

1 [Various Codes - Authority to Require New or Upgraded Fire Safety Systems in Multi-Unit
2 Residential Buildings with Recurring or Continuing Fire Hazards]

3 **Ordinance amending the Building, Housing, Fire, and Administrative Codes to**
4 **authorize the Building and Fire Departments to require the installation of a new fire**
5 **safety system or the improvement or upgrade of an existing system to current code**
6 **requirements in a residential building of three or more dwelling units to remedy**
7 **recurring or continuing fire hazards that substantially endanger the health and safety**
8 **of the residents or the general public; amending the Rent Ordinance to prohibit**
9 **landlords from increasing rents to cover the costs of compliance; affirming the**
10 **Planning Department’s determination under the California Environmental Quality Act;**
11 **making findings under the California Health and Safety Code; and directing the Clerk of**
12 **the Board to forward this Ordinance to the California Building Standards Commission**
13 **upon final passage.**

14
15 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
16 **Additions to Codes** are in *single-underline italics Times New Roman font*.
17 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
18 **Board amendment additions** are in double-underlined Arial font.
19 **Board amendment deletions** are in ~~strikethrough Arial font~~.
20 **Asterisks (* * * *)** indicate the omission of unchanged Code
21 subsections or parts of tables.

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

23 Section 1. General Findings.

24 (a) The Planning Department has determined that the actions contemplated in this
25 ordinance comply with the California Environmental Quality Act (California Public Resources
Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of

1 Supervisors in File No. 180756 and is incorporated herein by reference. The Board affirms
2 this determination.

3 (b) On September 19, 2018, the Building Inspection Commission considered this
4 ordinance at a duly noticed public hearing pursuant to Charter Section D3.750-5.

5

6 Section 2. Findings under the California Health and Safety Code.

7 The Board of Supervisors hereby finds that the following local conditions apply to the
8 Code amendments enacted by this ordinance:

9 (1) The City and County of San Francisco is unique among California communities
10 with respect to the possible causes and effects of fires, including fires in multi-unit residential
11 buildings. Among other things, San Francisco is located in an active seismic zone; certain
12 buildings in San Francisco are at an increased risk for earthquake-induced failure and
13 consequent fire because of local hazardous microzones, slide areas, and local liquefaction
14 hazards. Enhanced fire, structural, and other protections are required due to high building
15 density and high occupancy in many buildings.

16 (2) San Francisco has narrow and crowded sidewalks due to building and
17 population density as well as unusual topography. The City also has numerous high-rise
18 buildings, including residential buildings with large numbers of people living therein. For these
19 reasons, fires in San Francisco can be particularly devastating. The need for extra measures
20 to prepare for and cope with fires is pressing, especially for people who live in multi-unit
21 residential buildings and who may face fire dangers any day of the week and any hour of the
22 day or night.

23 (3) Recent fires in large apartment buildings in San Francisco have resulted in
24 property damage, loss of housing, and in some instances loss of life. A report from the Board
25 of Supervisors' Budget and Legislative Analyst's Office issued on November 21, 2016, found

1 that there were 252 two-alarm or greater residential fires from 2004 to 2016. Wood-framed
2 buildings, the most common building type in San Francisco, made up 87% of the fires.

3 (4) California Health and Safety Code Sections 17958, 17958.5, and 17958.7 allow
4 the City to make changes or modifications in the requirements contained in the provisions
5 published by the State Building Standards Commission, including the California Fire Code,
6 when those changes or modifications are reasonably necessary because of local conditions.
7 California Health and Safety Code Section 17958.7 provides that before making any such
8 changes or modifications, the governing body must make express findings that such changes
9 or modifications are reasonably necessary because of specified local conditions.

10 (5) Pursuant to the applicable California Health and Safety Code sections, the
11 Board of Supervisors finds and determines that the conditions described above constitute a
12 general summary of the most significant local conditions giving rise to the need for variance
13 from the California Fire and Building Codes and any other applicable provisions published by
14 the State Building Standards Commission. The Board of Supervisors further finds and
15 determines that the proposed variances are reasonably necessary based on these local
16 conditions, and that these conditions justify more restrictive standards applicable to the
17 enforcement of the fire safety requirements for multi-unit residential buildings in San
18 Francisco.

19
20 Section 3. The Building Code is hereby amended by adding Section 102A.16.1,
21 including Sections 102A.16.1.1 and 102A.16.1.2, to read as follows:

22 **102A.16.1 Continuing or Recurring Conditions Creating a Fire Hazard in a Residential Building of**
23 **Three or More Dwelling Units; Authority of the Building Official. In addition to any other power or**
24 **remedy available under this Code or other applicable laws, the Building Official may issue a Fire Life**
25 **Safety Notice and Order pursuant to the provisions of this Section 102A.16.1 and Sections 102A.16.1.1**

1 and 102A.16.1.2 that requires the owner of a residential building with three or more dwelling units to
2 install, improve, or upgrade the building's fire safety systems.

3 **102A.16.1.1 Fire Life Safety Notice and Order.** The Building Official may issue a Fire Life Safety
4 Notice and Order in cases where the Building Official has determined that:

5 (a) notwithstanding the Department's issuance of two or more NOV's and Administrative
6 Orders under Sections 102A.4 and 102A.7 of this Code for violation of the fire safety requirements
7 enforced by the Department of Building Inspection, a fire hazard (as defined in Section 102A.1)
8 continues to exist or recurs after abatement in a residential building with three or more dwelling units;
9 and

10 (b) while the cited code violations have not risen to the level of an imminent hazard that
11 requires issuance of an emergency order under Section 102A.16, the violations are so extensive and of
12 such a nature (including but not limited to conditions such as a nonworking fire alarm or sprinkler
13 system, a nonworking or chronically blocked fire escape, or locked or chronically blocked exits or
14 egress system) that the health and safety of the residents and/or the general public is substantially
15 endangered; and

16 (c) the property owner either has failed to abate or mitigate the violations in a timely way in
17 accordance with an Administrative Order issued pursuant to Section 10A2.7 of this Code, or the
18 violations recur after abatement.

19 **102A.16.1.1.1 Legal Status of Previously Issued NOV's.** A Fire Life Safety Notice and Order issued
20 pursuant to Section 102A.16.1.1 is in lieu of a Notice of Municipal Code Violation ("NOV") and an
21 Administrative Order issued pursuant to Sections 102A.4 and 102A.7 of this Code. However, such an
22 Order does not replace any NOV's that have previously been issued and remain unabated. Any
23 previously-issued NOV's shall require abatement pursuant to their terms.

1 **102A.16.1.1.2 Required Provisions of a Fire Life Safety Notice and Order.** The Fire Life Safety
2 Notice and Order issued pursuant to Section 102A.16.1.1 shall require the building owner to do one or
3 more of the following:

- 4 (a) install a new fire sprinkler system;
- 5 (b) improve an existing fire sprinkler system or upgrade it to current code requirements;
- 6 (c) install a new fire alarm and/or detection system;
- 7 (d) improve an existing fire alarm and/or detection system or upgrade it to current code
8 requirements.

9 Prior to ordering any such installation, improvement, or upgrade, the Building Official shall provide
10 the notice required by Section 102A.16.1.1.3 below and consult with the local fire code official. The
11 local fire official shall approve any installation, improvement, or upgrade ordered by the Building
12 Official.

13 **102A.16.1.1.3 Warning Statements and Letter Prior to Issuance of Fire Life Safety Notice and**
14 **Order .** Each NOV or Administrative Order issued pursuant to Sections 102A.4 and 102A.7 of this
15 Code that includes a fire safety violation shall provide information about Section 102A.16.1 et seq. and
16 the consequences for not abating fire safety violations within the specified compliance period. In
17 addition, prior to issuance of a Fire Life Safety Notice and Order, the Building Official shall send a
18 letter by regular and certified mail to the building owner at the address listed with the Assessor-
19 Recorder's Office and to the persons or entities listed in Section 102A.16.1.2(b) below informing them
20 that because the building has been cited with two or more fire-safety related NOV's and Administrative
21 Orders under Sections 102A.4 and 102A.7 of this Code, the owner is a potential recipient of a Fire Life
22 Safety Notice and Order.

23 **102A.16.1.2 Notice and Hearing Procedures.** All the notice and hearing procedures set forth in
24 Sections 102A.4 through 102A.7 shall apply to a Fire Life Safety Notice and Order, except as that
25 procedure may be modified below.

1 (a) The Fire Life Safety Notice and Order shall:

2 (1) be signed by the Building Official;

3 (2) set forth the street address of the building and a description of the building or
4 property sufficient for identification;

5 (3) identify each code violation that the Building Official has determined is a fire
6 hazard substantially endangering the health and safety of the residents and/or the general public;

7 (4) specify the fire safety installation, improvement, and/or upgrades required; and

8 (5) contain time frames required for compliance with the Notice and Order.

9 (b) The Building Official shall serve the Fire Life Safety Notice and Order by certified mail
10 on the building owner(s) at the address listed with the Assessor-Recorder's Office, and shall send a
11 copy by certified mail to:

12 (1) the person, if any, in real or apparent charge and control of the premises
13 involved;

14 (2) the holder of any mortgage, deed of trust, lien, or encumbrance of record; and

15 (3) the owner or holder of any other estate or interest in the building or property, or
16 the land on which it is located.

17 (c) The Building Official shall post a copy of the Fire Life Safety Notice and Order in a
18 conspicuous place on the subject property and either mail or deliver a copy to the resident(s) of each
19 unit on the subject property.

20 (d) Unless the building owner demonstrates to the Building Official's satisfaction that the
21 owner has made substantial progress in complying with the Fire Life Safety Notice and Order, if the
22 building owner has not complied with said Notice and Order according to the required time frames the
23 Building Official shall schedule an Administrative Hearing to be held no later than 14 days after the
24 compliance deadline.

1 (e) If an Administrative Hearing is held, a designee of the Building Official shall attend the
2 hearing, which shall be conducted by a designated Hearing Officer. A written decision signed by the
3 Building Official shall be issued no later than 30 days after the hearing.

4 **102A.16.1.3 Appeals.** A Fire Life Safety Notice and Order may be appealed to the Abatement Appeals
5 Board pursuant to the provisions of Section 105A.2 of this Code; provided, however, that

6 (a) an appeal of a Fire Life Safety Notice and Order shall be scheduled for hearing within
7 14 days after the date of filing the appeal, and

8 (b) if the Abatement Appeals Board had heard an appeal of any previously-issued Order of
9 Abatement pursuant to Section 102A for substantially the same code violations as are cited in the Fire
10 Life Safety Notice and Order, and the Abatement Appeals Board had upheld the Order of Abatement in
11 whole or substantial part, the decision of the Abatement Appeals Board shall be effective immediately
12 upon issuance of the Board's findings and decision with no right to request rehearing.

13 **102A.16.1.4 Recording of final Notice and Order; referral to City Attorney.** Upon issuance of the
14 Abatement Appeals Board decision, a copy of the final Fire Life Safety Notice and Order shall be
15 recorded in the Assessor-Recorder's Office. The Department shall refer the case to the City Attorney
16 for its review and possible action within 90 days after recording said Notice and Order.

17
18 Section 4. The Housing Code is hereby amended by revising Section 204, to read as
19 follows:

20 **SEC. 204. VIOLATIONS.**

21 * * * *

22 (f) **Continuing or Recurring Conditions Creating a Fire Hazard in Multi-Unit**
23 **Residential Buildings.** The Director of the Department of Building Inspection is expressly authorized,
24 under this subsection (f) and Sections 102A.16.1, 102A.16.1.1, and 102A.16.1.2 of the Building Code,
25 to order the owner of a residential building with three or more dwelling units to do one or more of the

1 following to abate or mitigate a fire hazard in the building that continues or recurs notwithstanding
2 the Department of Building Inspection's prior issuance of Notices of Violation and Administrative
3 Orders:

4 (1) install a new fire sprinkler system;

5 (2) improve an existing fire sprinkler system or upgrade it to current code
6 requirements;

7 (3) install a new fire alarm and/or detection system; or

8 (4) improve an existing fire alarm and/or detection system or upgrade it to current
9 code requirements.

10 For purposes of this subsection (f), a "fire hazard" is as defined in Section 102A.1 of the Building
11 Code.

12 The Director may exercise this authority in cases where:

13 (1) notwithstanding the Department's issuance of two or more NOV's and
14 Administrative Orders under Sections 102A.4 and 102A.7 of the Building Code for violation of the fire
15 safety requirements enforced by the Department of Building Inspection, a fire hazard (as defined in
16 Section 102A.1) continues to exist or recurs after abatement in a residential building with three or
17 more dwelling units; and

18 (2) while the cited code violations have not risen to the level of an imminent hazard
19 that requires issuance of an emergency order under Section 102A.16 of the Building Code, the
20 violations are so extensive and of such a nature (including but not limited to a nonworking fire alarm
21 or sprinkler system, a nonworking or chronically blocked fire escape, or locked or chronically blocked
22 exits or egress system) that the health and safety of the residents and/or the general public is
23 substantially endangered; and

1 (3) the property owner either has failed to abate or mitigate the violations in a
2 timely way in accordance with an order issued pursuant to Section 102A.7 of the Building Code, or the
3 violations recur after abatement.

4 Each NOV or Administrative Order issued pursuant to Sections 102A.4 and 102A.7 of the
5 Building Code that includes a fire safety violation shall provide information about Building Code
6 Section 102A.16.1 et seq. and the consequences for not abating fire safety violations within the
7 specified compliance period. In addition, prior to issuance of a Fire Life Safety Notice and Order, the
8 Building Official will send the warning letter required by Building Code Section 102A.16.1.1.3.

9 (g) ~~(f)~~ **Annual Report to Board of Supervisors.**

10 (1) Six months from the effective date of this ordinance, the Director of the
11 Department of Building Inspection shall provide the Board of Supervisors with information on
12 the implementation of this Section 204.

13 (2) Each annual report of the Department of Building Inspection transmitted
14 to the Board of Supervisors shall contain a statistical report detailing the number of citations
15 issued during the preceding year, correlated with a general description of the types of
16 violations for which they were issued.

17 (h) ~~(g)~~ **Partial Appropriation of Fines Collected.** Up to 25% percent of the monies
18 collected pursuant to Section 204(a), other than monies mandated by State law to be
19 appropriated for specific purposes, shall be deposited directly to the Department of Building
20 Inspection's Special Fund to partially offset the costs incurred by the Department of Building
21 Inspection in issuing citations pursuant to this Section 204.

22
23 Section 5. The Fire Code is hereby amended by revising Section 109.3, to read as
24 follows:
25

1 **109.3. [For SF] Remedies Available.**

2 The fire code official may enforce the provisions of this code by: issuing a notice of
3 violation under Section 109.4; issuing an administrative citation under Section 109.5; *and or*
4 issuing criminal penalties under Section 109.6.

5 *In addition to the above remedies or other remedies authorized by law, in cases where there is a*
6 *continuing or recurring fire hazard in a residential building with three or more dwelling units, the fire*
7 *code official may issue a Fire Life Safety Notice and Order that requires the owner of the building to do*
8 *one or more of the following to abate or mitigate the fire hazard: (1) install a new fire sprinkler system;*
9 *(2) improve an existing fire sprinkler system or upgrade it to current code requirements; (3) install a*
10 *new fire alarm and/or detection system; or (4) improve an existing fire alarm and/or detection system*
11 *or upgrade it to current code requirements. For purposes of this Section 109.3, a “fire hazard” is*
12 *defined in Section 102A.1 of the Building Code.*

13 *The fire code official may exercise this authority in cases where the fire official has determined*
14 *that:*

15 *(a) notwithstanding the Department’s issuance of two or more notices of violation under*
16 *Section 109.4 or administrative citations under Section 109.5, a fire hazard continues to exist or recurs*
17 *after abatement in a residential building of three or more units; and*

18 *(b) while the cited code violations have not risen to the level of an imminent hazard, they*
19 *are so extensive and of such a nature (including but not limited to a nonworking fire alarm or sprinkler*
20 *system, a broken or deteriorated fire escape or egress system, or locked or permanently blocked exits)*
21 *that the health and safety of the residents and/or the general public is substantially endangered; and*

22 *(c) the property owner has failed to abate or mitigate the violations in a timely way in*
23 *accordance with an order issued pursuant to Section 109.4.3(g) of this Code.*

24 *Each notice of violation or administrative citation for a fire hazard issued pursuant to Sections*
25 *109.4 or 109.5 shall provide information about the Fire Life Safety Notice and Order and the*

1 consequences for not abating fire safety violations within the specified compliance period. In addition,
2 prior to issuance of a Fire Life Safety Notice and Order, the fire code official shall send a letter by
3 regular and certified mail to the building owner at the address listed with the Assessor-Recorder's
4 Office and to the persons or entities listed in subsection (b) below informing them that because the
5 building has been cited with two or more notices of violation for a fire hazard under Section 109.4 or
6 administrative citations under Section 109.5 of this Code, the owner is a potential recipient of a Fire
7 Life Safety Notice and Order.

8 All the notice and hearing procedures set forth in Section 109.4.3 shall apply to a Fire Life
9 Safety Notice and Order, except as that procedure may be modified below.

10 (a) The Fire Life Safety Notice and Order shall:

11 (1) be signed by the fire code official;

12 (2) set forth the street address of the building and a description of the building or
13 property sufficient for identification;

14 (3) identify each code violation that the fire code official has determined is a fire
15 hazard substantially endangering the health and safety of the residents and/or the general public;

16 (4) specify the fire safety installation, improvement, and/or upgrades required; and

17 (5) contain time frames required for compliance with the order.

18 (b) The fire code official shall serve the Fire Life Safety Notice and Order by certified mail
19 on the building owner(s) at the address listed with the Assessor-Recorder's Office. A copy shall also be
20 sent by certified mail to:

21 (1) the person, if any, in real or apparent charge and control of the premises
22 involved;

23 (2) the holder of any mortgage, deed of trust, lien, or encumbrance of record; and

24 (3) the owner or holder of any other estate or interest in the building or property, or
25 the land on which it is located.

1 (c) The fire code official shall post a copy of the Fire Life Safety Notice and Order in a
2 conspicuous place on the subject property and either mail or deliver a copy to the resident(s) of each
3 unit on the subject property.

4 (d) Unless the building owner demonstrates to the fire code official's satisfaction that the
5 owner has made substantial progress in complying with the Fire Life Safety Notice and Order, if the
6 building owner has not complied with said Notice and Order according to the required time frames the
7 fire code official shall schedule an administrative hearing to be held no later than 14 days after the
8 compliance deadline.

9 (e) If an Administrative Hearing is held, the fire code official shall attend the hearing,
10 which shall be conducted by a designated Hearing Officer. A written decision signed by the fire code
11 official shall be issued no later than 30 days after the hearing.

12 (f) A copy of the fire code official's written decision shall be recorded in the Assessor-
13 Recorder's Office.

14 (g) The fire code official shall refer the case to the City Attorney for its review and possible
15 action within 90 days after recording said Notice and Order.

16
17 Section 6. The Administrative Code is hereby amended by revising Sections 37.7 and
18 37.8, to read as follows:

19 **SEC. 37.7. CERTIFICATION OF RENT INCREASES FOR CAPITAL IMPROVEMENTS,**
20 **REHABILITATION WORK, ENERGY CONSERVATION IMPROVEMENTS, AND**
21 **RENEWABLE ENERGY IMPROVEMENTS.**

22 * * * *

23 (b) **Requirements for Certification.** The Board and designated Administrative Law
24 Judges may only certify the costs of capital improvements, rehabilitation, energy conservation
25 improvements, and renewable energy improvements, where the following criteria are met:

1 * * * *

2 (6) The cost is not for work required to correct a code violation for which a
3 notice of violation has been issued and remained unabated for 90 days unless the landlord
4 made timely good faith efforts within that 90-day period to commence and complete the work
5 but was not successful in doing so because of the nature of the work or circumstances
6 beyond the control of the landlord. The landlord's failure to abate within the original 90-day
7 period raises a rebuttable presumption that the landlord did not exercise timely good faith
8 efforts. Any costs attributable to the landlord's compliance with a Fire Life Safety Notice and Order
9 issued by the Building Official under Sections 107A.16.1 et seq. of the Building Code or the fire code
10 official under Sections 109.3 et seq. of the Fire Code shall not be certified.

11 * * * *

12 **SEC. 37.8. ARBITRATION OF RENTAL INCREASE ADJUSTMENTS.**

13 * * * *

14 (e) **Hearings.**

15 * * * *

16 (4) **Determination of the Administrative Law Judge: Rental Units.** Based
17 upon the evidence presented at the hearing and upon such relevant factors as the Board shall
18 determine, the Administrative Law Judge shall make findings as to whether or not the
19 landlord's proposed rental increase exceeding the limitations set forth in Section 37.3 is
20 justified or whether or not the landlord has effected a rent increase through a reduction in
21 services or has failed to perform ordinary repair and maintenance as required by State or local
22 law; and provided further that, where a landlord has imposed a passthrough pursuant to this
23 Chapter 37, the same costs shall not be included in the calculation of increased operating and
24 maintenance expenses pursuant to this Subsection (4). In making such findings, the
25 Administrative Law Judge shall take into consideration the following factors:

1 (A) Increases or decreases in operating and maintenance expenses,
2 including, but not limited to, water and sewer service charges; janitorial service; refuse
3 removal; elevator service; security system; insurance for the property; ~~routine repairs and~~
4 ~~maintenance; and~~ debt service and real estate taxes as set forth in subsections (i) and (ii); ~~and~~
5 reasonable and necessary management expenses as set forth in subsection (iii); and routine
6 repairs and maintenance as set forth in subsection (iv).

7 * * * *

8 (iv) The term routine repairs and maintenance shall not include any
9 costs for installation or upgrade of a fire sprinkler system or fire alarm and/or detection system
10 attributable to the landlord's compliance with a Fire Life Safety Notice and Order issued by the
11 Building Official under Sections 107A.16.1 et seq. of the Building Code or the fire code official under
12 Sections 109.3 et seq. of the Fire Code.

13 * * * *

14
15 Section 7. Effective Date. This ordinance shall become effective 30 days after
16 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
17 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
18 of Supervisors overrides the Mayor's veto of the ordinance.

19
20 Section 8. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
21 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
22 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
23 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
24 additions, and Board amendment deletions in accordance with the "Note" that appears under
25 the official title of the ordinance.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Section 9. Undertaking for the General Welfare. In undertaking the enforcement of this ordinance, 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.

Section 10. Directions to Clerk. The Clerk of the Board of Supervisors is hereby directed to forward a copy of this ordinance to the California Building Standards Commission upon final passage.

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

By: _____
JUDITH A. BOYAJIAN
Deputy City Attorney

n:\legana\as2018\1700458\01305835.docx