

LEGISLATIVE DIGEST

(Amendment dated November 16, 2010)

[Health Code - Updating Enforcement and Compliance Procedures For Nuisance]

Ordinance amending Article 11 of the San Francisco Health Code by amending Sections 580, 581, 596, 599 and 600, and adding Sections 596.5 and 610 to: 1) update nuisance definitions, 2) add potential attorneys' fees recovery for the prevailing party in those cases in which the City elects to recover attorneys' fees, 3) add civil penalties, and 4) expand administrative penalties and procedures.

Existing Law

Section 596(b) authorizes the issuance of a Notice to Abate when the Director determines that a nuisance exists.

Neither Section 596 nor Section 599 authorizes collection of attorneys' fees for enforcement actions. Although Section 600 authorizes administrative and criminal penalties, it does not provide for civil penalties that can be collected through a civil action in court. Administrative penalties are \$1,000 for each violation of only subsections (b)(1), (b)(2) and (b)(3) and must be assessed, enforced, and collected in accordance with Section 39-1 of the Police Code.

Amendments to Current Law

The definition of responsible party in Section 580 would be clarified. Section 581(b)(6) would be amended to reflect that dry and dormant mold can also cause health problems. Section 581(b)(15) would be added to define as a nuisance any violation of rules and regulations adopted pursuant to this Article or applicable provisions of State law.

In Section 596(b), the initial notice to responsible parties that there is a nuisance on the property would be called a Notice of Violation, rather than a Notice to Abate. The Notice of Violation, Notice to Pay Relocation Benefits, Notice of Hearing and Director's Order would be required to be served on the Owner, in addition to other Responsible Parties. The language of Section 596(c) would be changed to be consistent with state law. Section 596(e) would be amended to permit the Director to extend the time for compliance beyond 30 days if necessary to abate the nuisance. This subsection would also be amended to clarify that the Director must specify the time period for abatement in the Notice of Violation. Section 596(f) would authorize recovery of all inspection fees and costs to cover the Department's costs incurred to verify the abatement of a nuisance. That Section would further provide that said violations shall not be deemed legally abated until the property owner makes full payment of

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the assessment of inspection fees and costs to the Department. Section 596(g) would require the Notice of Hearing to state whether the Director will seek recovery of attorneys' fees for the hearing following the Notice of Violation. Section 596(h) would provide that the Director may seek to recover attorneys' fees in any hearing conducted pursuant to that section. For those cases in which the Director makes that election, the prevailing party would be entitled to recover attorneys' fees, which would be limited by the amount of reasonable attorneys' fees incurred by the City in the action. Section 596(i)(5) would provide that the Director's Order issued after a hearing provide for the recovery of attorneys' fees for the prevailing party for those actions in which the Director has sought attorneys' fees. Section 599 would authorize a lien for recovery of any attorneys' fees awarded to the City in the Director's Order.

Section 596.5 would authorize recovery of administrative penalties pursuant to Administrative Code Chapter 100 as an alternative to the procedures set forth in Section 596, with some alterations regarding appointment of the hearing officer, payment of penalties, and cost recovery. In addition, this section would require the Director to 1) provide a reasonable period of time for a Responsible Party to correct violations before the Director will impose administrative fines; and 2) specify that period in the written notice.

Section 599 would be amended to add attorneys' fees recovery to existing lien provisions.

Section 600 would be changed to authorize civil penalties in the amount of up to \$1000 per violation for each day such violation is committed or permitted to continue. This civil penalty would be assessed and recovered in a civil action brought in the name of the people of the City and County of San Francisco by the City Attorney in any court of competent jurisdiction. Before referring a case to the City Attorney's Office the Department would be required to attempt to resolve the dispute through the administrative process unless the immediate health or safety of the residents is threatened. In addition, the court cannot impose penalties if the Responsible Party corrects a violation within the period specified in the Notice of Violation provided that the Director has not cited the Responsible Party for the same type of violation at the same property more than twice in a 12-month period.

In addition, administrative penalties would be expanded to include any violation of Section 581(b). As with civil penalties, a hearing officer cannot impose administrative penalties if the Responsible Party corrects a violation within the period specified in the Notice of Violation provided that the Director has not cited the Responsible Party for the same type of violation at the same property more than twice in a 12-month period. Any penalty assessed and recovered in an action brought pursuant to this section would be paid to the City Treasurer and credited to the Public Health Environmental Health Code Compliance Fund for use in enforcement and prevention of violations of this Article.

Amendments Dated November 16, 2010

This Amendment on November 16, 2010 makes the following changes to the legislation that was amended by the Public Safety Committee on October 18, 2010:

- Removes the amendment that would have restricted refuse collection from upper floors of multi story buildings during certain hours. (Sec. 292.5).
- Adds a definition for City. (Sec. 580(a)).
- Clarifies that a tenant may be a Responsible Party. (Sec. 580(h)).
- Requires the Director to specify in the Notice of Violation the time period within which a Responsible Party must abate the nuisance. (Sec. 596(e)(1)).
- Requires the Director to provide a reasonable time to correct a violation before imposing administrative fines under Sec. 596.5. In addition, requires the Director to specify in a written notice the time period within which a Responsible Party must abate the nuisance under this section. (Sec. 596.5 (e)(1)).
- Prohibits a court from awarding civil penalties against a Responsible Party who corrects a violation within the period specified in the Notice of Violation if the Director has not cited the Responsible Party for the same type of violation at the same property more than twice in a 12-month period. (Sec. 600(b)(3)). Creates the same limitation on a hearing officer awarding administrative penalties. (Sec. 600(c)(1)).
- Removes the amendment that would have required rental property owners to provide contact information for themselves and their managers. (Sec. 602.3).

Background

The purpose of this ordinance is to strengthen the Department's ability to enforce its nuisance codes.

The change in Section 596 from "Notice to Abate" to "Notice of Violation" would make DPH's notice consistent the initial notice issued by the Department of Building Inspection and decrease confusion when the City Attorney's Office brings enforcement actions in court. Requiring notices be sent to the Owner would increase compliance. Section 596 would permit the Department to recover attorneys' fees for those actions in which the Director has elected to recover attorneys' fees. The section provides for attorneys' fees recovery for the prevailing party, not just the City, as required by California Government Code Section 38773.5. The amount of attorneys' fees that any prevailing party can recover is limited by the reasonable attorneys' fees incurred by the City, as provided by Section 38773.5.

Adding civil and expanding administrative penalties gives the Department the tools to enforce its codes against parties responsible for creating and maintaining nuisances.