

File No. 101062

Committee Item No. 1

Board Item No. 23

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee PUBLIC SAFETY

Date 10/18/10

Board of Supervisors Meeting

Date 11/16/10

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Completed by: Gail Johnson

Date 10/14/10

Completed by: *[Signature]*

Date 10/21/10

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[Updating Enforcement and Compliance Procedures For Nuisance]

Ordinance amending the San Francisco Health Code Articles 6 and 11 by amending Sections 580, 581, 596, 599, and 600, and adding Sections 292.5, 596.5, 602.3, and 610 to: 1) add requirements for refuse collection and storage in multi-story residential facilities; 2) update nuisance definitions; 3) add potential attorneys' fees recovery for the prevailing party in those cases in which the City elects to recover attorneys' fees; 4) require owners of rental property to provide contact information to the Department; 5) add civil penalties; and 6) expand administrative penalties and procedures.

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

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

Section 1. Article 6 of the San Francisco Health Code is hereby amended by adding Section 292.5, to read as follows:

SEC. 292.5. REFUSE COLLECTION IN MULTI-STORY MULTIPLE DWELLINGS.

(a) Definitions. For purposes of this section, "refuse" shall have the same meaning as set forth in Section 290 of this Code. For purposes of this section, "dwelling" shall mean any building or portion thereof that contains not more than two dwelling units. A "dwelling unit" is any building or portion thereof that contains living facilities, which may include provisions for sleeping, eating, cooking or sanitation, which houses one or more persons. For purposes of this section, "multiple dwelling" shall mean any dwelling with two or more dwelling units, including but not limited to apartment buildings, condominiums, senior citizen residences, nursing homes, live-work developments

1 as defined in Planning Code Section 102.13, other housing as defined in Planning Code Section 209.2,
2 and other multiple unit residential facilities.

3 (b) **Refuse Storage and Collection.** In all multi-story multiple dwellings, all refuse shall be
4 collected from ground level or below ground level garbage collection rooms, designated garbage areas
5 or from the sidewalk by the Collector. Refuse may be temporarily stored in approved containers in
6 dedicated garbage collection rooms on upper floors of multi-story multiple dwellings but must be
7 transferred to ground level areas or outdoors before collection. Refuse shall not be transferred
8 from upper floor garbage collection areas between the hours of 11 p.m. and 7 a.m.

9
10 Section 2. Article 11 of the San Francisco Health Code is hereby amended by
11 amending Sections 580, 581, 596, 599, and 600, and adding Sections 596.5, 602.3, and 610
12 to read as follows:

13 **SEC. 580. DEFINITIONS.**

14 Unless otherwise specified, for the purposes of this Article, the following terms shall
15 have the following meanings:

16 (a) "Department" shall mean the San Francisco Department of Public Health.

17 (b) "Director" shall mean the Director of Public Health or his or her designee.

18 (c) "Manager" shall mean the authorized agent for the Owner of a building, structure or
19 property, who is responsible for the day-to-day operation of said building, structure or
20 property.

21 (d) "Owner" shall mean any Person who possesses, has title to or an interest in,
22 harbors or has control, custody or possession of any building, property, real estate, personalty
23 or chattel, ~~and the verb forms of "to own" shall include all those shades of meaning.~~

1 (e) "Person" shall mean and include corporations, estates, associations, partnerships
2 and trusts, one or more individual human beings, any department, Board or Commission of
3 the City and County of San Francisco, and any agencies or instrumentalities of the State of
4 California or the United States to the extent allowable by law.

5 (f) "Prevailing Party" shall have the same meaning as set forth in California Code of Civil
6 Procedure Sec. 1032, or any successor provisions., as well as "Prevailing Party" shall include the
7 City in actions where the City if it obtains an injunction under this Article or State law.

8 (g) "Responsible Party" shall include the Owner *and/or* Manager *and/or* any Person
9 having control over a property or who creates or allows or contributes to or fails to correct a that
10 ~~created a~~ condition that constitutes a nuisance as defined by this Article.

11
12 **SEC. 581. PROHIBITED PUBLIC HEALTH NUISANCES ~~NUISANCE PROHIBITED.~~**

13 (a) No Person shall have upon any premises or real property owned, occupied or
14 controlled by him, or her, or it any public nuisance.

15 (b) The following conditions are hereby declared to be a public nuisance:

16 (1) Any accumulation of filth, garbage, decayed or spoiled food, unsanitary debris or
17 waste material or decaying animal or vegetable matter unless such materials are set out for
18 collection in compliance with Section 283 of this Code;

19 (2) Any accumulation of hay, grass, straw, weeds, or vegetation overgrowth;

20 (3) Any accumulation of waste paper, litter or combustible trash unless such materials
21 are set out for collection in compliance with Section 283 of this Code;

22 (4) Any buildings, structures, or portion thereof found to be unsanitary;

23 (5) Any matter or material which constitutes, or is contaminated by, animal or human
24 excrement, urine or other biological fluids;

1 (6) Any visible or otherwise demonstrable ~~growth of~~ mold or mildew in the interiors of
2 any buildings or facilities;

3 (7) Any pest harborage or infestation including but not limited to pigeons, skunks,
4 raccoons, opossums, and snakes, except for pigeon harborages that comply with Section
5 37(e) of this Code;

6 (8) Any noxious insect harborage or infestation including, but not limited to
7 cockroaches, bed bugs, fleas, scabies, lice, spiders or other arachnids, houseflies, wasps and
8 mosquitoes, except for harborages for honey-producing bees of the genus *Apis* regulated by
9 the California Food and Agriculture Code Sections 29000 et seq. which are not otherwise
10 determined to be a nuisance under State law.

11 (9) Any article of food or drink in the possession or under the control of any person
12 which is tainted, decayed, spoiled or otherwise unwholesome or unfit to be eaten or drunk.
13 The term "food" as used in this subparagraph includes all articles used for food and drink by
14 humans, whether simple, mixed or compound.

15 (10) Any lead hazards which are within the control of the Owner or Manager of the
16 building, structure or property. Unless otherwise stated in this Article, the term "lead hazards"
17 as used in this subparagraph shall have the same meaning as that set forth in Section 1603 of
18 this Code. For the purposes of this subparagraph, the term "children" as used in Section 1603
19 of this Code shall mean any person who is up to 72 months of age. For the purposes of this
20 subparagraph, any paint, both interior and exterior, found on buildings and other structures
21 built before 1979 is presumed to be lead-based paint, such presumption may be rebutted by
22 competent evidence demonstrating that such paint is not lead-based paint;

1 (11) Any vacant lots, open spaces, and other properties in the City and County of San
2 Francisco, which become infested with poison oak (*Toxicodendron diversilobum*) or poison ivy
3 shrub (*Rhus toxicodendron*) hereafter referred to as poisonous growth;

4 (12) Any violation of Section 37 of this Code;

5 (13) Any violation of Section 92 of this Code;

6 (14) Any violation of Section 292.5 of this Code.

7 (15) Any violation of Section 590 of this Article;

8 (16) Any violations of rules or regulations the Director adopts to implement the provisions of
9 this Article or applicable provisions of State law.

10 (17) Anything else that the Director deems to be a threat to public health and safety.
11

12 **SEC. 596. ADMINISTRATIVE PROCEDURES INITIATED WITH NOTICE OF**
13 **VIOLATION. ENFORCEMENT.**

14 (a) **Complaints.** Whenever a written or oral complaint is made to the Department that
15 a nuisance as defined by Section 581 exists in a building or structure or on a property, the
16 Director shall inspect the building, structure or property to verify the existence of a nuisance
17 thereon.

18 (b) **Notice of Violation to Abate.** Whenever the Director determines that a nuisance, as
19 defined by Section 581 of this Article, exists in a building or structure or on a property, the
20 Director shall cause a Notice of Violation to Abate to be served either personally or by first
21 class mailing to the Responsible Parties. ~~If the~~The Notice of Violation to Abate ~~is~~ shall be served
22 on the Owner by mail, ~~it shall be mailed~~ to the address that appears on the last assessment
23 rolls of the City and County of San Francisco. If the Notice of Violation to Abate is served on
24 the Manager by mail, it shall be mailed to the Manager's principal place of business or to the
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1 address of the building, structure or property. If the Notice *of Violation to Abate* is served on
2 any other Person who created a condition that constitutes a nuisance, it shall be mailed to the
3 Person's last known address at which such Person receives mail if ascertainable. Thereafter,
4 the Director may cause a copy thereof to be posted in a conspicuous place on the building,
5 structure or property. The failure of the Responsible Parties to receive such notice when sent
6 in the manner set forth in this Subsection shall not affect in any manner the validity of any
7 proceeding against that party under this Article.

8 (c) **Order to Vacate.** The Director may order a premises vacated if she or he
9 determines that relocation is warranted upon discovery of a nuisance, as defined by Section
10 581(b)(10) of the Health Code, or at the discretion of the Director, to protect the health of
11 occupants. ~~The order shall be to the affected tenant(s) and owner.~~ A copy of the order shall be
12 served upon the Owner and the affected tenant(s) and posted in conspicuous places at the
13 affected premises. The order shall specify the time within which the premises is to be vacated
14 and advise the tenants that they may be eligible for assistance pursuant to Chapter 72 of the
15 San Francisco Administrative Code. The order shall further advise that the premise vacated
16 hereunder shall not be reoccupied without written permission of the Director. Such
17 permission shall be granted when the nuisance, ~~as defined by Section 581(b)(10) of the Health~~
18 ~~Code,~~ is abated.

19 (d) **Notice to Pay Relocation Benefits.** Whenever the Director determines that a
20 nuisance, as defined by Section 581(b)(10) of this Article, exists in a building or structure or
21 on a property, and issues a Notice *of Violation to Abate*, pursuant to subsection (b) of this
22 section, and an Order to Vacate, pursuant to subsection (c) of this Section, the Director shall
23 issue to the Responsible Party a Notice to Pay Relocation Benefits to the affected tenant(s)
24 pursuant to Chapter 72 of the San Francisco Administrative Code. The Director shall cause a
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1 Notice to Pay Relocation Benefits to be served either on the Responsible Party or sent by first
2 class mailing to the Responsible Parties. ~~If the~~ The Notice to Pay Relocation Benefits ~~is~~ shall
3 be served on the Owner by mail, ~~it shall be mailed to at~~ the address that appears on the last
4 assessment rolls of the City and County of San Francisco. If the Notice to Pay Relocation
5 Benefits is served on the Manager by mail, it shall be mailed to the Manager's principal place
6 of business or to the address of the building, structure or property. Thereafter, the Director
7 may cause a copy thereof to be posted in a conspicuous place on the building, structure or
8 property. The failure of Responsible Parties to receive such notice when sent in the manner
9 set forth in this Subsection shall not affect in any manner the validity of any proceeding
10 against that party under this Article.

11 (e) **Contents of Notices.** ~~Notice, Contents of Notice to Abate or Notice to Pay Relocation~~
12 ~~Benefits.~~

13 (1) The Notice ~~of Violation to abate~~ shall state with reasonable specificity a
14 description of the nuisance such that the Responsible Parties can reasonably understand the
15 nature of the nuisance to be abated. The Notice ~~of Violation to abate~~ shall direct the
16 Responsible Parties to abolish, abate, and remove the nuisance within a reasonable period of
17 time set by the Director given the nature and severity of the nuisance and any other
18 circumstances of which the Director is aware. Such time period shall not exceed 30 days,
19 unless extended by the Director if reasonable reasonably necessary to abate the nuisance.

20 (2) The Notice to Pay Relocation Benefits shall state the Director has determined
21 that the affected tenant(s) are eligible for relocation benefits as described in San Francisco
22 Administrative Code Chapter 72 such that the Responsible Parties can reasonably
23 understand the nature of their obligations under Chapter 72. The Notice to Pay Relocation
24 Benefits shall direct the Responsible Parties to commence making the required relocation
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1 payments to the affected tenant(s) at least 12 hours prior to the date that the affected
2 tenant(s) must vacate the unit.

3 (3) The notices shall further advise the Responsible Parties that if they fail to
4 comply with the notice, the Director may: (A) hold a Director's Hearing to be held to consider
5 whether it would be appropriate to issue a Director's Order to abate the nuisance and other
6 appropriate orders as provided for in this Article or (B) cause the abatement and removal of
7 the nuisance and the Owner shall be indebted to the City and County of San Francisco for the
8 costs, charges, and fees incurred by the City and County of San Francisco by reason of the
9 abatement and removal of such nuisance or (C) offer relocation services to the affected
10 tenant(s) and the Owner shall be indebted to the City and County of San Francisco for the
11 costs, charges, and fees incurred by the City and County of San Francisco by reason of the
12 provision of the relocation services.

13 (4) The notices shall inform the Responsible Party that they may be liable for other
14 charges, costs, including administrative costs, expenses incurred by the Department, fines,
15 attorneys' fees, and penalties as provided for in this Article.

16 (5) The notices shall state the name, business address and telephone number of
17 the Department staff who may be contacted regarding the building, structure or property in
18 question.

19 (6) At the discretion of the Director and to ~~ensure~~assure lawful handling and disposal
20 of any items constituting a nuisance in whole or in part, the notice may contain a requirement
21 that the Responsible Party, abating the nuisance or making the relocation payments submit
22 reports of testing and inspections by an appropriate licensed professional and provide to the Director
23 proof of lawful handling and disposal of such items or the payment of such relocations benefits,
24 and the form of such proof acceptable to the Director.

1 (f) **Action by the Director.** If the nuisance is not abated and removed within the time
2 period set forth in the notice, or the relocation benefits are not made within the time period set
3 forth in the notice, the Director shall either: (1) hold a Director's Hearing in accordance with
4 this Section or (2) abate and remove the nuisance as soon as practicable or (3) offer
5 relocation services to the affected tenant(s). The Owner shall be assessed ~~a~~reinspection
6 fees as provided in Section 609.1 of this Code to cover the Department's costs incurred to
7 verify the abatement of the nuisance. Said violations shall not be deemed legally abated until the
8 property owner makes full payment of the assessment of reinspection fees and late payment penalties to
9 the Director.

10 (g) **Notice of Hearing.**

11 (1) If the Responsible Parties failed to comply with the Notice of Violation to Abate or
12 the Notice to Pay Relocation Benefits, the Director may hold a hearing by serving a copy of
13 the Notice of Violation to Abate or the Notice to Pay Relocation Benefits, together with a notice
14 of the time and place set for the hearing thereof, by personal service or by certified mail upon
15 the Responsible Parties. The Director shall post a copy of the Notice of Violation to Abate or
16 the Notice to Pay Relocation Benefits, together with the Notice of Hearing in conspicuous
17 places throughout the building, structure or property. The time fixed for the hearing shall not
18 be less than 30 days after service and posting of the copy of the Notice of Hearing; except in
19 those circumstances where the Director has issued a written determination that the nuisance
20 constitutes a severe and immediate hazard to life, health or safety, in which case the time
21 fixed for the hearing shall not be less than 12 hours after personal service and posting the
22 Notice of Hearing. The Notice of Hearing shall inform all persons interested to appear at the
23 hearing to show cause, if any, why the building, structure, or property should not be declared
24 a nuisance or in the case where the Department has abated and removed the nuisance, why
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1 a lien should not be placed against the property for the costs incurred by the Department. The
2 Notice of Hearing shall also state whether the Department will seek recovery of attorneys' fees for the
3 hearing. In the case of unsanitary buildings, said notice shall also state that the hearing may
4 result in the revocation of the certificate of sanitation, if any, and the mandatory vacation of
5 occupants from the building.

6 (2) ~~The If the~~ Notice of Hearing ~~shall be~~ served by certified mail on the Owner; ~~the~~
7 ~~Director shall mail the Notice of Hearing to~~ at the address as it appears on the last assessment
8 rolls of the City and County of San Francisco. If the Notice is served by certified mail on the
9 Manager, the Director shall mail the Notice of Hearing to the Manager's principal place of
10 business, if any, or to the address of the building, structure or property in question. If the
11 Notice of Hearing is served by certified mail on any Person who created the condition that
12 constitutes a nuisance, the Director shall mail the Notice of Hearing to the last known address
13 of such Person at which it receives mail, if ascertainable. The failure of the Responsible
14 Parties or Owner to receive such notice when sent in the manner set forth in this Subsection
15 shall not affect in any manner the validity of any proceeding under this Article.

16 (h) **Director's Hearing.** A public hearing shall be held at the time and place
17 designated in the Notice of Hearing. Subject to the procedures prescribed by the Director for
18 the orderly conduct of the hearing, all persons having an interest in the building, structure or
19 property in question or having knowledge of facts material to the Notice of Violation to Abate or
20 the Notice to Pay Relocation Benefits may present evidence for consideration by the Director.
21 Any hearing conducted pursuant to this Section shall be electronically recorded. The Director
22 may elect to seek recovery of attorneys' fees by stating this intent in the Notice of Hearing. In a case
23 where the Director makes this election, the prevailing party shall be entitled to recover reasonable
24 attorneys' fees.

1 (i) **Director's Order.**

2 (1) Within 30 days after the conclusion of the hearing, the Director shall issue a written
3 order setting forth finding of facts and a determination based upon the facts found in the
4 record whether or not a nuisance, as defined by Section 581, exists or had existed in the
5 building or structure or on the property and if the Department abated and removed the
6 nuisance, the costs of abatement and removal of the nuisance by the Department, or a written
7 order setting forth finding of facts and determination based upon the facts found in the record
8 whether or not the relocation benefits have been paid and if the Department arranged for the
9 relocation of the affected tenant(s), the costs of that relocation to the Department. The order
10 shall be served on the Responsible Parties, including but not limited to the Owner, in the same
11 manner as set forth in Subsection (b)(e) of this Section and shall be served on all other parties
12 who provided testimony at the hearing by first class mail if such parties request at or before
13 the hearing that the order be sent to them.

14 (2) Upon a finding that a nuisance exists in the building or structure or on the property,
15 or a finding that appropriate relocation benefits have not been paid, the Director shall require
16 in the order the abatement of the nuisance or the payment of the benefits within a specified
17 time period not to exceed 30 days, unless extended by the Director if reasonably necessary to abate
18 the nuisance. The time period shall be determined based on the nature and severity of the
19 nuisance and any other circumstances of which the Director is aware. The order shall state
20 either that, failure to abate and remove the nuisance will result in the abatement of the
21 nuisance by the Department and that the Owner shall become indebted to the City and
22 County of San Francisco for the costs, charges, and fees incurred by reason of the abatement
23 and removal of such nuisance upon demand, or that failure to make the relocation benefit
24 payments will result in the offering of relocation services to the affected tenant(s) by the
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1 Department and that the Owner shall become indebted to the City and County of San
2 Francisco for the costs, charges, and fees incurred by reason of the making such relocation
3 services available upon demand. The order shall inform the Responsible Parties that it shall
4 be indebted to the City and County of San Francisco for all administrative costs, including
5 attorneys' fees if sought requested by the Director in the Notice of Hearing, incurred by the
6 Department in the prosecution of the abatement action or the prosecution of the relocation
7 benefit payment action and that such costs are due upon demand. The order shall further
8 state that failure to pay such costs, charges, and fees may result in a lien against the property.
9 The order shall require the Responsible Parties to abate and remove the nuisance in
10 compliance with all applicable ~~federal, State, and local~~ laws and regulations or shall require the
11 Responsible Parties to make the relocation benefit payments in compliance with all applicable
12 ~~local~~ laws.

13 (3) In the case where Director determines that a nuisance had existed and that the
14 Department had abated and removed the nuisance, or where the Director determines that the
15 relocation benefits were owed to the affected tenant(s) and the Director provided relocation
16 services to the affected tenant(s), the order shall itemize the costs of abatement and removal
17 or provision of relocation services and all administrative costs incurred by the Department.
18 The order shall notify the Owner that a lien will be assessed against the property for any
19 outstanding costs if the Owner fails to reimburse the Department for the costs incurred by the
20 Department as a result of the abatement and removal of the nuisance or the provision of
21 relocation services within ten (10) days of the service of the order and that the lien shall also
22 include additional charges for administrative expenses of \$1,000 or 10 percent of the costs of
23 abatement and removal, whichever is higher, and interest at a rate of 1-1/2 percent per ~~full~~

1 month, or fraction thereof, compounded monthly from the date of recordation of the lien on all
2 fees and charges due as aforesaid.

3 (4) The order shall advise the Responsible Parties that the order issued is final and of
4 their ~~Owner's~~ right to petition the Superior Court of San Francisco for appropriate relief
5 pursuant to Section 1094.6 of the California Code of Civil Procedures. The order shall notify
6 the Owner that the filing of a petition with the Superior Court shall not automatically stay the
7 effectiveness of the order or extend the time period in which the Responsible Parties have to
8 abate the nuisance.

9 (5) The order shall provide for the recovery of reasonable attorneys' fees for the prevailing
10 party for those proceedings in which the Director has ~~sought~~ elected to recover attorneys' fees.

11 (6) (5) In case of an unsanitary building, the Director shall revoke the certification of
12 sanitation; if the building is a hotel and may order the vacation of any unsanitary building for
13 all purposes, and shall cause a copy of said order to be posted in conspicuous places
14 throughout the aforesaid structure, building or part thereof determined by the Director to be a
15 nuisance, and a copy thereof is to be personally served upon the Owner thereof or his agent,
16 or the lessee or the occupant thereof. The order shall specify the time within which said
17 structure, building or part thereof determined by the Director to be a nuisance shall be
18 vacated. The order shall further advise that structure, building or part thereof vacated
19 hereunder shall not be reoccupied without the written permission of the Director. Such
20 permission shall be granted when the nuisance cited is abated within the time set forth in the
21 order.

22 (j) **Regulations.** The Director is hereby empowered to promulgate administrative
23 regulations, after a noticed public hearing, to implement the provisions of this Article and
24 applicable provisions of State law. Such rules and regulations shall take effect 30 days after the
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1 public hearing. Violation of any such rule or regulation and any existing rules or regulations
2 promulgated pursuant to this Article constitute a nuisance and may be grounds for administrative, civil,
3 or criminal action against the Responsible Party.

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5 **SEC. 596.5. CITATIONS UNDER SAN FRANCISCO ADMINISTRATIVE CODE CHAPTER 100.**

6 (a) This section provides for administrative citations, which are an alternative to the
7 administrative procedure set forth in Sec. 596. For continuing violations of this Article that pertain to
8 building, plumbing, electrical, or other similar structural or zoning issues, the Director shall provide
9 the Responsible Party a reasonable period of time to correct or otherwise remedy the violation before
10 imposing administrative fines, unless the violation creates an immediate danger to health or safety.

11 (b) San Francisco Administrative Code Chapter 100, "Procedures Governing the Imposition of
12 Administrative Fines," as amended, is hereby incorporated in its entirety and shall govern the
13 imposition, enforcement, collection, and review of administrative citations issued to enforce this
14 Article and any rule or regulation adopted pursuant to this Article; provided, however, that:

15 (1) Each day a violation is committed or permitted to continue shall constitute a
16 separate violation;

17 (2) The Director of Public Health shall appoint the hearing officer to conduct hearings
18 for appeals;

19 (3) The fine for any violation issued pursuant to this section shall be paid to the
20 Treasurer of the City and County of San Francisco and credited to the Public Health Environmental
21 Health Code Compliance Fund;

22 (4) The Director may recover any costs and fees, including but not limited to attorneys'
23 fees, for enforcement initiated through this Section and authorized under this Article.

1 **SEC. 599. COLLECTION.**

2 **(a) Notice of Cost and Claim of Lien.**

3 (1) Upon satisfactory compliance *of with* the Director's order, the Director shall
4 ascertain the administrative costs incurred by the Department and the Owner of such real
5 property shall thereupon be obligated to the City and County of San Francisco in the amount
6 of such administrative costs. The term "administrative costs" shall include attorneys' fees for those
7 cases in which such fees have been awarded to the Department under this Article. The City and
8 County of San Francisco shall thereupon have a lien for such costs, upon such real property
9 until payment thereof, which lien shall also include additional charges for administrative
10 expenses of \$1,000, or 10 percent of the costs of abatement and removal, whichever is
11 higher, and interest at a rate of 1-1/2 percent per ~~full month~~, or fraction thereof, compounded
12 monthly from the date of recordation of the lien on all fees and charges due as aforesaid. The
13 Director shall cause a notice itemizing the administrative costs to be mailed in the manner
14 herein provided for mailing Notice of Hearing, which notice shall demand payment thereof to
15 the Department, and shall give notice of claim of such lien and of the recording of the same, in
16 the event such amount is not paid, as hereinafter set forth.

17 (2) Upon the Responsible Parties' failure to comply with the Director's order and the
18 completion of the abatement and removal of the nuisance by the Department, the Director
19 shall, in addition to ascertaining the administrative costs as set forth in subparagraph (1) of
20 this Section, ascertain the costs of abatement and removal incurred by the City and the
21 Owner of such real property shall thereupon be obligated to the City and County of San
22 Francisco in the amount of such costs of abatement and removal. In addition to the lien
23 provided for in subparagraph (1) of this Section, the City and County of San Francisco shall
24 have a lien for such costs of abatement and removal upon such real property until payment
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1 thereof, which lien shall also include additional charges for administrative expenses of \$1,000,
2 or 10 percent of the costs of abatement and removal, whichever is higher, and interest at a
3 rate of 1-1/2 percent per ~~full month~~, or fraction thereof, compounded monthly from the date of
4 recordation of the lien on all fees and charges due as aforesaid. The Director shall cause a
5 notice itemizing the cost of abatement and removal to be mailed in the manner herein
6 provided for mailing Notice of Hearing, which notice shall demand payment thereof to the
7 Department, and shall give notice of claim of such lien and of the recording of the same, in the
8 event such amount is not paid, as hereinafter set forth.

9 (b) **Recording of Lien.** If the costs as provided for in subsection (a) of this Section
10 are not paid to the Department within 45 days after mailing of notice thereof, the Director shall
11 file in the Office of the Recorder of the City and County a verified claim containing a particular
12 description of the property subject to such lien, the place and general nature of the
13 administrative costs and of the abatement and removal for which the lien is claimed, the date
14 of posting of said property, the date of the service of Notice of Violation to Abate and the
15 Director's order, and the date of the removal of the nuisance, the name of the Owner of the
16 property as aforesaid and the amount of the lien claimed, which shall include the cost of
17 verification and filing thereof.

18 (c) **Collection by Bureau of Delinquent Revenue.** The Director shall also transmit to
19 the Bureau of Delinquent Revenue, on the expiration of such 45-day period, a statement of
20 each such unpaid costs, together with the cost of verification and filing and claim therefor.
21 The bureau shall endeavor diligently to collect the same on behalf of the City and County by
22 foreclosure of the lien therefor or otherwise. Any and all amounts paid or collected shall
23 replenish the revolving fund hereinafter provided.
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1 (d) **Release of Lien.** On payment of any such claim of lien, the Director shall give a
2 release thereof.

3 (e) **Continuing Appropriation Account.** There is hereby created a Special Revenue
4 Fund for a continuing appropriation account entitled "Payment of Property Owner's
5 Delinquencies for Abatement and Removal of Nuisances."

6 The account shall be credited with such sums as may be appropriate by the Board of
7 Supervisors, amounts collected by the Department and sums received in consideration of
8 release of liens and payment of special assessments. Expenditures from said sums shall be
9 made to pay for the abatement and removal of nuisances as provided in this Article. In the
10 event that the unexpended balance in said account shall exceed \$200,000 such excess shall
11 be transferred to the unappropriated balance of the general fund.

12 (f) **Collection of Expenses as a Special Assessment.** The Director may initiate
13 proceedings to make unpaid expenses for the administration of the abatement action and for
14 the abatement and removal of nuisances a special assessment against the parcels of property
15 from which the nuisance was abated and removed by the Department.

16 (g) **Report of Delinquencies Transmitted to Board of Supervisors.** A report of
17 delinquent charges shall be transmitted to the Board of Supervisors by the Director as
18 necessary, but in no event less often than once each year, commencing with the first
19 anniversary of the date of enactment of this ordinance. Upon receipt by the Board of
20 Supervisors of the report, it shall fix a time, date and place for hearing the report and any
21 protests or objections thereto.

22 (h) **Notice of Hearing.** The Board of Supervisors shall cause notice of the hearing to
23 be mailed to the Owner of the real property and any person or entity with a recorded interest
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1 in the property to which the service was rendered not less than 10 days prior to the date of
2 hearing.

3 (i) **Hearing.** At the time for consideration of the report, the Board of Supervisors shall
4 hear it with any objections of the Owners liable to be assessed for all administrative costs
5 incurred and the costs of abatement and removal by the Director, if any. The Board of
6 Supervisors may make such revisions, corrections or modifications of the report as it may
7 deem just and, in the event that the Board of Supervisors is satisfied with the correctness of
8 the report (as submitted or as revised, corrected or modified), it shall be confirmed or rejected
9 by resolution. The decision of the Board of Supervisors on the report and on all protests or
10 objections thereto shall be final and conclusive.

11 (j) **Collection of Assessment.** Upon confirmation of the report by the Board of
12 Supervisors, the delinquent charges contained therein shall constitute a special assessment
13 against the property to which the services were rendered. At the time the special assessment
14 is imposed, the Director shall give notice to the Owner and other parties with an interest in the
15 property by certified mail, and shall inform them that the property may be sold by the Tax
16 Collector for unpaid delinquent assessments after three-years. Thereafter, said assessment
17 may be collected at the same time and in the same manner as ordinary municipal taxes are
18 collected and shall be subject to the same penalties and same procedure of sale as provided
19 for delinquent, ordinary municipal taxes.

20 The assessments shall be subordinate to all existing special assessment liens
21 previously imposed upon the property and paramount to all other liens except those for State,
22 county and municipal taxes with which it shall be on parity. Such assessment lien shall
23 continue until the assessment and all interest and penalties due and payable thereon are
24 paid. All laws applicable to the levy, collection and enforcement of municipal taxes shall be
25

1 applicable to said special assessments. However, if any real property to which the costs of
2 abatement and removal relates has been transferred or conveyed to a bona fide purchaser for
3 value or if a lien of a bona fide encumbrance for value has been created and attaches
4 thereon, prior to the date on which the first installment of taxes would become delinquent,
5 then the costs of abatement and removal shall not result in a lien against the real property but
6 instead shall be transferred to the unsecured roll for collection.

7 (k) **Severability.** If any part or provision of this Article or application thereof, to any
8 person or circumstance is held invalid, the remainder of the ordinance, including the
9 application of such part or provision to other persons or circumstances shall not be affected
10 thereby and shall continue in full force and effect. To this end the provisions of this ordinance
11 are severable.

12
13 **SEC. 600. PENALTIES PENALTY.**

14 (a) **Criminal Penalty.** In addition to any other penalties provided in this Article, any
15 person, or their agents, violating any of the provisions of this Article, or failing to comply with
16 any direction or order of the Director given pursuant to the provisions of this Article, shall be
17 guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less
18 than \$100 and not more than \$1000, or by imprisonment in the County Jail for a period of not
19 less than 10 days nor more than three months, or by both such fine and imprisonment.

20 (b) **Civil Penalty.**

21 (1) **City Attorney Referral.** *The Director may refer a case to the City Attorney's Office for civil*
22 *enforcement only after a Responsible Party has failed to comply with (i) a Director's Order under*
23 *Section 596, or (ii) an administrative citation that is final for failure to exhaust administrative remedies*
24 *under Administrative Code Sec. 100.12 or following appeal to a Hearing Office or to Superior Court.*
25

1 This limitation shall not apply to conditions that, in the opinion of the Director, constitute an immediate
2 threat to public health and safety.

3 (2) **Presumption of Noncompliance with Order.** In addition to any other penalties provided in
4 this Article, any person or entity served with a notice or order by the Director setting forth the nature
5 of the violation of this Article, demanding correction of such violation, and specifying the time within
6 which such violation must be corrected, shall be presumed, in subsequent civil proceedings, to have
7 failed to comply with that said notice or order at and after the time given in that notice or order for
8 correction of such violation, after the time period specified in the order has expired without
9 correction of that violation.

10 (3) **Penalty Amounts.** Any person or entity violating this Article shall be liable for a civil
11 penalty of up to \$1,000 per violation for each day such violation is committed or permitted to continue,
12 which penalty shall be assessed and recovered in a civil action brought in the name of the people of the
13 City and County of San Francisco by the City Attorney in any court of competent jurisdiction.

14 (4) **Setting Civil Penalty.** In assessing the amount of the civil penalty, the Court shall
15 consider any one or more of the relevant circumstances presented by any of the parties to the case,
16 including but not limited to the following: the nature and seriousness of the misconduct, the number of
17 violations, the persistence of the misconduct, the length of time over which the misconduct occurred,
18 the willfulness of the defendant's misconduct, and the defendant's assets, liabilities, and net worth. Any
19 penalty assessed and recovered in an action brought pursuant to this paragraph shall be paid to the
20 City and credited to the Public Health Environmental Health Code Compliance Fund for use in
21 enforcement and prevention of violations of this Article. In addition, such violations will not be deemed
22 legally abated until the property owner makes full payment of the assessment of costs and fees awarded
23 to the City under this Article or any applicable State law.

1 (5) In any civil proceeding filed by the City Attorney to collect civil penalties, the Court may
2 award the Department the costs and fees, including but not limited to attorneys' fees, authorized under
3 this Article.

4 (c) Administrative Penalty. As an alternative to any other fines and penalties applicable
5 to a violation of ~~subparagraphs (b)(1), (b)(2) or (b)(3)~~ of Section 581(b), any person ~~or their agents~~
6 who ~~are in violation of~~ one or more of those subparagraphs shall be subject to an
7 administrative penalty not to exceed \$1,000 for each violation, for each day such violation
8 occurs. The administrative penalty shall be assessed, enforced and collected ~~underin~~
9 ~~accordance with Section 596 of this Article~~ Section 39-1 of the Police Code. In setting the amount of
10 the administrative penalty, the hearing officer may consider the factors listed in Sec. 600(b)(4). In any
11 civil proceeding filed by the City Attorney to collect administrative penalties, the Court may award the
12 Department the costs and fees, including but not limited to attorneys' fees, authorized under this
13 Article. Any administrative penalty assessed and recovered pursuant to this paragraph shall be paid to
14 the City Treasurer and credited to the Public Health Environmental Health Code Compliance Fund for
15 use in enforcement and prevention of violations of this Article.

16
17 **SEC. 602.3. RENTAL PROPERTY OWNER STREET ADDRESS REQUIREMENT.**

18 Each Owner of an apartment house or hotel, as those terms are defined by Section 401
19 of the San Francisco Building Code rental unit, as that term is defined in Section 609(a), shall
20 provide the Director with: 1) a current street address and phone number where the Director can
21 contact the Owner, and 2) the name, and current street address, and phone number for the
22 Manager, if any, of the apartment house or hotel rental unit. The address(es) provided may be that
23 of the Owner's agent authorized to accept legal service for the Owner, but may not cannot be a post
24 office box. Each Owner must provide this information annually on the date the Healthy Housing Fee is

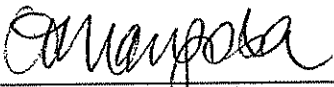
1 due, and must notify the Director within 30 days if there is any change of address. Each day an Owner
2 fails to provide this information shall be a violation, which may be enforced with the civil or
3 administrative procedures and penalties set forth in Section 600.

4
5 **SEC. 610. ATTORNEYS' FEES AUTHORIZED.**

6 The prevailing party in any action, including but not limited to administrative proceeding, court
7 case, or special proceeding, to abate a nuisance shall recover attorneys' fees if the Director elects, at
8 the initiation of the action, to seek recovery of attorneys' fees and provides notice of such intention to
9 the Responsible Party. In no action shall an award of attorneys' fees to a prevailing party exceed the
10 amount of reasonable attorneys' fees incurred by the City.

11
12 APPROVED AS TO FORM:
13 DENNIS J. HERRERA, City Attorney

14
15 By:



16 Cecilia T. Mangoba
17 Deputy City Attorney
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LEGISLATIVE DIGEST

(10/18/10)

[Updating Enforcement and Compliance Procedures For Nuisance]

Ordinance amending the San Francisco Health Code Articles 6 and 11 by amending Sections 580, 581, 596, 599, and 600, and adding Sections 292.5, 596.5, 602.3, and 610 to: 1) add requirements for refuse collection and storage in multi-story residential facilities; 2) update nuisance definitions; 3) add potential attorneys' fees recovery for the prevailing party in those cases in which the City elects to recover attorneys' fees; 4) require owners of rental property to provide contact information to the Department; 5) add civil penalties; and 6) expand administrative penalties and procedures.

Existing Law

Currently, there is no limitation on the location from which garbage may be collected by garbage collectors from multi-story residential facilities.

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

Section 292.5 would be added to require that in multi-story multiple dwellings, all refuse must be collected from ground level or below ground level garbage collection rooms, designated garbage areas, or from the sidewalk by garbage collectors. Though refuse may be temporarily stored in approved containers in dedicated garbage collection rooms on upper floors, refuse must be transferred to ground level areas or outdoors before collection.

The definition of responsible party in Section 580 would be clarified. Transferring or collecting garbage in violation of Section 295 would be added to the list of nuisances prohibited by Section 581. Section 581(b)(6) would be amended to reflect that dry and dormant mold can also cause health problems. Section 581(b)(16) 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. 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 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.

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 \$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, administrative penalties would be expanded to include any violation of Section 581(b). 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.

Section 602.3 would require that rental property owners provide contact information to the Department.

Background Information

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

The limitations on garbage collection in Section 292.5 of the Health Code are a response to complaints regarding noise and safety from residents of multi-story multiple dwellings. Adding violations of this section to the nuisance definition gives the Department the tools to enforce this section.

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.

The requirement that rental property owners provide the Department with contact information would facilitate the Department's efforts to contact owners and managers when there is a nuisance on the property.

