

BOARD of SUPERVISORS



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MEMORANDUM

Date: September 21, 2020
To: Patrick O'Riordan, Director, Department of Building Inspection
From: *ACC* Angela Calvillo, Clerk of the Board
Subject: Emergency Ordinance - Building Code - Construction During COVID-19
Pandemic That Results in Temporary Suspension of Water or Electricity
Service or Excessive Noise (File No. 200763)

On August 18, 2020, the Board of Supervisors finally passed Ordinance No. 154-20, sponsored by Supervisors Peskin, Ronen, Walton, Preston, Fewer, and Mandelman and approved by Mayor London N. Breed on August 28, 2020.

A copy of the Ordinance is being forwarded to you for informational purposes.

If you have any questions or concerns, please contact Erica Major, Assistant Clerk, at (415) 554-4441 or by email at: Erica.Major@sfgov.org.

c: Patty Lee, Department of Building Inspection
John Murray, Department of Building Inspection
Sonya Harris, Department of Building Inspection

1 [Emergency Ordinance - Building Code - Construction During COVID-19 Pandemic That
2 Results in Temporary Suspension of Water or Utility Service or Excessive Noise]

3 **Emergency ordinance to temporarily prohibit construction projects in buildings with**
4 **any residential rental units that require the suspension of water or utility service to**
5 **residential tenants without providing alternative sources of water and power, or**
6 **reaching agreement with tenants, due to the COVID-19 pandemic.**

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

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

15 Section 1. Declaration of Emergency under Charter Section 2.107.

16 (a) Section 2.107 of the Charter authorizes passage of an emergency ordinance in
17 cases of public emergency affecting life, health, or property, or for the uninterrupted operation
18 of any City or County department or office required to comply with time limitations established
19 by law. The Board of Supervisors hereby finds and declares that an actual emergency exists
20 that requires the passage of this emergency ordinance.

21 (b) On February 25, 2020, Mayor London Breed proclaimed a state of emergency
22 based on the COVID-19 pandemic (hereinafter referred to as “the emergency”). On March 3,
23 2020, the Board of Supervisors, in Motion No. 200228, concurred in the Proclamation and in
24 the actions taken by the Mayor to meet the emergency. On March 13, 2020, the Mayor issued
25 a Second Supplement to the Proclamation, finding that the emergency is causing severe
financial impacts to renters in the City, and providing certain protections to those renters who

1 will be unable to pay their rent on time due to the emergency, to avoid the further risks and
2 contamination that will result if they are displaced from their homes.

3 (c) Since March 16, 2020, City residents have been subject to the County Health
4 Officer's "shelter in place" orders, which require (with certain exceptions) that all San
5 Francisco residents must stay in their homes until at least May 3, due to the extreme
6 circumstances of the emergency (Order No. C19-07b). Also, on March 16, 2020, the
7 Governor issued Executive Order N-28-20, finding that local jurisdictions must take measures
8 to preserve and increase housing security and that additional measures may be necessary to
9 protect public health and to mitigate the economic effects of COVID-19.

10 (d) For the same reasons that warranted the foregoing orders and directives, the
11 Board of Supervisors finds that it is essential for the health, safety, and welfare of the tenants
12 of residential units to have access to water and utility service while they are sheltering in
13 place.

14 (e) Affordable housing units are less likely to be subject to ongoing or elective
15 renovation construction work, and repairs are more likely to be for the purpose of maintaining
16 safe and habitable housing. Tenants in affordable housing units, including long-term tenants
17 in that housing, are less likely to be subject to harassment and constructive eviction motivated
18 by a desire to re-rent those units at high market rates. Therefore, affordable housing units
19 have been exempted from the requirements of this legislation.

20
21 Section 2. CEQA Finding. The Planning Department has determined that the actions
22 contemplated in this emergency ordinance comply with the California Environmental Quality
23 Act (California Public Resources Code Sections 21000 et seq.). Said determination is on file
24 with the Clerk of the Board of Supervisors in File No. 200763 and is incorporated herein by
25 reference. The Board affirms this determination.

1 Section 3. Temporary Prohibition of Construction Activities that Suspend Water or
2 Other Utility Service Unless an Alternative Source is Provided; Notice to Tenants.

3 (a) Except as provided in subsection (e) below, No construction may be performed
4 in a building containing any residential rental units, whether or not a building permit has been
5 issued prior to the effective date of this emergency ordinance, if that construction would result
6 in the suspension of water service or other utility service to any other resident in the building
7 unless: (i) in the event of a water shutoff exceeding two hours in a single day, the property
8 owner provides an alternative water source is provided to each impacted resident, including
9 but not limited to water bottles or gallons of water; (ii) in the event of an electricity shutoff
10 exceeding two hours in a single day, the property owner provides a generator or alternative
11 power source that allows internet use is provided to each impacted resident.

12 (b) The property owner shall give each tenant that will be impacted by water and/or
13 utility service interruption ~~caused by construction with one week's advance notice and the~~
14 name and contact information of a liaison who can provide information ~~regarding the~~
15 ~~disruption~~ and respond to tenant concerns, as well as advance notice to each impacted
16 resident as follows: Advance notice shall also be given to tenants where it is anticipated that
17 ~~construction activities will cause loud and constant noise at a level that is likely to disrupt daily~~
18 ~~activities.~~

19 (i) in the event of an anticipated water or electricity shutoff lasting more than
20 two consecutive hours or four non-consecutive hours in a single day, all impacted residents
21 must be provided with 72 hours advance written notice;

22 (ii) in the event of an anticipated water or electricity shutoff of more than two
23 consecutive hours or four non-consecutive hours on two or more consecutive days, or on
24 more than three days in a single week, all impacted residents must be provided with written
25

1 notice at least one week in advance of the first shutoff, and with weekly updates for prolonged
2 construction projects.

3 (c) If over the course of construction the need emerges to shut off water or power
4 for more than two hours, construction must pause and may only resume pursuant to the
5 notice and alternative accommodations provisions of subsections (a) and (b) of this
6 emergency ordinance; provided, however, that the Department of Building Inspection may
7 authorize the construction to continue if a pause would create an imminent safety hazard .

8 (d) In the event of any anticipated use of loud instruments for a continuous or long
9 period of time, the property owner shall install temporary insulation to mitigate the resulting
10 noise and disruption to impacted residential tenants.

11 (e) Property owners shall be exempt from the obligations set forth in this emergency
12 if:

13 (i) a property owner and all impacted residential tenants agree to terms
14 other than those set forth in subsections (a)-(c) above, and the property owner submits an
15 email to an address established by the Department of Building Inspection reflecting the terms
16 and duration of that agreement; or

17 (ii) all impacted residents reside in a building where 100% of the residential
18 units (A) have a maximum affordable purchase price or affordable rent set at 120% of the
19 unadjusted area median family income (AMI) determined by MOHCD on any annual basis and
20 derived from the HUD Metro Fair Market Rent Area (HMFA) that contains San Francisco; (B)
21 at a rent that shall not exceed 30% of the applicable household income limit for a rental unit,
22 or at a purchase price with an annual housing cost that shall not exceed 33% of the applicable
23 income limit for an owner-occupied unit, as each may be adjusted for household size and
24 bedroom count; and (C) for the life of the project or a minimum of 55 years, whichever is
25 longer, by a recorded regulatory agreement and consistent with any applicable federal, state

1 or local government regulatory requirements.

2
3 Section 4. Implementation by the Department of Building Inspection.

4 The Department of Building Inspection shall implement the requirements of this
5 emergency ordinance. Upon finding a first violation, the Department of Building Inspection
6 shall issue a warning to the property owner along with a copy of the requirements of this
7 emergency ordinance. After receiving a warning, the property owner shall be required to send
8 an e-mail to an address established by the Department of Building Inspection concurrent with
9 any notice provided to impacted residents pursuant to this emergency ordinance. Failure to do
10 so shall constitute a separate violation of this emergency ordinance. For any subsequent
11 violations, the Department of Building Inspection shall issue a Notice of Violation and/or any
12 other applicable citation pursuant to its authority under the Chapter 1A of the Building Code.

13
14 Section 5. Severability. If any section, subsection, sentence, clause, phrase, or word
15 of this ordinance, or any application thereof to any person or circumstance, is held to be
16 invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision
17 shall not affect the validity of the remaining portions or applications of the ordinance. The
18 Board of Supervisors hereby declares that it would have passed this ordinance and each and
19 every section, subsection, sentence, clause, phrase, and word not declared invalid or
20 unconstitutional without regard to whether any other portion of this ordinance or application
21 thereof would be subsequently declared invalid or unconstitutional.

22
23 Section 6. Effective Date; Retroactivity; Expiration.

24 (a) Consistent with Charter Section 2.107, this emergency ordinance shall become
25 effective immediately upon enactment. Enactment occurs when the Mayor signs the

1 ordinance, the Mayor returns the ordinance unsigned or does not sign the ordinance within
2 ten days of receiving it, or the Board of Supervisors overrides the Mayor’s veto of the
3 ordinance.

4 (b) The Board of Supervisors intends that this emergency ordinance become effective
5 on July 14, 2020, the date of introduction, and urges that the Department of Building
6 Inspection to exercise administrative discretion to implement its provisions prior to effective
7 date described in subsection (a).

8 (c) This emergency ordinance shall expire on the 61st day following enactment unless
9 reenacted as provided by Section 2.107.

10
11 Section 7. Supermajority Vote Required.

12 In accordance with Charter Section 2.107, passage of this emergency ordinance by the
13 Board of Supervisors requires an affirmative vote of two-thirds of the Board of Supervisors.

14
15 APPROVED AS TO FORM:
16 DENNIS J. HERRERA, City Attorney

17 By: /s/ Judith A. Boyajian

18 JUDITH A. BOYAJIAN
19 Deputy City Attorney

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City and County of San Francisco

Tails
Ordinance

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

File Number: 200763

Date Passed: August 18, 2020

Emergency ordinance to temporarily prohibit construction projects in buildings with any residential rental units that require the suspension of water or utility service to residential tenants without providing alternative sources of water and power, or reaching agreement with tenants, due to the COVID-19 pandemic.

August 10, 2020 Land Use and Transportation Committee - AMENDED, AN AMENDMENT OF THE WHOLE BEARING NEW TITLE

August 10, 2020 Land Use and Transportation Committee - CONTINUED AS AMENDED

August 17, 2020 Land Use and Transportation Committee - RECOMMENDED AS COMMITTEE REPORT

August 18, 2020 Board of Supervisors - FINALLY PASSED

Ayes: 11 - Fewer, Haney, Mandelman, Mar, Peskin, Preston, Ronen, Safai, Stefani, Walton and Yee

File No. 200763

I hereby certify that the foregoing Ordinance was FINALLY PASSED on 8/18/2020 by the Board of Supervisors of the City and County of San Francisco.

Angela Calvillo
Clerk of the Board

London N. Breed
Mayor

8.28.20

Date Approved