

BOARD of SUPERVISORS



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MEMORANDUM

TO: John Rahaim, Director, Planning Department
Tom Hui, Director, Department of Building Inspection
Mawuli Tugbenyoh, Liaison to the Board of Supervisors, Mayor's Office
Victor Young, Sunshine Ordinance Task Force

FROM: Erica Major, Assistant Clerk, Government Audit and Oversight Committee,
Board of Supervisors

DATE: January 17, 2017

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Government Audit and Oversight Committee has received the following proposed legislation, introduced by Supervisor Peskin on January 10, 2017:

File No. 170031

Ordinance amending the Administrative Code to require the Department of Building Inspection to retain certain records permanently.

If you have any additional 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: Scott Sanchez, Planning Department
Lisa Gibson, Planning Department
AnMarie Rodgers, Planning Department
Aaron Starr, Planning Department
Joy Navarrete, Planning Department
Jeanie Poling, Planning Department
William Strawn, Department of Building Inspection

1 [Administrative Code - Retention of Department of Building Inspection Records]

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3 **Ordinance amending the Administrative Code to require the Department of Building**
4 **Inspection to retain certain records permanently.**

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

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

13 Section 1. The Administrative Code is hereby amended by adding Section 8.10, to
14 read as follows:

15 **SECTION 8.10. DEPARTMENT OF BUILDING INSPECTION RECORDS.**

16 **(a) Definitions.**

17 For purposes of this Section 8.10, the following definitions apply:

18 “City” means the City and County of San Francisco.

19 “Construction or Occupancy Permit” means any Building Permit, Site Permit
20 (including any Addenda connected with a Site Permit), Certificate of Final Completion, Certificate of
21 Final Completion and Occupancy, or Temporary Certificate of Occupancy, or any permit that serves
22 essentially the same function as any of the foregoing. It does not mean an Electrical Permit,
23 Mechanical Permit, or Plumbing Permit.

24 “Department” means the Department of Building Inspection.

25 “Earthquake-related Hazards” means any hazard of any kind that can be caused in
whole or in part by an earthquake and includes but is not limited to hazards relating to liquefaction.

1 earthquake-related landslides or debris flows, earthquake-related fires, earthquake-related flooding,
2 and tsunamis and seiches, in addition to direct effects from ground shaking.

3 “Relevant Building” means the building or other structure, at any stage of design or
4 construction and whether or not occupied, that is or was the subject of a particular Construction or
5 Occupancy Permit.

6 **(b) Retention Requirements.**

7 Notwithstanding any other provision of City law, the Department shall permanently retain any
8 writing, as defined in Section 6252(g) of the California Government Code, that is in the Department’s
9 actual possession, if the writing (which, for purposes of this Section 8.10, is called the “record”)
10 satisfies at least one of the following criteria and no exception identified in subsection (c) of this
11 Section applies:

12 (1) The record was submitted to the Department as part of an application for, or as a
13 condition of obtaining, a Construction or Occupancy Permit.

14 (2) The record pertains to the Relevant Building and was in the possession of the
15 Department prior to any decision regarding the issuance of a Construction or Occupancy Permit,
16 regardless of the manner in which the Department obtained the record or the purpose for which the
17 record was obtained by or submitted to the Department.

18 (3) The record was created or received by the Department after the issuance of a
19 Construction or Occupancy Permit, and contains any reference to the possibility (including any
20 question about the possibility, and any response to such a question) that:

21 (A) The Department should not have issued the Construction or Occupancy
22 Permit for the Relevant Building as the Relevant Building was designed at the time that the
23 Construction or Occupancy Permit was issued;

1 (B) Physical conditions associated with the Relevant Building are more likely to
2 endanger human health or safety, or may endanger human health or safety to a greater degree, than
3 the Department anticipated when the Construction or Occupancy Permit was issued;

4 (C) Physical conditions associated with the Relevant Building are more likely to
5 damage property, or may damage property to a greater degree, than the Department anticipated when
6 the Construction or Occupancy Permit was issued;

7 (D) Physical conditions associated with the Relevant Building are more likely to
8 adversely affect the value of real property, or may adversely affect the value of real property to a
9 greater degree, than the Department anticipated when the Construction or Occupancy Permit was
10 issued; or

11 (E) Physical conditions associated with the Relevant Building are more likely to
12 give rise to litigation, or may give rise to more instances of litigation, than the Department anticipated
13 when the Construction or Occupancy Permit was issued.

14 (4) The record was created or received by the Department after the issuance of a
15 Construction or Occupancy Permit, and contains any reference to the possibility (including any
16 question about the possibility, and any response to such a question) of any of the following:

17 (A) The Relevant Building, or any part of the Relevant Building, is experiencing,
18 or may experience, greater compressive stress, tensile stress, shear stress, deformation, strain, or
19 deflection than the Department anticipated when the Construction or Occupancy Permit was issued;

20 (B) The Relevant Building, or any part of the Relevant Building, is tilting, or
21 may tilt, to a degree greater than the Department anticipated when the Construction or Occupancy
22 Permit was issued;

23 (C) The Relevant Building, or any part of the Relevant Building, or soil or other
24 material beneath or adjacent to the Relevant Building, is subsiding or settling, or may subside or settle,

1 to a degree greater than the Department anticipated when the Construction or Occupancy Permit was
2 issued;

3 (D) The Relevant Building, or any part of the Relevant Building, is at greater
4 risk of collapse than the Department anticipated when the Construction or Occupancy Permit was
5 issued;

6 (E) The Relevant Building is more vulnerable to Earthquake-related Hazards,
7 wind, flooding, or other natural hazards than the Department anticipated when the Construction or
8 Occupancy Permit was issued;

9 (F) The Relevant Building is more vulnerable to fires of any kind than the
10 Department anticipated when the Construction or Occupancy Permit was issued; or

11 (G) The construction or existence of the Relevant Building, or any site
12 preparation related to construction of the Relevant Building, has made any other building more
13 vulnerable to any of the conditions listed in subsections (b)(4)(A)-(F), to a degree greater than, or in a
14 manner different from, that which the Department anticipated when the Construction or Occupancy
15 permit was issued.

16 (c) Exceptions.

17 The retention requirements of Section 8.10 do not apply to any record described in subsections
18 (b)(1) or (b)(2) that satisfies either of the following criteria:

19 (1) All or substantially all of the record consists of mathematical calculations
20 underlying architectural or engineering plans that will be retained by the Department, and the
21 Department does not possess an electronic version of the record; or

22 (2) The record concerns a building for which the Department has issued a Construction
23 or Occupancy Permit for the building's overall structure (sometimes referred to as the building's "core
24 and shell"); the Department has also issued, or plans to issue, separate Construction and Occupancy
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1 Permits for multiple individual units or uses within the building; and the record concerns individual
2 units or uses within the building rather than the building's overall structure.

3 (d) Manner of Retention.

4 Notwithstanding any other provision of City law, records retained pursuant to this Section 8.10
5 may be stored electronically, on microfilm, in hard copy, or in any other manner that does not prevent
6 the Department from preserving, locating, and retrieving the record.

7 (e) Outside Entities.

8 The Department's decision to issue a Construction or Occupancy Permit may not rely, in whole
9 or in part, on any work product of any kind produced by any person who is not an employee of the City
10 or any other government, or by any entity that is not part of the City or any other government, unless
11 that outside person or entity agrees to give the Department a copy of any record that would, if it were
12 in the Department's possession, be subject to the retention requirements of this Section 8.10. Nothing
13 in this subsection (e) shall be construed to impair any right or obligation under any contract that exists
14 as of the effective date of this ordinance.

15 (f) Relationship to Other Retention Requirements.

16 This Section 8.10 is not intended to, and does not, supplant any other records retention
17 requirement imposed by State or City law that is applicable to the Department, and does not supplant
18 the Department's records retention policy. Rather, this Section supplements existing legal
19 requirements applicable to the retention of Department records, and shall be incorporated by law into
20 the Department's records retention policy.

21 (g) Records Requests.

22 In a prominent location on its public website, the Department shall post the name(s),
23 address(es), phone number(s), fax number(s), and e-mail address(es) of the Department employee or
24 employees to whom requests for public records (made pursuant to Section 6253(b) of the California
25 Government Code, Chapter 67 of this Administrative Code, or other applicable laws) may be directed.

1 The Department may satisfy this requirement by posting, in a prominent location on its public website,
2 a direct link to the contact information specified in the previous sentence, provided that this link is
3 clearly labeled.

4 Section 2. Effective Date. This ordinance shall become effective 30 days after
5 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
6 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
7 of Supervisors overrides the Mayor's veto of the ordinance.

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

11 By: 
12 Matthew Lee
13 Deputy City Attorney

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LEGISLATIVE DIGEST

[Administrative Code - Retention of Department of Building Inspection Records]

Ordinance amending the Administrative Code to require the Department of Building Inspection to retain certain records permanently.

Existing Law

The City's records retention laws, codified primarily in Chapter 8 of the Administrative Code, apply to all City departments. Many departmental records need not be retained at all. For those records that must be retained, or that a department chooses to retain, there is considerable discretion as to the length of the retention period for many of those records.

Amendments to Current Law

This ordinance supplements existing records retention laws by requiring the Department of Building Inspection to retain certain categories of records permanently, if any one of numerous criteria is met.

Two of these criteria concern the Department's decision to issue a construction or occupancy permit, which the ordinance defines to include building permits, site permits and related addenda, certificates of final completion, certificates of final completion and occupancy, and temporary certificates of occupancy. Permanent retention is required (1) if the record is submitted to the Department to obtain a construction or occupancy permit, or (2) if the record pertains to a building that is or was the subject of a construction or occupancy permit, and the Department possessed the record prior to making any decision regarding the issuance of a construction or occupancy permit.

The remaining criteria all concern developments after the Department's decision to issue a construction or occupancy permit.

In particular, permanent retention is required if the record was created or received by the Department after the issuance of a construction or occupancy permit, and contains any reference to the possibility that (1) the Department should not have issued the permit for the building in question as it was then designed, (2) the building's physical conditions present a greater-than-expected risk of endangering human health or safety, (3) the building's physical conditions present a greater-than-expected risk of damaging property, (4) the building's physical conditions present a greater-than-expected risk of adversely affecting real estate values, or (5) the building's physical conditions present a greater-than-expected probability of litigation.

Permanent retention is also required if the record was created or received by the Department after the issuance of a construction or occupancy permit, and refers to the possibility that (1) the building, or any part of it, is experiencing more mechanical stress than expected, (2) the building, or any part of it, is tilting or may tilt more than expected, (3) the building, any part of the building, or any soil or other material beneath or adjacent to the building, is subsiding or settling, or may subside or settle, more than expected, (4) the building, or any part of it, is at greater risk of collapse than expected, (5) the building is more vulnerable than expected to natural hazards, including earthquake-related hazards, (6) the building is more vulnerable than expected to fires of any kind, or (7) the building, its construction, or related pre-construction activities, has made any other building more vulnerable to any of the conditions listed in this paragraph.

There are two exceptions to the ordinance's records retention requirements. First, if all or substantially all of the record consists of mathematical calculations underlying architectural or engineering plans that the Department will retain, and the Department does not possess an electronic version of the record, then the Department need not retain it. Second, if the record concerns a building for which the Department issues a construction or occupancy permit for the overall building, and issues or plans to issue separate construction or occupancy permits for individual units or uses within the building, the Department need not retain records that concern those individual units or uses, but must retain records that concern the building's overall structure.

Additionally, the ordinance prohibits the Department from basing its decision to issue a construction or occupancy permit, in whole or in part, on any work product of any kind produced by persons who are not employed by the City or another government, or by entities that are not part of the City or another government, unless those outside persons or entities agree to give the Department a copy of any record that would, if it were in the Department's possession, be subject to the ordinance's retention requirements.

Finally, the ordinance also requires the Department to make available, via its public website, contact information for the employee or employees responsible for receiving public records requests.