

FILE NO. 161110

ORDINANCE NO.

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

2
3 **Ordinance amending the Police Code to prohibit owners of multiple occupancy**
4 **buildings from interfering with the choice of communications services providers by**
5 **occupants, establish requirements for communications services providers to obtain**
6 **access to multiple occupancy buildings, and establish remedies for violation of the**
7 **access requirement.**

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

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

16 Section 1. Findings

17 (a) San Francisco has long been recognized as a technology leader. San
18 Franciscans expect that the communications services they receive at their residences and
19 offices meet modern standards. San Franciscans also expect to be able to choose among
20 different providers. The ability to choose among providers benefits all San Franciscans by
21 incentivizing providers to offer the best services at the lowest prices.

22 (b) There are a handful of different entities offering communications services in San
23 Francisco, though several of these provide service only in limited areas. Many San
24 Franciscans can choose between at least two service providers, but some customers have
25 only one option for service. This is particularly true for occupants of residential and

1 commercial multiple occupancy buildings. It is common in such buildings for property owners
2 to allow only one provider to install the facilities and equipment necessary to provide services
3 to occupants.

4 (c) While state and federal laws prohibit providers from entering into exclusive
5 access agreements with property owners, nothing in state or federal law directly regulates
6 property owners. The City and County of San Francisco can use its police power to facilitate
7 opportunities for access to multiple occupancy buildings by communications services
8 providers to ensure that enable occupants *of multiple occupancy unit buildings* to can obtain
9 communications services from the providers of their choice, while respecting the rights of
10 property owners.

11
12 Section 2. The Police Code is hereby amended by adding Article 52, consisting of
13 Sections 5200 to ~~5216~~ 5218, to read as follows:

14
15 **ARTICLE 52:**

16 **OCCUPANT’S RIGHT TO CHOOSE A COMMUNICATIONS SERVICES PROVIDER**

17 **SEC. 5200. DEFINITIONS.**

18 *For purposes of this Article 52:*

19 *“City” means the City and County of San Francisco.*

20 *“Communications services” means: (a) video service as that term is defined in California*
21 *Public Utilities Code § 5830(s); (b) telecommunications services certificated by the California Public*
22 *Utilities Commission under California Public Utilities Code § 1001; or (c) services provided by a*
23 *telephone corporation as that term is defined in California Public Utilities Code § 234. Nothing in*
24 *this definition is intended to limit the types of services that a communications services provider*
25 *accessing a multiple occupancy building pursuant to this Article 52 may provide to occupants.*

1 “Communications services provider” means a person that: (a) has obtained a franchise to
2 provide video service from the California Public Utilities Commission under California Public Utilities
3 Code § 5840; (b) has obtained a certificate of public convenience and necessity from the California
4 Public Utilities Commission under California Public Utilities Code § 1001 to provide
5 telecommunications services; or (c) is a telephone corporation as that term is defined in California
6 Public Utilities Code § 234. In addition, a communications services provider must have obtained a
7 Utility Conditions Permit from the City under Administrative Code Section 11.9.

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

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

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

21 “Occupant” means a person occupying a unit in a multiple occupancy building.

22 “Person” means any natural person or an entity including but not limited to a corporation or
23 partnership.

24 “Property owner” means a person that owns a multiple occupancy building or controls or
25 manages a multiple occupancy building on behalf of other persons.

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

6
7 **SEC. 5201. NO INTERFERENCE BY PROPERTY OWNER.**

8 (a) No property owner shall interfere with the right of an occupant to obtain
9 communications services from the communications services provider of the occupant’s choice.

10 (b) A property owner interferes with the occupant’s choice of communications services
11 provider by, among other things, refusing to allow a communications services provider to install the
12 facilities and equipment necessary to provide communications services or use any existing wiring to
13 provide communications services as required by this Article 52.

14
15 **SEC. 5202. NO DISCRIMINATION BY PROPERTY OWNER AGAINST OCCUPANT.**

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

19
20 **SEC. 5203. APPLICABILITY.**

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

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

2 (a) Prior to issuing a notice of intent to provide service under Section 5205 of this Article
3 52, a communications services provider shall inspect a multiple occupancy building to determine the
4 feasibility of providing services to one or more occupants.

5 (b) A communications services provider shall request in writing that the property owner
6 allow it to inspect the property for the purpose of providing service. Such request shall be sent to the
7 property owner by registered mail at least 14 days before the proposed date for the inspection. The
8 request may be sent by electronic mail instead, but the 14-day period shall not commence until the
9 communications services provider is able to confirm that the property owner actually received the
10 electronic mail communication.

11 (c) A request for an inspection shall include, but need not be limited to, the following:

12 (1) A statement that the communications services provider: (A) is authorized to
13 provide communications services in the City; (B) has received a request for service from one or more
14 occupants; (C) when inspecting the property, will conform to such reasonable conditions as the
15 property owner deems necessary to protect the safety, functioning, and appearance of the property and
16 the convenience and well-being of the occupants; and (D) will indemnify, defend, and hold harmless
17 the property owner for any damage caused by the inspection.

18 (2) A description of: (A) the communications services to be offered to occupants;
19 and (B) the facilities and equipment the communications services provider anticipates installing
20 to be installed on the property, (if known); (C) the square footage generally required for the
21 provider's facilities and equipment; and (D) the estimated electrical demand of the provider's
22 facilities and equipment.

23 (3) The date and time the communications services provider proposes to inspect the
24 property.

1 (4) A statement that the property owner has until three days before the proposed
2 inspection 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 52; or

6 (B) The property owner will allow the communications services provider to
7 inspect the property. In this case, the property owner shall identify any reasonable conditions that the
8 communications services provider must follow during the inspection in order to protect the safety,
9 functioning, and appearance of the property and the convenience and well-being of the occupants.

10 (5) A reference to and a copy of this Article 52.

11
12 **SEC. 5205. NOTICE OF INTENT TO PROVIDE SERVICE.**

13 (a) A communications services provider that intends to provide communications services to
14 one or more occupants shall send a notice of intent to the property owner at least ~~14~~ 30 days before
15 the proposed installation date. The notice of intent shall be sent by registered mail or electronic mail.
16 If the notice of intent is sent by electronic mail, the ~~14~~ 30-day period shall not commence until the
17 communications service provider is able to confirm that the property owner actually received the
18 electronic mail communication.

19 (b) A notice of intent to provide communications services shall include, but need not be
20 limited to, the following information:

21 (1) A statement that the communications services provider: (A) is authorized to
22 provide communications services in the City; (B) has received a request for service from one or more
23 occupants, including the unit number of each such occupant; (C) when installing, operating,
24 maintaining or removing its facilities and equipment from the property, will conform to such
25 reasonable conditions as the property owner deems necessary to protect the safety, functioning, and

1 appearance of the property and the convenience and well-being of the occupants; (D) will pay the
2 property owner just and reasonable compensation for its use of the property, and the proposed amount
3 of such just and reasonable compensation to be paid as required by Article 52 of the Police Code; and
4 (E) will indemnify, defend, and hold harmless the property owner for any damage caused by the
5 installation, operation, maintenance, or removal of its facilities from the property.

6 (2) (A) A description of: (A) the communications services to be offered to occupants;
7 and (B) the facilities and equipment to be installed on the property; and (B) a full set of the
8 communications services provider's detailed plans and specifications for any work to be
9 performed and facilities and equipment to be installed in or on the property, including any
10 required utility connections and the electrical demand of any facilities and equipment to be
11 installed.

12 (3) The dates and times the communications services provider proposes to start and
13 complete the installation.

14 (4) A statement that the property owner has until five days before the proposed
15 installation start date to notify the communications services provider in writing either that:

16 (A) The property owner will not allow the communications services provider
17 to provide services on the property. In this case, the property owner shall set forth the reasons for its
18 refusal and whether any of those reasons are permitted by Section 5206 of this Article 52; or

19 (B) The property owner will allow the communications services provider to
20 provide services on the property, but disagrees with the amount of the just and reasonable
21 compensation the communications services provider has proposed. In this case, the property owner
22 shall state the amount of just and reasonable compensation the property owner will require; and, in
23 either the case of (A) or (B), the property ownersowner shall state:

1 (C) Such reasonable conditions the communications services provider must
2 follow during the installation to protect the safety, functioning, and appearance of the property and the
3 convenience and well-being of the occupants.

4 (5) A reference to and a copy of this Article 52.

5
6 **SEC. 5206. PERMITTED REFUSAL OF ACCESS.**

7 (a) Nothing in this Article 52 shall be construed to require a property owner to allow a
8 communications services provider to access its property to inspect the property where the
9 communications services provider has failed or refused to agree to the property owner's request that
10 the provider comply with any conditions on accessing the property contained in a notice pursuant to
11 Section 5207 of this Article.

12 (b) Nothing in this Article 52 shall be construed to require a property owner to allow a
13 communications services provider to access its property to install the facilities and equipment that are
14 necessary to offer services to occupants where:

15 (1) The communications services provider is not authorized to provide
16 communications services in the City;

17 (2) The communications services provider cannot verify that one or more occupants
18 of the multiple occupancy building have made a request for services;

19 (3) The property owner can show that physical limitations at the property prohibit
20 the communications services provider from installing ~~the installation of~~ facilities and equipment
21 in existing space that are necessary to provide communications services and/or from using
22 existing wiring to provide such ~~by the communications services provider;~~

23 (4) The communications services provider has not agreed to the property owner's
24 request that the provider comply with any conditions on accessing the property contained in a notice
25 from the property owner issued pursuant to Section 5207 of this Article 52; ~~or~~

1 (5) The communications services provider's proposed installation of facilities
2 and equipment in or on the property would: (A) have a significant, adverse effect on any
3 historically or architecturally significant elements of the property; (B) disturb any existing
4 asbestos or lead-paint in or on the property; (C) have a significant, adverse effect on the
5 continued ability of existing communications services providers to provide services on the
6 property; (D) cause undue damage to the property; or (E) impair the use of the property for
7 the continued provision of any existing essential services; or

8 (6) The property owner and communications services provider have not reached an
9 agreement concerning any just and reasonable compensation to the property owner for allowing the
10 communications services provider to install, operate, and maintain facilities and equipment on its
11 property as required by Section 5208 of this Article 52.

12
13 **SEC. 5207. PERMITTED LIMITATIONS ON ACCESS.**

14 (a) A property owner that grants a communications services provider access to its property
15 to either inspect the property or install facilities and equipment on the property to be used to
16 offer communications services to occupants may require the communications services provider,
17 when inspecting, installing, operating, maintaining, or removing its facilities and equipment
18 from the property, to conform to such reasonable conditions as the property owner deems necessary
19 to protect the safety, functioning, and appearance of the property and the convenience and well-being
20 of the occupants during the inspection.

21 (b) A property owner that grants a communications services provider access to its
22 property to install facilities and equipment on the property to be used to offer communications
23 services to occupants may require the communications services provider, when installing,
24 operating, maintaining, or removing its facilities and equipment from the property to:

1 (1) Conform to such reasonable conditions as the property owner deems
2 necessary to protect the safety, functioning, and appearance of the property and the
3 convenience and well-being of the occupants;

4 (2) Provide a certificate of insurance evidencing coverages generally
5 required by the property owner for contractors performing comparable work at the property;

6 (3) Demonstrate that any contractors installing facilities and equipment on
7 the property are licensed;

8 (4) Obtain any permits that might be required to install facilities and
9 equipment on the property;

10 (5) Accept responsibility for the cost: (A) to install any electrical facilities
11 needed to serve the facilities and equipment installed by the provider; and (B) of any
12 electricity to be used by those facilities and equipment;

13 (6) Allow the property owner to inspect the communication services
14 provider's installation and construction of any facilities and equipment for compliance with the
15 San Francisco Building Code and generally acceptable construction standards; and

16 (7) Remove its facilities and equipment and restore any area of the property
17 occupied by the communications services provider to its prior condition when: (A) those
18 facilities and equipment are no longer being used to provide communications services to any
19 occupant; or (B) any access agreement between the property owner and the communication
20 services provider has expired or been terminated.

21 (b)(c) A property owner that has received an inspection request under Section 5204(a) of this
22 Article 52 or an installation notice under Section 5205(b) of this Article shall notify the
23 communications services provider in writing at least five days before the inspection or installation of
24 any conditions authorized under ~~subsection~~ subsections (a) or (b) that the communications services
25

1 provider must comply with while inspecting the property or installing facilities or equipment on the
2 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 services provider that obtains access to a multiple occupancy building
7 from a property owner pursuant to this Article 52 for installing, operating, and maintaining on
8 its property the facilities and equipment necessary to provide communications services to
9 occupants.

10 (b) — ~~In accordance with Section 5205(b)(4) of this Article 52, a property owner shall~~
11 ~~notify a communications services provider in writing at least five days before the proposed~~
12 ~~installation date if the property owner disagrees with the amount of the just and reasonable~~
13 ~~compensation that the communications services provider has proposed to pay. The property~~
14 ~~owner shall include in such notice the amount of just and reasonable compensation the~~
15 ~~property owner will require the communications services provider to pay.~~

16
17 **SEC. 5209. NOTICE OF VIOLATION.**

18 (a) A communications services provider or occupant that believes that a property
19 owner has failed to comply with the requirements of this Article 52 shall notify the property
20 owner in writing that: (1) the property owner is in violation of this Article; and (2) unless the
21 property owner agrees to come into compliance with this Article within 10 days the
22 communications services provider or occupant may take action against the property owner
23 pursuant to Section 5211 of this Article.

1 **(b)** The notice required by subsection (a) shall: (1) describe the manner in which the
2 property owner is in violation of this Article 52; and (2) identify any actions the property owner
3 is required to take to come into compliance with this Article.

4 **(c)** No communications services provider or occupant may enforce the
5 requirements of this Article 52, as permitted under Section 5211, unless and until the
6 communications services provider or occupant has complied with subsection (a).

7
8 **SEC. 5210. ENFORCEMENT BY THE CITY ATTORNEY.**

9 *The City Attorney may institute a civil proceeding in the San Francisco Superior Court on*
10 *behalf of the City; for injunctive and monetary relief, including civil penalties as specified more fully in*
11 *Section ~~5212~~ 5213 of this Article 52, to enforce this Article against a property owner that has violated*
12 *this Article.*

13
14 **SEC. 5211. ENFORCEMENT BY COMMUNICATIONS SERVICES PROVIDERS AND**
15 **OCCUPANTS.**

16 **(a)** ~~Except as stated in subsection (b), any A~~ communications services provider or
17 occupant of a multiple occupancy building where the property owner has refused to allow the
18 communications services provider to provide service may institute a civil proceeding to enforce this
19 Article 52 in San Francisco Superior Court against such property owner for injunctive and monetary
20 relief.

21 **(b)** Prior to filing a civil proceeding in accordance with subsection (a), the communications
22 services provider or occupant shall: (1) comply with the notice requirements contained in Section
23 5209 of this Article 52, and (2) notify the City Attorney in writing of its intent to proceed against a
24 property owner.

1 (c) Subject to subsection (d), a ~~No~~ communications service services provider or
2 occupant that has complied with subsection (b) may commence such a proceeding until at least 30
3 days after this notice has been was sent to the City Attorney.

4 ~~(e)~~(d) If the City Attorney institutes a civil proceeding against the property owner before or
5 during the 30-day notice period, then no communications services provider or occupant may file a
6 proceeding under subsection (a). If the City Attorney institutes a civil proceeding after the 30-day
7 notice period has elapsed, any communications services provider or occupant that provides the notice
8 required under subsection (b) may file a separate civil proceeding.

9 ~~(e)~~(e) The City Attorney shall notify any person submitting a notice under subsection (b) that
10 the City Attorney has instituted a civil proceeding or decided not to institute a civil proceeding.

11
12 **SEC. 52145212. ATTORNEYS' FEES AND COSTS.**

13 (a) A court may award reasonable attorneys' fees and costs to the City if it obtains
14 injunctive relief under Section ~~5209~~ 5210 of this Article 52 or to any person who obtains injunctive
15 and monetary relief under Section ~~5210~~ 5211 of this Article.

16 (b) If a court finds that any action brought under this Article 52 is frivolous, the court may
17 award the property owner reasonable attorneys' fees and costs.

18 (c) If a proceeding brought against a property owner under this Article 52 concerns
19 a multiple occupancy building that contains fewer than 25,000 square feet of space available
20 for occupants to rent or own, the attorneys' fees and costs recoverable against the property
21 owner pursuant to subsection (a), or recoverable against a person commencing the action
22 pursuant to subsection (b), shall be limited to \$5,000.

23
24 **SEC. 52125213. CIVIL PENALTIES.**

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

4 (b) In assessing the amount of a civil penalty, a court may consider any of the relevant
5 circumstances, including, but not limited to, the following:

6 (1) The number of occupants affected by the violation;

7 (2) The number of communications services providers affected by the violation;

8 (3) Whether the property owner has violated this Article 52 at other properties;

9 (4) The amount of revenues the property owner receives from any existing
10 communications services providers serving the property;

11 (5) Whether the property owner has a legitimate reason for refusing access to its
12 property by the communications services provider; and

13 (6) The net assets and liabilities of the property owner, whether corporate or
14 individual.

15 (c) Any civil penalty under subsection (a) will start to accrue following the
16 completion of the notice required by Section 5209 of this Article 52.

17
18 **SEC. 52135214. STATUTE OF LIMITATIONS.**

19 (a) Any ~~After satisfying the preconditions for filing suit under Section 5210 of this~~
20 ~~Article 52, any person so authorized under Section 5210 may institute a court proceeding by a~~
21 ~~communications services provider or occupant to enforce this Article 52 against a property owner-~~
22 ~~Such proceeding must be brought within 180 days of the communications services provider or~~
23 ~~occupant completing the notice requirements contained in Sections 5209 and 5211 of this~~
24 ~~Article. of the earliest of the following occurrences:~~

1 ~~—— (1) —— The receipt of notice from the property owner refusing to allow a~~
2 ~~communications services provider to enter the premises for an inspection;~~

3 ~~—— (2) —— The date the property owner was required by Section 5204(c)(4) of this~~
4 ~~Article to object to a request for an inspection if the property owner does not respond to the~~
5 ~~request;~~

6 ~~—— (3) —— The receipt of notice from the property owner refusing to allow the~~
7 ~~communications services provider to enter the premises to provide communications services~~
8 ~~to occupants or use existing wiring to provide service to occupants; or~~

9 ~~—— (4) —— The date the property owner was required by Section 5205(b)(4) of this~~
10 ~~Article to object to a notice of intent to provide communications services if the property owner~~
11 ~~does not respond to the notice.~~

12 ~~*(b) The City Attorney may institute a court proceeding to enforce this Article 52 within 180*~~
13 ~~*days of the City Attorney receiving written notice that a property owner has violated this Article.*~~

14
15 ~~**SEC. 52145215. EXTENSIONS OF TIME.**~~

16 ~~Any of the deadlines set forth in Sections 5204, 5205, 5207, or 5209 of this Article 52~~
17 ~~may be extended by agreement between a communications services provider or occupant~~
18 ~~and property owner, as applicable.~~

19
20 ~~**SEC. 5216. UNDERTAKING FOR GENERAL WELFARE.**~~

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

1 **SEC. 52155217. SEVERABILITY.**

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

9
10 **SEC. 52165218. NO CONFLICT WITH FEDERAL OR STATE LAW.**

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

13
14 Section 3. Effective Date. This ordinance shall become effective 30 days after
15 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
16 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
17 of Supervisors overrides the Mayor's veto of the ordinance.

18
19 APPROVED AS TO FORM:
20 DENNIS J. HERRERA, City Attorney

21
22 By: _____
23 WILLIAM K. SANDERS
24 Deputy City Attorney

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