3505. TRANSFER OF CERTIFICATE OF REGISTRATION.**

7 **Certificates of Registration are non-transferable and may only be used by the Person who**
8 **submitted the application under this Article.**

9 **SEC. 3506. PRODUCTION OF CERTIFICATE OF REGISTRATION UPON REQUEST OF**
10 **AUTHORIZED CITY REPRESENTATIVE.**

11 **Any Person possessing a Certificate of Registration issued under this Article must produce the**
12 **Certificate of Registration for review by any City employee authorized to inspect the premises.**

13 **SEC. 3507. FEES.**

14 **(a) The Biological Agent Detector User shall pay a fee for each Biological Agent Detector**
15 **in order to obtain and maintain a Certificate of Registration. In the year that a Person applies for a**
16 **new Certificate of Registration, the fee for the Department of Public Health shall be \$3,140 for the first**
17 **fixed position Biodetector, and \$200 for each additional fixed position Biodetector deployed within the**
18 **same building. In the year that a Person applies for a new Certificate of Registration for a mobile**
19 **Biodetector, the fee shall be \$3,140 for each building where the Biological Agent Detector User plans**
20 **to deploy the mobile Biodetector. The fee for the Fire Department shall be \$220 per Biodetector, with**
21 **\$110 for each additional hour of review or inspection per Biodetector after the initial two hours. The**
22 **Detector User must renew the Certificate of Registration annually as provided in this Article, and pay**
23 **the fees for each Biological Agent Detector for the Certificate of Registration to remain valid. The fee**
24 **for the Department of Public Health after the first year that a fixed position Biodetector is approved**

1 shall be \$392 for the first fixed position Biodetector, and \$50 for each additional fixed position
2 Biodetector deployed within the same building. The fee for mobile devices after the first year the
3 device is approved shall be \$392 for each mobile device. The fee for the Fire Department in the years
4 after an initial approval shall be \$110 per Biodetector per hour of review or inspection. The fees shall
5 be paid to the aforementioned Departments before the City approves or renews the Certificate of
6 Registration and the Detector User activates or continues operation of the Biological Agent Detector.

7 (b). Beginning with fiscal year 2012-2013, fees set forth in this Article may be adjusted each
8 year, without further action by the Board of Supervisors, as set forth in this Section.

9 Not later than April 1, the Director and the Chief shall report to the Controller the revenues
10 generated by the fees for the prior fiscal year and the prior fiscal year's costs of operation, as well as
11 any other information that the Controller determines appropriate to the performance of the duties set
12 forth in this Article.

13 Not later than May 15, the Controller shall determine whether the current fees have produced
14 or are projected to produce revenues sufficient to support the costs of providing the services for which
15 the fees are assessed and that the fees will not produce revenue that is significantly more than the costs
16 of providing the services for which the fees are assessed.

17 The Controller shall, if necessary, adjust the fees upward or downward for the upcoming fiscal
18 year as appropriate to ensure that the program recovers the costs of operation without producing
19 revenue which is significantly more than such costs. The adjusted rates shall become operative on July
20 1.

21 **SEC. 3508. DUTY TO REPORT CHANGES.**

22 Any Person required to obtain a Certificate of Registration under this Article shall notify the
23 Director within 10 days of any relevant or material change in the information contained in the
24 application or of other relevant circumstances, including but not limited to, if the Person acquires an
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1 additional Biological Agent Detector, ceases to possess a Biological Agent Detector, or modifies the
2 training, notification, or response plans for the Biological Agent Detector. Upon notification of such
3 change, the Director may suspend, revoke, or amend the registration or direct that the Certificate of
4 Registration holder submit an application for a new registration. If Director instructs a Person to
5 submit an application for a new registration, that Person must do so within 30 days of the mailing of
6 the notice by the Director.

7 **SEC. 3509. INSPECTION.**

8 Any Person required to register under this Article must allow inspections by any City agency of
9 the location or building containing the Biological Agent Detector, either pursuant to the application
10 process or after the issuance of the Certificate of Registration.

11 **SEC. 3510. TIME LIMIT FOR BUSINESSES OPERATING WHEN THIS ARTICLE IS**
12 **ENACTED TO FILE AN APPLICATION FOR CERTIFICATE OF REGISTRATION.**

13 Any Person who already possesses a Biological Agent Detector as of the date this Article
14 becomes effective must submit an application for a Certificate of Registration within 90 days of the
15 effective date of this ordinance. Following a denial, an applicant may resubmit an application or
16 remove the Biological Agent Detector within 30 days. If a Person's third application is denied, that
17 Person is barred from resubmitting another application and must permanently remove the Biological
18 Agent Detector within 30 days.

19 **SEC. 3511. DUTIES OF THE BIOLOGICAL AGENT DETECTOR USER.**

20 (a) A Biological Agent Detector User shall:

21 (1) Maintain the Biological Agent Detector so as to minimize or eliminate false
22 alarms;

23 (2) Make every reasonable effort to have a responder to the Biological Agent
24 Detector's location within 10 minutes of when the Biological Agent Detector alarm is activated to:

1 (A) Provide access to the Biological Agent Detector location;

2 (B) Assist with the assessment of the situation; or

3 (C) Provide alternative security for the Biological Agent Detector location; and,

4 (3) Not activate a Biological Agent Detector for any reason other than an
5 occurrence of an event that the Biological Agent Detector system was intended to report.

6 (b) A Biological Agent Detector User shall adjust the mechanism or cause the mechanism to
7 be adjusted so that a Biological Agent Detector signal shall not be audible to the general public.

8 (c) A Biological Agent Detector User shall maintain at each Biological Agent Detector
9 location a set of written operating instructions for each Biological Agent Detector system in a location
10 and manner acceptable to the Fire Department and the Department of Public Health.

11 (d) A Biological Agent Detector User shall maintain at each fire alarm annunciator panel
12 signage explaining that there is a Biological Agent Detector in the building. The signage shall also
13 contain a map or directions to explain the locations of the devices.

14 **SEC. 3512. PROHIBITION AGAINST FALSE ALARMS.**

15 False alarms are prohibited.

16 **SEC. 3513. VIOLATIONS AND PENALTIES.**

17 (a) Enforcement. Biological Agent Detector Users who violate this Article or any
18 regulations enacted under Section 3519 shall be liable for administrative or civil penalties. The
19 Director may assess administrative penalties following an administrative hearing. Civil penalties may
20 be assessed and recovered in a civil action brought in the name of the people of the City and County of
21 San Francisco by the City Attorney in any court of competent jurisdiction.

22 (b) False Alarm Penalty. A Biological Agent Detector User shall pay penalties for each
23 False Alarm as follows:

24 First False Alarm: Up to \$5,000.

1 Second False Alarm: Up to \$7,500.

2 Third And Each Subsequent False Alarm: Up to \$10,000.

3 (c) Other Violations. Any Person who violates any other provision of this Article or any
4 rule or regulation promulgated pursuant to this Article may be subject to an administrative or civil
5 penalty of up to \$500 per day of violation.

6 (d) Factors For Setting Penalty. In assessing the amount of the administrative or civil
7 penalty, the Director or Court shall consider any one or more of the relevant circumstances presented
8 by any of the parties to the case, including but not limited to the following: the nature and seriousness
9 of the misconduct, the number of violations, the persistence of the misconduct, the length of time over
10 which the misconduct occurred, the willfulness of the defendant's misconduct, and the defendant's
11 assets, liabilities, and net worth.

12 (e) Presumption of Noncompliance in Civil Cases. In addition to any other penalties
13 provided in this Article, any Person or entity served with a notice or order by the Director setting forth
14 the nature of the violation of this Article, demanding correction of such violation, and specifying the
15 time within which such violation must be corrected, shall be presumed, in civil proceedings, to have
16 failed to comply with that notice or order at and after the time given in that notice or order for
17 correction of such violation, after the time specified in the order has expired without correction of the
18 violation.

19 (f) In any civil or administrative proceeding to collect penalties under this Article, the
20 Court or Hearing Officer may award the City costs and fees, including but not limited to attorneys'
21 fees.

22 **SEC. 3514. INTEREST AND PENALTIES FOR NONPAYMENT.**

23 (a) Any fee, penalty, or cost due to the Director not paid by the due date is delinquent.
24
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1 **(b) If a Certificate of Registration fee, penalty or cost due to the Director is not paid within**
2 **30 days after the same becomes due, the Director shall add 50 percent to the amount of the stated fee**
3 **or penalty as a penalty for non-payment.**

4 **(c) The Director may refer Detector User accounts to the Bureau of Delinquent Revenue or**
5 **to the Tax Collector to initiate collection.**

6 **(d) In addition to the penalties imposed in Subsection (b), any Detector User who fails to**
7 **pay any fee, penalty or cost due the Director shall pay interest on the amount due, exclusive of late**
8 **payment penalties; plus an additional collection charge for each delinquent account in an amount to be**
9 **determined by rules and regulations of the Tax Collector. The Tax Collector shall establish collection**
10 **charges sufficient to reimburse the costs incurred by the City for collecting delinquent fees or penalties.**
11 **Interest shall be paid at a rate of one percent per month, or fraction thereof. Interest and collection**
12 **charges shall accrue immediately after the original due date.**

13 **(e) If the Director determines that the Detector User has deliberately withheld the amount**
14 **of the fee to be remitted or that a Detector User has failed to pay the amount of the fee for a period of**
15 **one or more billing periods, or if the Director deems it in the best interest of the City and County, he or**
16 **she may refer collection of fees due under this Article from certain Detector Users for specified billing**
17 **periods to the Tax Collector. The Director shall notify the Detector User that the Director has referred**
18 **collection of the fees due and payable for the stated periods and demand payment of such fees to the**
19 **Tax Collector. The notice shall be served on the Detector User personally by handing it to him or her**
20 **or by deposit of the notice in the United States mail, postage prepaid thereon, addressed to the Detector**
21 **User at the address on the application or location where the detector(s) is located. If the Detector User**
22 **fails to remit fees, penalties, or costs assessed to the Tax Collector, the Detector User shall be subject**
23 **to the interest and penalties provided in this Section.**

24 **SEC. 3515. SUSPENSION AND REVOCATION OF CERTIFICATE OF REGISTRATION.**

1 In addition to the penalties described in Section 3513, the Director may suspend or revoke any
2 Certificate of Registration if the Director finds:

3 (1) The Biological Agent Detector User has violated any of the provisions of this Article;

4 (2) The application contains a material false statement;

5 (3) The Biological Agent Detector for which a Certificate was issued does not comply with
6 any of the provisions of this Article or rules and regulations promulgated hereunder;

7 (4) The Biological Agent Detector User has refused to permit any City inspector to inspect
8 the premises or the Biological Agent Detector therein;

9 (5) The Biological Agent Detector User refuses to produce the Certificate of Registration
10 upon request by a City inspector;

11 (6) The Biological Agent Detector User or his or her authorized employees or agents have
12 failed to comply with the instructions of any City Director or cooperate in any investigation relating to
13 the Certificate of Registration or the Biological Agent Detector for which a Certificate of Registration
14 was issued;

15 (7) The Biological Agent Detector has more than two false alarms within a 12-month
16 period; or,

17 (8) For good cause.

18 **SEC. 3516. APPEALS.**

19 (a) If the Director revokes or suspends a Certificate of Registration, assesses a penalty, or
20 denies the issuance, renewal or reinstatement of a Certificate of Registration, the Director shall send
21 written notice of the action and a statement of the right to an appeal to either the affected applicant or
22 Biological Agent Detector User.

23 (b) The applicant or Biological Agent Detector User may appeal the decision of the
24 Director as follows:

1 (1) The applicant or Biological Agent Detector User may file a written request for a
2 review by paying an appeal fee of \$180 and setting forth the reasons for the appeal within 20 business
3 days notice of the Director's decision. The Person filing the appeal must also deposit with the Tax
4 Collector the full amount of any penalty imposed, plus any accrued interest and costs. Appeal fees, and
5 any other amount deposited with the Tax Collector, will be returned to the appealing applicant or
6 Biological Agent Detector User if the appeal is upheld.

7 (2) The Director may grant, but not deny, the appeal based upon an initial review of
8 the appellant's written submission, as well as any other pertinent information.

9 (3) If, after his or her initial review, the Director does not grant the appeal or
10 determines that a hearing is appropriate or necessary, the Director shall appoint a hearing officer to
11 conduct a formal hearing within 30 days of the receipt of the request and consider the evidence
12 submitted by any interested Person(s). The hearing officer shall not be an employee whose regular
13 duties include administration or enforcement of this Article. The hearing officer shall make his or her
14 decision affirming or reversing the decision of the Director on the basis of the preponderance of
15 evidence presented at the hearing, and must render the decision within 30 days after the date of the
16 hearing.

17 (c) Filing of a request for appeal shall stay the action by the Director revoking or
18 suspending the Certificate of Registration or requiring payment of a penalty, until the appeal is
19 complete. If a request for appeal is not made within the 20 business day period, the Director's decision
20 is final.

21 **SEC. 3517. REINSTATEMENT.**

22 A Person whose Certificate of Registration has been revoked or suspended may, at the
23 discretion of the Director, have the Certificate of Registration reinstated if the Person:
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1 (1) In the case of revocation, submits a new application and pays a reinstatement fee equal to
2 one-half of the certificate renewal fee;

3 (2) Pays, or otherwise resolves, all outstanding fees and penalties; and,

4 (3) Submits a certification from a Biological Agent Detector installation company, stating that
5 the detector system has been inspected and repaired (if necessary) by the alarm installation company.

6 **SEC. 3518. LIENS.**

7 (a) All final costs, fees, and administrative or civil penalties assessed against a Person for
8 violations of this Article shall be an obligation owed to the City by the Person found to have violated
9 this Article, and the owner of the property where the violation occurred, provided that both have been
10 given adequate notice of the alleged violation(s). Such obligation may be collected by means of the
11 imposition of a lien against the property of the owner of the property or the Person against whom the
12 final administrative or civil penalty was assessed. The City shall mail to the owner of the property and
13 to the Person against whom the final amount was assessed (if different from the owner of the property)
14 a notice of the amounts due and a warning that lien proceedings will be initiated against the property if
15 the amounts are not paid within 30 days after the notice is mailed.

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

18 **SEC. 3519. RULES AND REGULATIONS**

19 The Director, after a noticed public hearing, may adopt rules and regulations to carry out the
20 provisions of this Article. Such rules and regulations shall take effect 15 days after the public hearing.
21 Violation of any such rule or regulation may be grounds for administrative or civil action against the
22 permittee pursuant to this Article.

23 **SEC. 3520. GOVERNMENT IMMUNITY.**

1 Issuance of a Certificate of Registration is not intended to, nor will it, create a duty or
2 obligation, either expressed or implied, of response. Nor will issuance of a Certificate of Registration
3 guarantee the safety of an emergency response plan. Any and all liability and consequential damage
4 resulting from the failure to respond to a Biological Agent Detector or the implementation of an
5 emergency response plan is hereby disclaimed and governmental immunity as provided by law is
6 retained. By applying for a Certificate of Registration, the applicant acknowledges that the Director,
7 law enforcement, or any other City director response may be influenced by factors such as the
8 availability of Personnel, priority of calls, weather conditions, traffic conditions, emergency conditions,
9 staffing levels and prior response history.

10 **SEC. 3521. CITY UNDERTAKING LIMITED TO PROMOTION OF GENERAL WELFARE.**

11 In undertaking the adoption and enforcement of this Article, the City and County is assuming an
12 undertaking only to promote the general welfare. The City does not intend to impose the type of
13 obligation that would allow a Person to sue for money damages for an injury that the Person claims to
14 suffer as a result of a City officer or employee taking or failing to take an action with respect to any
15 matter covered by this Article.

16 **SEC. 3522. PREEMPTION.**

17 Nothing in this Article shall be interpreted or applied so as to create any power, duty or
18 obligation in conflict with, or preempted by, any Federal or State law.

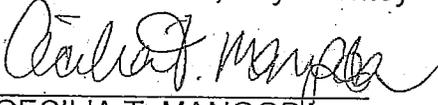
19 **SEC. 3523. SEVERABILITY.**

20 If any section, subsection, subdivision, paragraph, sentence, clause, or phrase in this Article or
21 any part thereof is for any reason held to be unconstitutional or invalid or ineffective by any court of
22 competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining
23 portions of this Article or any part thereof. The Board of Supervisors hereby declares that it would
24 have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase thereof
25

1 irrespective of the fact that any one or more subsections, subdivisions, paragraphs, sentences, clauses,
2 or phrases be declared unconstitutional, or invalid, or ineffective.

3 Section 2. Effective Date. This ordinance shall become effective 30 days from the
4 date of passage.

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

7 By: 
8 CECILIA T. MANGOBA
9 Deputy City Attorney

LEGISLATIVE DIGEST

[Health Code – Biological Agent Detector Registration and Fees]

Ordinance amending the San Francisco Health Code by adding Article 35 to create a registration scheme, fees and other requirements for Biological Agent Detectors.

Existing Law

Currently, the City and County of San Francisco (City) does not regulate biological agent detectors.

Amendments to Current Law

The proposed law would establish a regulatory program through which the Department of Public Health would require biological agent detector users to register and pay fees for each device or equipment that purports to test for a biological agent that may be used in a terrorism attack.

Section 3500 would set forth findings.

Section 3501 would define terms used in the ordinance.

Section 3502 would require any person who possesses a biological agent detector to obtain and keep current a certificate of registration with the Director of the Department of Public Health (Director).

Section 3503 would require each person applying for a certificate of registration under this article to apply on forms provided by the Director.

Section 3504 would provide that the Director may coordinate with other directors of City departments in reviewing applications for biological agent detector registrations. In addition, this section would require applicants to meet with the Director and other appropriate City agencies to coordinate emergency response to an alarm.

Section 3505 would provide that a certificate of registration under this article is non-transferable.

Section 3506 would provide that any person possessing a certificate of registration under this article would be required to produce it for review by any City employee authorized to inspect the premises.

Section 3507 would establish annual fees per biological agent detector (and per building where mobile detectors will be deployed) and a mechanism for the Controller to annually adjust fees to ensure that fees do not produce revenue that exceeds the costs of providing the services for which the fees are assessed.

Section 3508 would impose a duty on registrants to notify the Director of any material change in the information contained in the application. This section would also enable the Director to suspend, revoke, or amend the registration, or require a biological agent detector user to apply for a new certificate.

Section 3509 would provide that any person required to register under this article must allow inspections by any City agency of the location or facility containing a biological agent detector.

Section 3510 would require businesses already possessing a biological agent detector to apply for a certificate of registration within 90 days of the effective date of the ordinance. Following a denial, an applicant must resubmit an application or remove the biological agent detector within 30 days.

Section 3511 would establish the duties of a biological agent detector user, including maintaining the detector so as to minimize or eliminate false alarms, adjusting the notification mechanism so that it is not audible to the general public, and maintaining written operating instructions at the site.

Section 3512 would prohibit biological agent detectors that emit false alarms.

Section 3513 would establish administrative and civil penalties for false alarms and other violations of the ordinance.

Section 3514 would set forth interest and penalties for nonpayment of any fee, penalty, or cost due under the ordinance.

Section 3515 would provide for the conditions under which the Director may suspend or revoke the certificate of registration.

Section 3516 would establish an appeal procedure for any decision by the Director revoking or suspending a certificate of registration, assessing a penalty, or denying the issuance, renewal, or reinstatement of a certificate of registration.

Section 3517 would provide the conditions under which a person whose certificate of registration has been revoked or suspended may obtain reinstatement of that certificate.

Section 3518 would provide for the recovery of costs, fees, and penalties through liens provided that the owner of the property where the violation occurred has been given adequate notice of the violation.

Section 3519 would authorize the Director to adopt rules and regulations to carry out the provisions of this ordinance.

Background Information

Commercial vendors are promoting scientifically unvalidated biological agent detectors to companies and institutions in San Francisco. Due to the lack of definitive field tests to identify biological agents, these detectors may emit a false alarm of possible bioterrorism attack. Such false alarms may cause civil unrest, business disruptions, prolonged facility closure, and mental health consequences. Estimated cost to the San Francisco of responding to a biological agent detector false alarm is over \$700,000 per incident, with \$200,000 for each additional day of emergency response and restoration activities.

This proposed regulatory program would allow the City to identify the biological agent detector users, work with these registrants to minimize false alarms, and impose penalties on registrants whose devices emit false alarms.

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

NOTICE OF PUBLIC HEARING

BOARD OF SUPERVISORS OF THE CITY AND COUNTY OF SAN FRANCISCO

PUBLIC SAFETY COMMITTEE

NOTICE IS HEREBY GIVEN THAT the Public Safety Committee will hold a public hearing to consider the following proposal and said public hearing will be held as follows, at which time all interested parties may attend and be heard:

- Date:** Thursday, October 6, 2011
- Time:** 10:30 a.m.
- Location:** Committee Room 263 located at City Hall, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA
- Subject:** File No. 110348. Ordinance amending the San Francisco Health Code by adding Article 35 to create a registration scheme, fees, and other requirements for Biological Agent Detectors.

If the legislation passes, it will authorize the following new fees:

The Biological Agent Detector User shall pay a fee for each Biological Agent Detector in order to obtain and maintain a Certificate of Registration. In the year that a person applies for a new Certificate of Registration, the fee for the Department of Public Health shall be \$3,140 for the first fixed position Biodetector, and \$200 for each additional fixed position Biodetector deployed within the same building. In the year that a person applies for a new Certificate of Registration for a mobile Biodetector, the fee shall be \$3,140 for each building where the Biological Agent Detector User plans to deploy the mobile Biodetector. The fee for the Fire Department shall be \$220 per Biodetector, with \$110 for each additional hour of review or inspection per Biodetector after the initial two hours. The Detector User must renew the Certificate of Registration annually as provided in this Article, and pay the fees for each Biological Agent Detector for the Certificate of Registration to remain valid. The fee for the Department of Public Health after the first year that a fixed position Biodetector is approved shall be \$392 for the first fixed position Biodetector, and \$50 for each additional fixed position Biodetector deployed within the same building. The fee for mobile devices after the first year the

device is approved shall be \$392 for each mobile device. The fee for the Fire Department in the years after an initial approval shall be \$110 per Biodetector per hour of review or inspection. The fees shall be paid to the aforementioned Departments before the City approves or renews the Certificate of Registration and the Detector User activates or continues operation of the Biological Agent Detector.

Beginning with FY2012-2013, fees set forth in this Article may be adjusted each year, without further action by the Board of Supervisors, as set forth in this Section.

Not later than April 1st, the Director and the Chief shall report to the Controller the revenues generated by the fees for the prior fiscal year and the prior fiscal year's costs of operation, as well as any other information that the Controller determines appropriate to the performance of the duties set forth in this Article.

Not later than May 15th, the Controller shall determine whether the current fees have produced or are projected to produce revenues sufficient to support the costs of providing the services for which the fees are assessed and that the fees will not produce revenue that is significantly more than the costs of providing the services for which the fees are assessed.

The Controller shall, if necessary, adjust the fees upward or downward for the upcoming fiscal year as appropriate to ensure that the program recovers the costs of operation without producing revenue which is significantly more than such costs. The adjusted rates shall become operative on July 1st.

In accordance with Section 67.7-1 of the San Francisco Administrative Code, persons who are unable to attend the hearing on these matters may submit written comments to the City prior to the time the hearing begins. These comments will be made a part of the official public records in these matters, and shall be brought to the attention of the Board of Supervisors. Written comments should be addressed to Angela Calvillo, Clerk of the Board, Room 244, City Hall, 1 Dr. Carlton Goodlett Place, San Francisco, 94102. Information relating to this matter is available in the Office of the Clerk of the Board and agenda information relating to this matter will be available for public review on Friday, September 30, 2011.



Angela Calvillo
Clerk of the Board

DATED: September 21, 2011
PUBLISHED: September 23, 2011, AND September 30, 2011
(California Newspaper Service Bureau, Inc. – **San Francisco Examiner**)

BOARD of SUPERVISORS



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FOR YOUR INFORMATION SEE THE ATTACHED LEGISLATION

DATE SENT: September 22, 2011

FILE #: 110348

DESCRIPTION: Health Code - Biological Agent Detector Registration and Fees

- FROM:
- Budget & Finance
 - City Operations & Neighborhood Services
 - City & School District Select
 - Government Audit & Oversight
 - Land Use & Economic Development
 - Rules
 - Public Safety

The meeting to hear this file will be held on: October 6, 2011 URGENT

(response needed within one week) OR: No date set yet

Hearing or Legislation referred to:

- Building Inspection Commission *Charter Section D3.750-5*
- Ethics Commission *Campaign & Governmental Conduct Code Section 1.103*
- Historic Preservation Commission *Charter Section 4.135*
- Planning - Code Amendment *Planning Code Section 302(b) and 306(a) (90 days to respond)*
- Planning - Environmental review - 30 days to respond
- Planning - Environmental review (fees) *CEQA CA Public Resources Code § 21000 et seq - 10 days to respond*
- Planning - Interim Controls *Planning Code Section 306.7(c)*
- Retirement Board *Campaign & Governmental Code or Elections Code*
- Small Business Commission *M01-33*
- Youth Commission *Charter Section 3.720-2; Charter Section 4.124 (12 day to respond)*
- FYI

BOARD of SUPERVISORS



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MEMORANDUM

TO: Regina Dick-Endrizzi, Director
Chris Schulman, Commission Secretary
Small Business Commission, City Hall, Room 448

FROM: Gail Johnson, Assistant Clerk

DATE: September 22, 2011

SUBJECT: REFERRAL FROM BOARD OF SUPERVISORS
Public Safety Committee

The Board of Supervisors Public Safety Committee has received the following, which is being referred to the Small Business Commission for comment and recommendation. The Commission may provide any response it deems appropriate within 12 days from the date of this referral.

File: 110348

Ordinance amending the San Francisco Health Code by adding Article 35 to create a registration scheme, fees, and other requirements for Biological Agent Detectors.

Please return this cover sheet with the Commission's response to Gail Johnson, Clerk, Public Safety Committee.

RESPONSE FROM SMALL BUSINESS COMMISSION - Date: _____

- No Comment
- Recommendation Attached

Chairperson, Small Business Commission

BOARD of SUPERVISORS



City Hall
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San Francisco 94102-4689
Tel. No. 554-5184
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MEMORANDUM

TO: Planning Department
Environmental Review Officer

FROM: Gail Johnson, Assistant Clerk

DATE: September 22, 2011

SUBJECT: REFERRAL FROM BOARD OF SUPERVISORS
Public Safety Committee

*Not subject to CEQA per Guidelines
Section 15040(c)(2): Activity will not
result in a direct or reasonably foreseeable
indirect physical change in the environment*

Brett Bollinger 9/22/11
Approved Planning Dept. Brett Bollinger
2011.1103E

The Board of Supervisors Public Safety Committee has received the following, which is being referred to the Planning Department for determination as to whether the proposed fee increase will impact the environment.

Please provide your findings within 10 days from the date of referral.

File: 110348

Ordinance amending the San Francisco Health Code by adding Article 35 to create a registration scheme, fees, and other requirements for Biological Agent Detectors.

Please return this cover sheet with the Commission's response to Gail Johnson, Clerk, Public Safety Committee.

cc: Nannie Turrell, Major Environmental Analysis
Brett Bollinger, Major Environmental Analysis

RESPONSE FROM PLANNING DEPARTMENT - Date: _____

No Comment
 Recommendation Attached

Bill Wycko, Environmental Review Officer

Biological Agent Detector Ordinance

Board of Supervisors
Public Safety Committee
October 6, 2011

Erica Pan, MD, MPH
Deputy Health Officer, SFDPH
Director, Public Health Emergency Preparedness & Response Section

Background

- Commercial vendors promote various biological agent detectors to companies, buildings, and institutions in SF
- There is no federal or state validation or standardization of these detectors or their technology
- False alarms may cause civil unrest, business disruptions, prolonged facility closures, and widespread mental health consequences

Costs & Fees

- Estimated cost of a false alarm to CCSF:
 - >\$700,000 per incident, with ~\$200,000 per additional day
- Potential responding agencies:
 - SFFD, SFPD, SFDPPH, DPT, SFSD, SFDEM
- Potential response activities:
 - DOC/EOC Activations
 - Evacuation/facility closure
 - Traffic & crowd control
 - Criminal investigation
 - Decontamination
 - Environmental sampling
 - PH surveillance
 - Mass antibiotic distribution
 - Facility evaluation and restoration
 - Risk communication



Ordinance Summary

- Identify entities purchasing and utilizing biological agent detectors
- Register users with SFDPH and SFHD and require notification and response plans
 - Require annual renewal of registration and plans
- Allow inspections of biological agent detector site by any city agency
- Impose financial penalties for registrants whose devices emit false alarms

Supplementary Slides

Existing BT Detection

Current validated systems & methods:

- Centers for Disease Control & Prevention Laboratory Reference Network
 - SF Reference lab in Richmond at CA DPH
- Federal Biowatch Program
- US Postal Service Biohazard Detection Systems
- Clinician & public health surveillance
- National Office of Science & Technology is undergoing a process to determine evaluation and standardization

Fees

- SFDPH: \$3140 for 1st biodetector
 - \$200 per additional device
 - Subsequent years: \$392 per device, \$50 per additional device at same site
- SFFD: \$220 minimum + \$110/hour or plan review or inspection

False Alarm Penalties

- First False Alarm: Up to \$5,000.
- Second False Alarm: Up to \$7,500.
- Third And Each Subsequent False Alarm: Up to \$10,000.
- >2 false alarms within 12 months – Director of Health may revoke registration

INTRODUCTION FORM

By a member of the Board of Supervisors or the Mayor

Time Stamp or
Meeting Date

I hereby submit the following item for introduction:

- 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 Committee hearing on a subject matter
- 4. Request for letter beginning "Supervisor _____ inquires..."
- 5. City Attorney request
- 6. Call file from Committee
- 7. Budget Analyst request (attach written motion).
- 8. Substitute Legislation File Nos. 110348
- 9. Request for Closed Session
- 10. Board to Sit as A Committee of the Whole
- 11. Question(s) submitted for Mayoral Appearance before the BOS on _____

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

- | | |
|---|--|
| <input type="checkbox"/> Small Business Commission | <input type="checkbox"/> Youth Commission |
| <input type="checkbox"/> Ethics Commission | <input type="checkbox"/> Planning Commission |
| <input type="checkbox"/> Building Inspection Commission | |

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

Sponsor(s): Chiu

Subject: Ordinance amending the San Francisco Health Code by adding Article 35 to create a registration scheme, fees and other requirements for Biological Agent Detectors.

The text is listed below or attached:

Signature of Sponsoring Supervisor: 

For Clerk's Use Only:

