

FILE NO.

LEGISLATIVE DIGEST

[Neighborhood Sanitation and Housing Habitability Ordinance]

Ordinance amending Article 11 of the San Francisco Health Code to change the title from "Nuisance" to "Neighborhood Sanitation and Housing Habitability," adding relevant definitions to Section 580, amending the definition of nuisance in Section 581 to include asbestos hazards and violations of Sections 582, 583 and 295, adding Section 582 to set forth specific requirements to prevent vermin and insect disease vector harborage and infestation in dwellings, commercial establishments, and vacant lots in order to improve the health, safety and general welfare of occupants, adding Section 583 to prohibit smoking in common areas of multiple unit residential facilities, adding Section 584 to give the Department of Public Health the discretion to require owners and managers of multiple dwellings with more than three dwelling units and a history of noncompliance to complete Department of Public Health-approved training sessions; adding potential attorneys' fees recovery for those cases in which the City elects to recover attorneys' fees to Sections 596 and 609, clarifying and making consistent with state law the Director's authority in Section 596 to issue orders to vacate a premises upon discovery of a nuisance that endangers the immediate health and safety of the residents, adding a requirement that the Director give notice to relocated tenants under this section that they may be eligible for assistance pursuant to California Health and Safety Code Sections 17975 et seq., adding lien recovery for attorneys' fees for Section 599 and 609, adding civil penalties of \$500 per violation per day to Section 600, authorizing recovery of all costs and fees, including attorneys' fees, incurred in enforcement under Section 609 and raising the existing inspection fees to \$150 for the first hour and \$75 for each additional half-hour or part thereof, extending the notice and hearing provisions for lien collections under Sections 609.1 and 609.2 to include the additional costs and fees that may be recovered under the amended Section 609, creating fees in Section 609 for routine and complaint-based inspections that reveal violations; adding Section 295 to require that in all multi-story residential facilities, refuse be collected from the ground level or below ground level garbage collection rooms, designated garbage areas or from the sidewalk and that refuse from upper floors may not be transferred to those designated areas between the hours of 11 p.m. and 7 a.m., expanding the definition of lead hazards in Sections 1603 and 581(b)(10) to include hazards to adults as well as children.

Existing Law

Currently, Article 11 is titled "Nuisance." Asbestos hazards are not currently included in the definition of nuisance. Article 11 does not provide specific neighborhood sanitation and housing habitability requirements for maintaining buildings free of vermin and insect disease vectors.

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Smoking in the common areas of multiple unit residential facilities is not defined as a nuisance.

The Director does not have authority to require managers or owners of property or other responsible parties to attend health code enforcement training.

Section 596(b) authorizes the issuance of a Notice to Abate when the Director determines that a nuisance exists. Section 596(c) authorizes the Director to issue orders to vacate for nuisances as defined by Section 581(b)(9) of the Health Code, or at the discretion of the Director, to protect the health of occupants. Section 596(d) requires the Director to provide notice of potential relocation benefits under Chapter 72 of the San Francisco Administrative Code.

Neither Section 596 nor Section 599 authorizes collection of attorneys' fees for enforcement actions. Although Section 600 authorizes administrative and criminal penalties, it does not provide for civil penalties that can be collected through a civil action in court. Administrative penalties are \$1,000 for each violation and must be assessed, enforced, and collected in accordance with Section 39-1 of the Police Code.

Section 609 provides for a recovery of reinspection fees, but not other costs of enforcement or attorneys' fees. The current rate for reinspections is \$63 for the first hour and \$15 for each quarter hour thereafter. Sections 609.1 and 609.2 authorize notices and hearings when reinspection fees are not paid.

There is no limitation on the hours during which garbage may be transferred from the upper floors of multi-story residential facilities to ground level or below ground level garbage collection rooms, designated garbage areas or the sidewalk.

Lead hazards are defined in Sections 581(b)(10) as those that expose children to lead.

Amendments to Current Law

The proposed ordinance makes the following changes. First, the title of Article 11 would be changed from "Nuisance" to "Neighborhood Sanitation and Housing Habitability." Relevant definitions would be added to Section 580. Asbestos hazards, smoking in common areas of multiple unit residential facilities, and transferring or collecting garbage in violation of Section 295 would be added to the list of nuisances prohibited by Section 581. Section 582 would be added to set forth specific requirements for public and private responsible parties to maintain their properties free of vermin and other disease vectors. These requirements would apply to dwellings, commercial establishments, and vacant lots.

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Section 583 would be added to prohibit smoking in the common areas of multiple unit residential facilities and to require that anyone smoking in a room adjacent to a common area keep the door to the common area closed.

Section 584 would be added to provide that the Department shall design and offer a health code training course for responsible parties. At its discretion, the Department could require managers or owners of property or other responsible parties with any history of violations of the Article to attend this training or other DPH-approved training. The Department would be authorized to charge a fee for this training course.

In Section 596(b), the initial notice to responsible parties that there is a nuisance on the property would be called a Notice of Violation, rather than a Notice to Abate. The language of Section 596(c) would be changed to be consistent with state law. Section 596(d) would require the Director to provide notice of relocation benefits under Section 17975 et seq. of the Cal. Health and Safety Code, in addition to the current notice of such benefits for lead contamination under Chapter 72 of the San Francisco Administrative Code. Section 596(e) would require that Director's Notices reflect these changes. Section 596(f) would authorize recovery of all inspection fees and costs to cover the Department's costs incurred to verify the abatement of a nuisance. That Section would further provide that said violations shall not be deemed legally abated until the property owner makes full payment of the assessment of inspection fees and costs to the Department. Section 596(g) would require the Notice of Hearing to state whether the Director will seek recovery of attorneys' fees for the hearing following the Notice of Violation. Section 596(h) would provide that the Director may seek to recover attorneys' fees in any hearing conducted pursuant to that section. For those cases in which the Director makes that election, the prevailing party would be entitled to recover attorneys' fees, which would be limited by the amount of reasonable attorneys' fees incurred by the City in the action. Section 596(i)(5) would provide that the Director's Order issued after a hearing provide for the recovery of attorneys' fees for the prevailing party for those actions in which the Director has sought attorneys' fees. Section 599 would authorize a lien for recovery of any attorneys' fees awarded to the City in the Director's Order.

Section 600 would be changed to authorize civil penalties in the amount of \$500 per violation for each day such violation is committed or permitted to continue. This civil penalty would be assessed and recovered in a civil action brought in the name of the people of the City and County of San Francisco by the City Attorney in any court of competent jurisdiction. Any penalty assessed and recovered in an action brought pursuant to this paragraph would be paid to the City Treasurer and credited to the Department Environmental Health Section Special Revenue Account for use in enforcement and prevention of violations of this Article.

Section 609 would increase fees for inspections to \$150 for the first hour or any part thereof, and \$75 for each additional half-hour or any part thereof to compensate the Department for its costs in performing the inspection, documenting the inspection, issuing applicable notices, and conducting reinspection necessary to secure correction of the violation. The Department would be able to recover for initial inspections that result in a violation of any provision of the

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Code or of any State law, rather than just for reinspections. In addition, Section 609 would be changed to provide that the prevailing party in any action, administrative proceeding, or special proceeding shall recover attorneys' fees for those cases in which the Director elects, at the initiation of the action, to seek recovery of attorneys' fees. However, any award of attorneys' fees shall not exceed the amount of reasonable attorneys' fees incurred by the City in the action or proceeding.

Sections 609.1 and 609.2 would be changed so that the notices and hearings described in those sections would apply to all fees and costs assessed pursuant to Section 609.

Section 295 would be added to require that in multi-story residential facilities, all refuse must be collected from ground level or below ground level garbage collection rooms, designated garbage areas, or from the sidewalk. Though refuse may be temporarily stored in approved containers in dedicated garbage collection rooms on upper floors, refuse must be transferred to ground level areas or outdoors before collection. Finally, refuse may not be transferred from upper floor garbage collection areas between the hours of 11 p.m. and 7 a.m.

Sections 1603 and 581(b)(10) would be amended to remove the limitation of lead hazards to those conditions that expose only children to lead. The definition would now apply to lead hazards that expose people to lead.

Background Information

The Article 11 title change reflects the Department's comprehensive approach towards improving the health, safety and general welfare of occupants as well as protecting neighborhood environments. Adding asbestos hazards to the nuisance definition in Section 581 would include those situations in which there exists seriously deteriorated or damaged asbestos that may expose building occupants, which Article 21 does not currently cover unless there is construction or demolition work in progress. Defining smoking in common areas of multiple unit residential facilities as a nuisance would give the Department a greater ability to enforce existing prohibitions against smoking in locations covered by the California Labor Code and Article 19F of the San Francisco Health Code.

Section 582 would provide specific requirements to ensure that responsible parties maintain their properties free of vermin, insect disease vectors, and noxious arthropods. These requirements, which provide for structural barriers and attention to waste management, would prevent rodent and vermin entry into buildings.

Section 583 would enhance the Department's ability to protect nonsmokers from the damage inflicted upon them when they involuntarily inhale secondhand smoke.

The change in Section 596 from "Notice to Abate" to "Notice of Violation" would make DPH's notice consistent the initial notice issued by the Department of Building Inspection and decrease confusion when the City Attorney's Office brings enforcement actions in court.

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Section 596 would permit the Department to recover attorneys' fees for those actions in which the Director has elected to recover attorneys' fees. The section provides for attorneys' fees recovery for the prevailing party, not just the City, as required by California Government Code Section 38773.5. The amount of attorneys' fees that any prevailing party can recover is limited by the reasonable attorneys' fees incurred by the City, as provided by Section 38773.5.

The penalties in Section 600(b) would provide a powerful enforcement tool for the Department to obtain compliance with this Article.

Section 609 would enable the Department to recover additional costs and fees for enforcement that are not currently enumerated in Article 11.

The changes to Section 609.1 and 609.2 reflect the changes to Section 609, so that the notice and hearing provisions for collection of costs include administrative costs, reinspection fees, and attorneys' fees.

The refuse collection changes in Section 295 would address tenant concerns regarding noise, hallway damage, and safety.

Expanding the definition of lead hazards to adults as well as children would be consistent with state law and protect a greater number of people from such hazards.