File No	161110	Committee Item No.	12
		Board Item No.	

COMMITTEE/BOARD OF SUPERVISORS

	AGENDA PACKET CON	NTENTS	SLIST		
	Committee: Budget & Finance Committee Date November 30, 2016 Board of Supervisors Meeting Date				
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	Motion Resolution Ordinance Legislative Digest Budget and Legislative Analys Youth Commission Report Introduction Form Department/Agency Cover Let MOU Grant Information Form Grant Budget Subcontract Budget Contract/Agreement Form 126 – Ethics Commission Award Letter Application Public Correspondence	ter and			
OTHER	(Use back side if additional sp	ace is r	needed)		
Completed b	y: Linda Wong	Date	November 22, 2016		
	y: Linda Wong	Date_			

access requirement.

NOTE:

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Ordinance amending the Police Code to prohibit owners of multiple occupancy buildings from interfering with the choice of communications services providers by occupants, establish requirements for communications services providers to obtain access to multiple occupancy buildings, and establish remedies for violation of the

[Police Code - Choice of Communications Services Providers in Multiple Occupancy Buildings]

Unchanged Code text and uncodified text are in plain Arial font.

Additions to Codes are in <u>single-underline italics Times New Roman font</u>.

Deletions to Codes are in <u>strikethrough italics Times New Roman font</u>.

Board amendment additions are in <u>double-underlined Arial font</u>.

Board amendment deletions are in <u>strikethrough Arial font</u>.

Asterisks (* * * *) indicate the omission of unchanged Code subsections or parts of tables.

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

Section 1. Findings

- (a) San Francisco has long been recognized as a technology leader. San Franciscans expect that the communications services they receive at their residences and offices meet modern standards. San Franciscans also expect to be able to choose among different providers. The ability to choose among providers benefits all San Franciscans by incentivizing providers to offer the best services at the lowest prices.
- (b) There are a handful of different entities offering communications services in San Francisco, though several of these provide service only in limited areas. Many San Franciscans can choose between at least two service providers, but some customers have only one option for service. This is particularly true for occupants of residential and commercial multiple occupancy buildings. It is common in such buildings for property owners

to allow only one provider to install the facilities and equipment necessary to provide services to occupants.

(c) While state and federal laws prohibit providers from entering into exclusive agreements with property owners, nothing in state or federal law directly regulates property owners. The City and County of San Francisco can use its police power to ensure that occupants of multiple occupancy unit buildings can obtain communications services from the providers of their choice.

providers of their off

Section 2. The Police Code is hereby amended by adding Article 52, consisting of Sections 5200 to 5216, to read as follows:

ARTICLE 52:

OCCUPANT'S RIGHT TO CHOOSE A COMMUNICATIONS SERVICES PROVIDER <u>SEC. 5200. DEFINITIONS.</u>

For purposes of this Article 52:

"City" means the City and County of San Francisco.

"Communications services" means: (a) video service as that term is defined in California

Public Utilities Code § 5830(s); (b) telecommunications services certificated by the California Public

Utilities Commission under California Public Utilities Code § 1001; or (c) services provided by a

telephone corporation as that term is defined in California Public Utilities Code § 234.

"Communications services provider" means a person that: (a) has obtained a franchise to provide video service from the California Public Utilities Commission under California Public Utilities

Code § 5840; (b) has obtained a certificate of public convenience and necessity from the California

Public Utilities Commission under California Public Utilities Code § 1001 to provide

telecommunications services; or (c) is a telephone corporation as that term is defined in California

Public Utilities Code § 234. In addition, a communications services provider must have obtained a

Utility Conditions Permit from the City under Administrative Code Section 11.9.

"Existing wiring" means both home run wiring and cable home wiring, as those terms are defined by the Federal Communications Commission in 47 C.F.R. § 76.800(d) and 47 C.F.R. § 76.5(ll) respectively, except that those terms as used herein shall apply only to the home run wiring or cable home wiring owned or controlled by a property owner.

"Just and reasonable compensation" means the "fair market value" of the impact on the multiple occupancy building as that term is defined in California Code of Civil Procedure § 1263.320.

"Multiple occupancy building" means: (a) an apartment building, apartment complex, or any other group of residential units located upon a single premises or lot, provided that such multiple dwelling unit contains at least four separate units; and (b) a multi-tenant building used for business purposes that has separate units occupied by at least four different persons. Hotels, guesthouses, and motels, consisting primarily of guest rooms and/or transient accommodations, are not multiple occupancy buildings. Multiple occupancy buildings include properties that are rented to tenants, owned and occupied by individual owners, or occupied by shareholders/tenants of a cooperative.

"Occupant" means a person occupying a unit in a multiple occupancy building.

"Person" means any natural person or an entity including but not limited to a corporation or partnership.

"Property owner" means a person that owns a multiple occupancy building or controls or manages a multiple occupancy building on behalf of other persons.

"Request for service" means an expression of interest from an occupant received by a communications service provider either by mail, telephone or electronic mail. A contact between an occupant and a communications services provider through a sign-up list contained on the provider's website will be deemed a request for service once the communications services provider confirms the request either by telephone or electronic mail.

SEC. 5201. NO INTERFERENCE BY PROPERTY OWNER.

- (a) No property owner shall interfere with the right of an occupant to obtain communications services from the communications services provider of the occupant's choice.
- (b) A property owner interferes with the occupant's choice of communications services provider by, among other things, refusing to allow a communications services provider to install the facilities and equipment necessary to provide communications services or use any existing wiring to provide communications services as required by this Article 52.

SEC. 5202. NO DISCRIMINATION BY PROPERTY OWNER AGAINST OCCUPANT.

No property owner shall discriminate in any manner against an occupant on account of the occupant's requesting or obtaining communications services from the communications services provider of the occupant's choice.

SEC. 5203. APPLICABILITY.

All property owners as defined in Section 5200 are covered by this Article 52. A property owner that, as of the effective date of this Article, has an agreement with a communication services provider that purports to grant the communications services provider exclusive access to the property and/or the existing wiring to provide services is not exempt from the requirements of this Article.

SEC. 5204. REQUEST TO INSPECT A MULTIPLE OCCUPANCY BUILDING.

- (a) Prior to issuing a notice of intent to provide service under Section 5205 of this Article 52, a communications services provider shall inspect a multiple occupancy building to determine the feasibility of providing services to one or more occupants.
- (b) A communications services provider shall request in writing that the property owner allow it to inspect the property for the purpose of providing service. Such request shall be sent to the

SEC. 5205.	NOTICE OF I	VTENT TO	PROVIDE	SERVICE
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- (a) A communications services provider that intends to provide communications services to one or more occupants shall send a notice of intent to the property owner at least 14 days before the proposed installation date. The notice of intent shall be sent by registered mail or electronic mail. If the notice of intent is sent by electronic mail, the 14-day period shall not commence until the communications service provider is able to confirm that the property owner actually received the electronic mail communication.
- (b) A notice of intent to provide communications services shall include, but need not be limited to, the following information:
- (1) A statement that the communications services provider: (A) is authorized to provide communications services in the City; (B) has received a request for service from one or more occupants; (C) when installing, operating, maintaining or removing its facilities and equipment from the property, will conform to such reasonable conditions as the property owner deems necessary to protect the safety, functioning, and appearance of the property and the convenience and well-being of the occupants; (D) will pay the property owner just and reasonable compensation for its use of the property, and the proposed amount of such just and reasonable compensation to be paid as required by Article 52 of the Police Code; and (E) will indemnify the property owner for any damage caused by the installation, operation, maintenance, or removal of its facilities from the property.
- (2) A description of: (A) the communications services to be offered to occupants; and (B) the facilities and equipment to be installed on the property.
- (3) The dates and times the communications services provider proposes to start and complete the installation.

1	(4) A statement that the property owner has until five days before the proposed
2	installation start date to notify the communications services provider in writing either that:
3 .	(A) The property owner will not allow the communications services provider
4	to provide services on the property. In this case, the property owner shall set forth the reasons for its
- 5	refusal and whether any of those reasons are permitted by Section 5206 of this Article; or
6	(B) The property owner will allow the communications services provider to
7	provide services on the property, but disagrees with the amount of the just and reasonable
8	compensation the communications services provider has proposed. In this case, the property owner
9 .	shall state the amount of just and reasonable compensation the property owner will require; and, in
10	either case, the property owners shall state:
11	(C) Such reasonable conditions the communications services provider must
12	follow during the installation to protect the safety, functioning, and appearance of the property and the
13	convenience and well-being of the occupants.
14	(5) A reference to and a copy of this Article 52.
15	
16	SEC. 5206. PERMITTED REFUSAL OF ACCESS.
17	(a) Nothing in this Article 52 shall be construed to require a property owner to allow a
18	communications services provider to access its property to inspect the property where the
19	communications services provider has failed or refused to agree to the property owner's request that
20	the provider comply with any conditions on accessing the property contained in a notice pursuant to
21	Section 5207 of this Article.
22	(b) Nothing in this Article 52 shall be construed to require a property owner to allow a
23	communications services provider to access its property to install the facilities and equipment that are
24	necessary to offer services to occupants where:
25	

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1	any conditions authorized under subsection (a) that the communications services provider must comply
2	with while inspecting the property or installing facilities or equipment on the property.
3	
4	SEC. 5208. JUST AND REASONABLE COMPENSATION.
5	(a) A property owner is entitled to just and reasonable compensation from a
6	communications service provider for installing, operating, and maintaining on its property the facilities
7	and equipment necessary to provide communications services to occupants.
8	(b) In accordance with Section 5205(b)(4) of this Article 52, a property owner shall notify a
9	communications services provider in writing at least five days before the proposed installation date if
0	the property owner disagrees with the amount of the just and reasonable compensation that the
1	communications services provider has proposed to pay. The property owner shall include in such
2	notice the amount of just and reasonable compensation the property owner will require the
3	communications services provider to pay.
4	
5	SEC. 5209. ENFORCEMENT BY THE CITY ATTORNEY.
6	The City Attorney may institute a civil proceeding in the San Francisco Superior Court on
7	behalf of the City, for injunctive and monetary relief, including civil penalties as specified more fully in
8	Section 5212 of this Article 52, to enforce this Article against a property owner that has violated this
9	<u>Article.</u>
20	
!1	SEC. 5210. ENFORCEMENT BY COMMUNICATIONS SERVICES PROVIDERS AND
22	OCCUPANTS.
23	(a) Except as stated in subsection (b), any communications services provider or occupant of
24	a multiple occupancy building where the property owner has refused to allow the communications

services provider to provide service may institute a civil proceeding to enforce this Article 52 in San

Francisco Superior Court against such property owner for injunctive and monetary relief.

- (b) Prior to filing a civil proceeding in accordance with subsection (a), the communications services provider or occupant shall notify the City Attorney in writing of its intent to proceed against a property owner. No communications service provider or occupant may commence such a proceeding until at least 30 days after this notice has been sent to the City Attorney.
- (c) If the City Attorney institutes a civil proceeding against the property owner before or during the 30-day notice period, then no communications services provider or occupant may file a proceeding under subsection (a). If the City Attorney institutes a civil proceeding after the 30-day notice period has elapsed, any communications services provider or occupant that provides the notice required under subsection (b) may file a separate civil proceeding.
- (d) The City Attorney shall notify any person submitting a notice under subsection (b) that the City Attorney has instituted a civil proceeding or decided not to institute a civil proceeding.

SEC. 5211. ATTORNEYS' FEES AND COSTS.

- (a) A court may award reasonable attorneys' fees and costs to the City if it obtains injunctive relief under Section 5209 of this Article 52 or to any person who obtains injunctive and monetary relief under Section 5210 of this Article.
- (b) If a court finds that any action brought under this Article 52 is frivolous, the court may award the property owner reasonable attorneys' fees and costs.

SEC. 5212. CIVIL PENALTIES.

(a) Any property owner that violates this Article 52 may be liable for a civil penalty not to exceed \$500 for each day such violation is committed or continues. Such penalty shall be assessed and recovered in a civil action brought in the name of the people of the City by the City Attorney.

1	(b) In assessing the amount of a civil penalty, a court may consider any of the relevant	
2	circumstances, including, but not limited to, the following:	
3	(1) The number of occupants affected by the violation;	
4	(2) The number of communications services providers affected by the violation:	
5	(3) Whether the property owner has violated this Article 52 at other properties;	
6	(4) The amount of revenues the property owner receives from any existing	
7	communications services providers serving the property;	
8	(5) Whether the property owner has a legitimate reason for refusing access to its	
9	property by the communications services provider; and	
10	(6) The net assets and liabilities of the property owner, whether corporate or	
11	<u>individual.</u>	
12		
13	SEC. 5213. STATUTE OF LIMITATIONS.	
14	(a) After satisfying the preconditions for filing suit under Section 5210 of this Article 52,	
15	any person so authorized under Section 5210 may institute a court proceeding to enforce this Article	
16	against a property owner. Such proceeding must be brought within 180 days of the earliest of the	
17	following occurrences:	
18	(1) The receipt of notice from the property owner refusing to allow a	
19	communications services provider to enter the premises for an inspection;	
20	(2) The date the property owner was required by Section 5204(c)(4) of this Article to	
21	object to a request for an inspection if the property owner does not respond to the request;	
22	(3) The receipt of notice from the property owner refusing to allow the	
23	communications services provider to enter the premises to provide communications services to	
24	occupants or use existing wiring to provide service to occupants; or	
25		

- (4) The date the property owner was required by Section 5205(b)(4) of this Article to object to a notice of intent to provide communications services if the property owner does not respond to the notice.
- (b) The City Attorney may institute a court proceeding to enforce this Article 52 within 180 days of the City Attorney receiving written notice that a property owner has yiolated this Article.

SEC. 5214. UNDERTAKING FOR GENERAL WELFARE.

In enacting or implementing this Article 52, the City is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury.

SEC. 5215. SEVERABILITY.

If any section, subsection, sentence, clause, phrase, or word of this Article 52, or any application thereof to any person or circumstance, is held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or applications of the ordinance. The Board of Supervisors hereby declares that it would have passed this Article, and each and every section, subsection, sentence, clause, phrase, and word not declared invalid or unconstitutional, without regard to whether any other portion of this Article or application thereof would be subsequently declared invalid or unconstitutional.

SEC. 5216. NO CONFLICT WITH FEDERAL OR STATE LAW.

Nothing in this Article 52 shall be interpreted or applied so as to create any requirement, power, or duty in conflict with any federal or state law.

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

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

By: WILLIAM K. SANDERS
Deputy City Attorney

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LEGISLATIVE DIGEST

[Police Code - Choice of Communications Services Providers in Multiple Occupancy Buildings]

Ordinance amending the Police Code to prohibit owners of multiple occupancy buildings from interfering with the choice of communications services providers by occupants, establish requirements for communications services providers to obtain access to multiple occupancy buildings, and establish remedies for violation of the access requirement.

Existing Law

Not applicable.

Amendments to Current Law

The ordinance establishes the right of occupants of residential multiple dwelling units and commercial office buildings ("multiple occupancy buildings") to choose among providers of communications services by prohibiting property owners from either: (i) interfering with the choice of communications services providers by occupants; and/or (ii) denying communications services providers access to wiring within the building.

The ordinance: (i) establishes a procedure for a communications services provider to obtain access to multiple occupancy buildings and existing wiring to provide communications services; (ii) requires communications services providers to pay property owners just and reasonable compensation for access to their properties; (iii) specifies those circumstances under which it would be proper for a property owner to refuse a communications services provider request for access to its property; and (iv) allows the City Attorney, the occupant, or the communications services provider to enforce the ordinance in court.

The ordinance applies to state video service providers and telecommunications services providers. Only these types of providers have the right under both state and City law to use the public right-of-way to provide communications services to their customers.

Background Information

Many occupants of residential and commercial multiple occupancy buildings are unable to choose between service providers because in some such buildings property owners allow only one provider to install the facilities and equipment necessary to provide services to occupants.

State and federal regulatory agencies have adopted policies that promote competition among service providers, believing that this competition will benefit all consumers by incentivizing

BOARD OF SUPERVISORS Page 1

lower costs and better service. As the Federal Communications Commission ("FCC") has noted, "contractual agreements granting . . . exclusivity to cable operators harm competition and broadband deployment and . . . any benefits to consumers are outweighed by the harms of such [agreements]." In the Matter of Exclusive Service Contracts for Provision of Video Services in Multiple Dwelling Units & Other Real Estate Developments, Report & Order & Further Notice of Proposed Rulemaking, 22 FCC Rcd 20235, at 20236 (2007), affirmed, National Cable & Telecommunications Association v. FCC, 567 F.3d 659 (D.C. Cir. 2009) ("FCC Decision").)

In 1998, the California Public Utilities Commission ("CPUC") prohibited telecommunications carriers from "entering into any type of arrangement with private property owners that has the effect of restricting the access of other [telecommunications] carriers to the owners' properties or discriminating against the facilities of other carriers." Decision 98-10-058, *Order Instituting Rulemaking on the Commission's Own Motion into Competition for Local Exchange Service*, 82 CPUC 2d 510, 1998 WL 1109255 (CPUC 1998).

In 2007, the FCC prohibited cable television providers from executing contracts with property owners that contained exclusivity clauses and from enforcing existing contracts containing those clauses. *FCC Decision*, 22 FCC Rcd at 20235.¹

In Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419 (1982), the United States Supreme Court considered a New York City law mandating that property owners allow cable television providers to install their facilities and equipment on their properties. The Supreme Court decided that this use of plaintiff's property required payment of just and reasonable compensation. This ordinance requires communications services providers to pay property owners just and reasonable compensation for the use of their properties.

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BOARD OF SUPERVISORS Page 2

¹ Pursuant to that decision, the FCC promulgated certain regulations to ban exclusive contracts. See 47 C.F.R. § 76.2000.

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

MEMORANDUM

TO:

Toney D. Chaplin, Acting Chief of Police, Police Department

Jon Givner, Deputy City Attorney, Office of the City Attorney

Mohammed Nuru, Director, Public Works

Tom Hui, Director, Department of Building Inspection

John Rahaim, Director, Planning Department

FROM:

Erica Major, Assistant Clerk, Public Safety and Neighborhood Services

Committee, Board of Supervisors

DATE:

October 25, 2016

SUBJECT:

LEGISLATION INTRODUCED

The Board of Supervisors' Public Safety and Neighborhood Services Committee has received the following proposed legislation, introduced by Supervisor Farrell on October 18, 2016:

File No. 161110

Ordinance amending the Police Code to prohibit owners of multiple occupancy buildings from interfering with the choice of communications services providers by occupants, establish requirements for communications services providers to obtain access to multiple occupancy buildings, and establish remedies for violation of the access requirement.

If you have any comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

c:
Christine Fountain, Police Department
Frank Lee, Public Works
William Strawn, Department of Building Inspection
Scott Sanchez, Planning Department
Lisa Gibson, Planning Department
AnMarie Rodgers, Planning Department
Aaron Starr, Planning Department
Joy Navarrete, Planning Department
Jeanie Poling, Planning Department

Print Form

Introduction Form

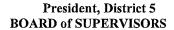
By a Member of the Board of Supervisors or the Mayor

I he	reby submit the following item for introduction (select only one):
	A Commence of the Commence of
	1. For reference to Committee. (An Ordinance, Resolution, Motion, or Charter Amendment)
	2. Request for next printed agenda Without Reference to Committee.
	3. Request for hearing on a subject matter at Committee.
	4. Request for letter beginning "Supervisor inquires"
	5. City Attorney request.
	6. Call File No. from Committee.
	7. Budget Analyst request (attach written motion).
	8. Substitute Legislation File No.
	9. Reactivate File No.
	10. Question(s) submitted for Mayoral Appearance before the BOS on
	ase check the appropriate boxes. The proposed legislation should be forwarded to the following: Small Business Commission Planning Commission Building Inspection Commission For the Imperative Agenda (a resolution not on the printed agenda), use a Imperative Form.
Spon	sor(s):
Sup	ervisor Mark E. Farrell
Subj	ect:
Polic	ce Code - Choice of Communication Service Provider in Multiple Occupancy Buildings
The	text is listed below or attached:
Atta	ched.
•	Signature of Sponsoring Supervisor:
For	Clerk's Use Only:

BOS-11, OB, PSNS, BOF, Les. Dep., Dep City Atty City Hall

1 Dr. Carlton B. Goodlett Place, Room 244 **San Francisco 94102-4689** Tel. No. 554-7630

Fax No. 554-7634 TDD/TTY No. 544-5227



London Breed

·	PRESIDENTIAL ACTION
Date:	November 17, 2016
To:	Angela Calvillo, Clerk of the Board of Supervisors
Madam Cl Pursuant t	
	Waiving 30-Day Rule (Board Rule No. 3.23)
	File No. (Primary Sponsor)
	Title.
×	Transferring (Board Rule No. 3.3)
	File No. 161110 Farrell
. •	(Primary Sponsor) Title. Police Code - Choice of Communications Server
	From: Public Safety & Neighborhood Services Committee
	To: Budget & Finance Committee
	Assigning Temporary Committee Appointment (Board Rule No. 3.1)
	Supervisor
	Replacing Supervisor
	For: Meeting (Committee)
•	Inda Rad
	and an Page
	London Breed, President

Board of Supervisors

Major, Erica (BOS)

From: Major, Erica (BOS)

Sent: Tuesday, October 25, 2016 11:29 AM

To: Chaplin, Toney (POL); Givner, Jon (CAT); Nuru, Mohammed (DPW); Hui, Tom (DBI);

Rahaim, John (CPC)

Cc: Fountain, Christine (POL); Lee, Frank (DPW); Strawn, William (DBI); Sanchez, Scott (CPC);

Gibson, Lisa (CPC); Rodgers, AnMarie (CPC); Starr, Aaron (CPC); Navarrete, Joy (CPC);

Poling, Jeanie (CPC)

Subject: REFERRAL FYI (161110) Police Code - Choice of Communications Services Providers in

Multiple Occupancy Buildings

Attachments: 161110FYI.pdf

Greetings:

This matter is being forwarded to your department for informational purposes. If you have any comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

Thank you for your attention.

ERICA MAJOR Assistant Clerk

Board of Supervisors

1 Dr. Carlton B. Goodlett Place, City Hall, Room 244 San Francisco, CA 94102

Phone: (415) 554-4441 | Fax: (415) 554-5163 Erica.Major@sfgov.org | www.sfbos.org



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