# SUBSTITUTED 9/25/2018 ORDINANCE NO. 267-18

FILE NO. 180756

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

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

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

Additions to Codes are in single-underline italics Times New Roman font.

Deletions to Codes are in strikethrough italics Times New Roman font.

Board amendment additions are in double-underlined Arial font.

Board amendment deletions are in strikethrough Arial font.

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. General Findings.

(a) The Planning Department has determined that the actions contemplated in this 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

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

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

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

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

- (1) The City and County of San Francisco is unique among California communities with respect to the possible causes and effects of fires, including fires in multi-unit residential buildings. Among other things, San Francisco is located in an active seismic zone; certain buildings in San Francisco are at an increased risk for earthquake-induced failure and consequent fire because of local hazardous microzones, slide areas, and local liquefaction hazards. Enhanced fire, structural, and other protections are required due to high building density and high occupancy in many buildings.
- (2) San Francisco has narrow and crowded sidewalks due to building and population density as well as unusual topography. The City also has numerous high-rise buildings, including residential buildings with large numbers of people living therein. For these reasons, fires in San Francisco can be particularly devastating. The need for extra measures to prepare for and cope with fires is pressing, especially for people who live in multi-unit residential buildings and who may face fire dangers any day of the week and any hour of the day or night.
- (3) Recent fires in large apartment buildings in San Francisco have resulted in property damage, loss of housing, and in some instances loss of life. A report from the Board of Supervisors' Budget and Legislative Analyst's Office issued on November 21, 2016, found

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

- (4) California Health and Safety Code Sections 17958, 17958.5, and 17958.7 allow the City to make changes or modifications in the requirements contained in the provisions published by the State Building Standards Commission, including the California Fire Code, when those changes or modifications are reasonably necessary because of local conditions. California Health and Safety Code Section 17958.7 provides that before making any such changes or modifications, the governing body must make express findings that such changes or modifications are reasonably necessary because of specified local conditions.
- (5) Pursuant to the applicable California Health and Safety Code sections, the Board of Supervisors finds and determines that the conditions described above constitute a general summary of the most significant local conditions giving rise to the need for variance from the California Fire and Building Codes and any other applicable provisions published by the State Building Standards Commission. The Board of Supervisors further finds and determines that the proposed variances are reasonably necessary based on these local conditions, and that these conditions justify more restrictive standards applicable to the enforcement of the fire safety requirements for multi-unit residential buildings in San Francisco.

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

102A.16.1 Continuing or Recurring Conditions Creating a Fire Hazard in a Residential Building of

Three or More Dwelling Units; Authority of the Building Official. In addition to any other power or

remedy available under this Code or other applicable laws, the Building Official may issue a Fire Life

Safety Notice and Order pursuant to the provisions of this Section 102A.16.1 and Sections 102A.16.1.1

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

- 102A.16.1.1 Fire Life Safety Notice and Order. The Building Official may issue a Fire Life Safety

  Notice and Order in cases where the Building Official has determined that:
- (a) notwithstanding the Department's issuance of two or more NOVs and Administrative

  Orders under Sections 102A.4 and 102A.7 of this Code for violation of the fire safety requirements

  enforced by the Department of Building Inspection, a fire hazard (as defined in Section 102A.1)

  continues to exist or recurs after abatement in a residential building with three or more dwelling units;

  and
- (b) while the cited code violations have not risen to the level of an imminent hazard that requires issuance of an emergency order under Section 102A.16, the violations are so extensive and of such a nature (including but not limited to conditions such as a nonworking fire alarm or sprinkler system, a nonworking or chronically blocked fire escape, or locked or chronically blocked exits or egress system) that the health and safety of the residents and/or the general public is substantially endangered; and
- (c) the property owner either has failed to abate or mitigate the violations in a timely way in accordance with an Administrative Order issued pursuant to Section 10A2.7 of this Code, or the violations recur after abatement.
- 102A.16.1.1.1 Legal Status of Previously Issued NOVs. A Fire Life Safety Notice and Order issued pursuant to Section 102A.16.1.1 is in lieu of a Notice of Municipal Code Violation ("NOV") and an Administrative Order issued pursuant to Sections 102A.4 and 102A.7 of this Code. However, such an Order does not replace any NOVs that have previously been issued and remain unabated. Any previously-issued NOVs shall require abatement pursuant to their terms.

(e) If an Administrative Hearing is held, a designee of the Building Official shall attend the
hearing, which shall be conducted by a designated Hearing Officer. A written decision signed by the
Building Official shall be issued no later than 30 days after the hearing.
102A.16.1.3 Appeals. A Fire Life Safety Notice and Order may be appealed to the Abatement Appeals
Board pursuant to the provisions of Section 105A.2 of this Code; provided, however, that
(a) an appeal of a Fire Life Safety Notice and Order shall be scheduled for hearing within
14 days after the date of filing the appeal, and
(b) if the Abatement Appeals Board had heard an appeal of any previously-issued Order of
Abatement pursuant to Section 102A for substantially the same code violations as are cited in the Fire
Life Safety Notice and Order, and the Abatement Appeals Board had upheld the Order of Abatement in
whole or substantial part, the decision of the Abatement Appeals Board shall be effective immediately
upon issuance of the Board's findings and decision with no right to request rehearing.
102A.16.1.4 Recording of final Notice and Order; referral to City Attorney. Upon issuance of the
Abatement Appeals Board decision, a copy of the final Fire Life Safety Notice and Order shall be
recorded in the Assessor-Recorder's Office. The Department shall refer the case to the City Attorney

Section 4. The Housing Code is hereby amended by revising Section 204, to read as

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

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

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

### (g) (f) Annual Report to Board of Supervisors.

- (1) Six months from the effective date of this ordinance, the Director of the Department of Building Inspection shall provide the Board of Supervisors with information on the implementation of this Section <u>204</u>.
- (2) Each annual report of the Department of Building Inspection transmitted to the Board of Supervisors shall contain a statistical report detailing the number of citations issued during the preceding year, correlated with a general description of the types of violations for which they were issued.
- (h) (g) Partial Appropriation of Fines Collected. Up to 25% percent of the monies collected pursuant to Section 204(a), other than monies mandated by State law to be appropriated for specific purposes, shall be deposited directly to the Department of Building Inspection's Special Fund to partially offset the costs incurred by the Department of Building Inspection in issuing citations pursuant to this Section 204.
- Section 5. The Fire Code is hereby amended by revising Section 109.3, to read as follows:

#### 109.3. [For SF] Remedies Available.

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

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

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

- (a) notwithstanding the Department's issuance of two or more notices of violation under

  Section 109.4 or administrative citations under Section 109.5, a fire hazard continues to exist or recurs

  after abatement in a residential building of three or more units; and
- (b) while the cited code violations have not risen to the level of an imminent hazard, they are so extensive and of such a nature (including but not limited to a nonworking fire alarm or sprinkler system, a broken or deteriorated fire escape or egress system, or locked or permanently blocked exits) that the health and safety of the residents and/or the general public is substantially endangered; and
- (c) the property owner has failed to abate or mitigate the violations in a timely way in accordance with an order issued pursuant to Section 109.4.3(g) of this Code.

<u>Each notice of violation or administrative citation for a fire hazard issued pursuant to Sections</u>

109.4 or 109.5 shall provide information about the Fire Life Safety Notice and Order and the

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- (d) Unless the building owner demonstrates to the fire code official's satisfaction that the owner has made substantial progress in complying with the Fire Life Safety Notice and Order, if the building owner has not complied with said Notice and Order according to the required time frames the fire code official shall schedule an administrative hearing to be held no later than 14 days after the compliance deadline.
- (e) If an Administrative Hearing is held, the fire code official shall attend the hearing, which shall be conducted by a designated Hearing Officer. A written decision signed by the fire code official shall be issued no later than 30 days after the hearing.
- (f) A copy of the fire code official's written decision shall be recorded in the Assessor-Recorder's Office.
- (g) The fire code official shall refer the case to the City Attorney for its review and possible action within 90 days after recording said Notice and Order.

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

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

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

\* \* \*

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

SEC. 37.8. ARBITRATION OF RENTAL INCREASE ADJUSTMENTS.

(e) Hearings.

\* \* \* \*

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

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(A) Increases or decreases in operating and maintenance expenses, including, but not limited to, water and sewer service charges; janitorial service; refuse removal; elevator service; security system; insurance for the property; *routine repairs and maintenance; and* debt service and real estate taxes as set forth in subsections (i) and (ii); *and routine repairs and maintenance as set forth in subsection (iv)*.

\* \* \* \*

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

\* \* \* \*

Section 7. 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.

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

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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:

DENNISO, HERRERA, City Attorney

By:

Deputy City Attorney

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## City and County of San Francisco Tails

City Hall 1 Dr. Carlton B. Goodlett Place San Francisco, CA 94102-4689

#### **Ordinance**

File Number:

180756

Date Passed: October 30, 2018

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

October 01, 2018 Land Use and Transportation Committee - REFERRED

October 17, 2018 Rules Committee - RECOMMENDED

October 23, 2018 Board of Supervisors - PASSED ON FIRST READING

Ayes: 11 - Brown, Cohen, Fewer, Kim, Mandelman, Peskin, Ronen, Safai, Stefani, Tang and Yee

October 30, 2018 Board of Supervisors - FINALLY PASSED

Ayes: 11 - Brown, Cohen, Fewer, Kim, Mandelman, Peskin, Ronen, Safai, Stefani, Tang and Yee

File No. 180756

I hereby certify that the foregoing Ordinance was FINALLY PASSED on 10/30/2018 by the Board of Supervisors of the City and County of San Francisco.

> Angela Calvillo Clerk of the Board

London N. Breed Mayor Date Approved