AMENDED IN COMMITTEE 11/30/16

FILE NO. 161110

ORDINANCE NO. 250-16

[Police Code - Choice of Communications Services Providers in Multiple Occupancy Buildings] Ordinance amending the Police Code to prohibit owners of multiple occupancy buildings from interfering with the choice of communications services providers by occupants, establish requirements for communications services providers to obtain access to multiple occupancy buildings, and establish remedies for violation of the access requirement. 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. Findings (a) San Francisco has long been recognized as a technology leader. San Franciscans expect that the communications services they receive at their residences and offices meet modern standards. San Franciscans also expect to be able to choose among different providers. The ability to choose among providers benefits all San Franciscans by incentivizing providers to offer the best services at the lowest prices. (b) There are a handful of different entities offering communications services in San Francisco, though several of these provide service only in limited areas. Many San Franciscans can choose between at least two service providers, but some customers have only one option for service. This is particularly true for occupants of residential and

commercial multiple occupancy buildings. It is common in such buildings for property owners to allow only one provider to install the facilities and equipment necessary to provide services to occupants.

(c) While state and federal laws prohibit providers from entering into exclusive <u>access</u> agreements with property owners, nothing in state or federal law directly regulates property owners. The City and County of San Francisco can use its police power to <u>facilitate</u> <u>opportunities for access to multiple occupancy buildings by communications services</u> <u>providers to *ensure that* <u>enable</u> occupants *of multiple occupancy unit buildings* <u>to ean</u> obtain communications services from the providers of their choice, while respecting the rights of <u>property owners</u>.</u>

Section 2. The Police Code is hereby amended by adding Article 52, consisting of Sections 5200 to <u>5216</u> <u>5218</u>, to read as follows:

ARTICLE 52:

OCCUPANT'S RIGHT TO CHOOSE A COMMUNICATIONS SERVICES PROVIDER SEC. 5200. DEFINITIONS.

For purposes of this Article 52:

"City" means the City and County of San Francisco.

"Communications services" means: (a) video service as that term is defined in California

Public Utilities Code § 5830(s); (b) telecommunications services certificated by the California Public

Utilities Commission under California Public Utilities Code § 1001; or (c) services provided by a

telephone corporation as that term is defined in California Public Utilities Code § 234. Nothing in

this definition is intended to limit the types of services that a communications services provider

accessing a multiple occupancy building pursuant to this Article 52 may provide to occupants.

1	"Communications services provider" means a person that: (a) has obtained a franchise to
2	provide video service from the California Public Utilities Commission under California Public Utilities
3	Code § 5840; (b) has obtained a certificate of public convenience and necessity from the California
4	Public Utilities Commission under California Public Utilities Code § 1001 to provide
5	telecommunications services; or (c) is a telephone corporation as that term is defined in California
6	Public Utilities Code § 234. In addition, a communications services provider must have obtained a
7	Utility Conditions Permit from the City under Administrative Code Section 11.9.
8	"Existing wiring" means both home run wiring and cable home wiring, as those terms are
9	defined by the Federal Communications Commission in 47 C.F.R. § 76.800(d) and 47 C.F.R. § 76.5(ll)
10	respectively, except that those terms as used herein shall apply only to the home run wiring or cable
11	home wiring owned or controlled by a property owner.
12	"Just and reasonable compensation" means the "fair market value" of the impact on the
13	multiple occupancy building as that term is defined in California Code of Civil Procedure § 1263.320.
14	"Multiple occupancy building" means: (a) an apartment building, apartment complex, or any
15	other group of residential units located upon a single premises or lot, provided that such multiple
16	dwelling unit contains at least four separate units; and (b) a multi-tenant building used for business
17	purposes that has separate units occupied by at least four different persons. Hotels, guesthouses, and
18	motels, consisting primarily of guest rooms and/or transient accommodations, are not multiple
19	occupancy buildings. Multiple occupancy buildings include properties that are rented to tenants,
20	owned and occupied by individual owners, or occupied by shareholders/tenants of a cooperative.
21	"Occupant" means a person occupying a unit in a multiple occupancy building.
22	"Person" means any natural person or an entity including but not limited to a corporation or
23	partnership.
24	"Property owner" means a person that owns a multiple occupancy building or controls or
25	manages a multiple occupancy building on behalf of other persons.

1.0001.001

Supervisor Farrell BOARD OF SUPERVISORS

<u>"Request for service" means an expression of interest from an occupant received by a</u> <u>communications service provider either by mail, telephone or electronic mail. A contact between an</u> <u>occupant and a communications services provider through a sign-up list contained on the provider's</u> <u>website will be deemed a request for service once the communications services provider confirms the</u> <u>request either by telephone or electronic mail.</u>

SEC. 5201. NO INTERFERENCE BY PROPERTY OWNER.

(a) No property owner shall interfere with the right of an occupant to obtain communications services from the communications services provider of the occupant's choice.

(b) <u>A property owner interferes with the occupant's choice of communications services</u> provider by, among other things, refusing to allow a communications services provider to install the facilities and equipment necessary to provide communications services or use any existing wiring to provide communications services as required by this Article 52.

SEC. 5202. NO DISCRIMINATION BY PROPERTY OWNER AGAINST OCCUPANT. No property owner shall discriminate in any manner against an occupant on account of the occupant's requesting or obtaining communications services from the communications services provider of the occupant's choice.

SEC. 5203. APPLICABILITY.

All property owners as defined in Section 5200 are covered by this Article 52. A property owner that, as of the effective date of this Article, has an agreement with a communication services provider that purports to grant the communications services provider exclusive access to the property a multiple occupancy building and/or the existing wiring to provide services is not exempt from the requirements of this Article.

SEC. 5204. REQUEST TO INSPECT A MULTIPLE OCCUPANCY BUILDING.

(a) Prior to issuing a notice of intent to provide service under Section 5205 of this Article 52, a communications services provider shall inspect a multiple occupancy building to determine the feasibility of providing services to one or more occupants.

(b) <u>A communications services provider shall request in writing that the property owner</u> allow it to inspect the property for the purpose of providing service. Such request shall be sent to the property owner by registered mail at least 14 days before the proposed date for the inspection. The request may be sent by electronic mail instead, but the 14-day period shall not commence until the communications services provider is able to confirm that the property owner actually received the electronic mail communication.

(c) A request for an inspection shall include, but need not be limited to, the following:

(1) A statement that the communications services provider: (A) is authorized to provide communications services in the City; (B) has received a request for service from one or more occupants; (C) when inspecting the property, will conform to such reasonable conditions as the property owner deems necessary to protect the safety, functioning, and appearance of the property and the convenience and well-being of the occupants; and (D) will indemnify, defend, and hold harmless the property owner for any damage caused by the inspection.

(2) A description of: (A) the communications services to be offered to occupants; and (B) the facilities and equipment the communications services provider anticipates installing to be installed on the property, (if known); (C) the square footage generally required for the provider's facilities and equipment; and (D) the estimated electrical demand of the provider's facilities and equipment.

(3) The date and time the communications services provider proposes to inspect the property.

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

(4) A statement that the property owner has until three days before the proposed inspection date to notify the communications services provider in writing either that:

(A) The property owner will not allow the communications services provider to provide services on the property. In this case, the property owner shall set forth the reasons for its refusal and whether any of those reasons are permitted by Section 5206 of this Article 52; or

(B) The property owner will allow the communications services provider to inspect the property. In this case, the property owner shall identify any reasonable conditions that the communications services provider must follow during the inspection in order to protect the safety, functioning, and appearance of the property and the convenience and well-being of the occupants.

(5) A reference to and a copy of this Article 52.

SEC. 5205. NOTICE OF INTENT TO PROVIDE SERVICE.

(a) A communications services provider that intends to provide communications services to one or more occupants shall send a notice of intent to the property owner at least 14 30 days before the proposed installation date. The notice of intent shall be sent by registered mail or electronic mail. If the notice of intent is sent by electronic mail, the 1430-day period shall not commence until the communications service provider is able to confirm that the property owner actually received the electronic mail communication.

(b) A notice of intent to provide communications services shall include, but need not be limited to, the following information:

(1) A statement that the communications services provider: (A) is authorized to provide communications services in the City; (B) has received a request for service from one or more occupants, including the unit number of each such occupant; (C) when installing, operating, maintaining or removing its facilities and equipment from the property, will conform to such reasonable conditions as the property owner deems necessary to protect the safety, functioning, and

Supervisor Farrell BOARD OF SUPERVISORS

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

appearance of the property and the convenience and well-being of the occupants; (D) will pay the property owner just and reasonable compensation for its use of the property, and the proposed amount of such just and reasonable compensation to be paid as required by Article 52 of the Police Code; and (E) will indemnify, defend, and hold harmless the property owner for any damage caused by the installation, operation, maintenance, or removal of its facilities from the property.

(2) (A) A description of: (A) the communications services to be offered to occupants; and (B) the facilities and equipment to be installed on the property; and (B) a full set of the communications services provider's detailed plans and specifications for any work to be performed and facilities and equipment to be installed in or on the property, including any required utility connections and the electrical demand of any facilities and equipment to be installed.

(3) The dates and times the communications services provider proposes to start and complete the installation.

(4) A statement that the property owner has until five days before the proposed installation start date to notify the communications services provider in writing either that:

(A) The property owner will not allow the communications services provider to provide services on the property. In this case, the property owner shall set forth the reasons for its refusal and whether any of those reasons are permitted by Section 5206 of this Article <u>52</u>; or

(B) The property owner will allow the communications services provider to provide services on the property, but disagrees with the amount of the just and reasonable compensation the communications services provider has proposed. In this case, the property owner shall state the amount of just and reasonable compensation the property owner will require; and, in either the case of (A) or (B), the property ownersowner shall state:

1

(C) Such reasonable conditions the communications services provider must follow during the installation to protect the safety, functioning, and appearance of the property and the convenience and well-being of the occupants.

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

(5) A reference to and a copy of this Article 52.

SEC. 5206. PERMITTED REFUSAL OF ACCESS.

(a) Nothing in this Article 52 shall be construed to require a property owner to allow a communications services provider to access its property to inspect the property where the communications services provider has failed or refused to agree to the property owner's request that the provider comply with any conditions on accessing the property contained in a notice pursuant to Section 5207 of this Article.

(b) Nothing in this Article 52 shall be construed to require a property owner to allow a communications services provider to access its property to install the facilities and equipment that are necessary to offer services to occupants where:

(1) The communications services provider is not authorized to provide communications services in the City;

(2) The communications services provider cannot verify that one or more occupants of the multiple occupancy building have made a request for services;

(3) The property owner can show that physical limitations at the property prohibit the communications services provider from installing the installation of facilities and equipment in existing space that are necessary to provide communications services and/or from using existing wiring to provide such by the communications <u>services</u> provider;

(4) The communications services provider has not agreed to the property owner's request that the provider comply with any conditions on accessing the property contained in a notice from the property owner issued pursuant to Section 5207 of this Article 52; or

(5) The communications services provider's proposed installation of facilities and equipment in or on the property would: (A) have a significant, adverse effect on any historically or architecturally significant elements of the property; (B) disturb any existing asbestos or lead-paint in or on the property; (C) have a significant, adverse effect on the continued ability of existing communications services providers to provide services on the property; (D) cause undue damage to the property; or (E) impair the use of the property for the continued provision of any existing essential services; or

(6) <u>The property owner and communications services provider have not reached an</u> agreement concerning any just and reasonable compensation to the property owner for allowing the communications services provider to install, operate, and maintain facilities and equipment on its property as required by Section 5208 of this Article <u>52</u>.

SEC. 5207. PERMITTED LIMITATIONS ON ACCESS.

(a) A property owner that grants a communications services provider access to its property to either inspect the property or install facilities and equipment on the property to be used to offer communications services to occupants may require the communications services provider; when inspecting, installing, operating, maintaining, or removing its facilities and equipment from the property, to:-conform to such reasonable conditions as the property owner deems necessary to protect the safety, functioning, and appearance of the property and the convenience and well-being of the occupants during the inspection.

(b) A property owner that grants a communications services provider access to its property to install facilities and equipment on the property to be used to offer communications services to occupants may require the communications services provider, when installing, operating, maintaining, or removing its facilities and equipment from the property to:

Conform to such reasonable conditions as the property owner deems (1)necessary to protect the safety, functioning, and appearance of the property and the convenience and well-being of the occupants: (2) Provide a certificate of insurance evidencing coverages generally required by the property owner for contractors performing comparable work at the property; Demonstrate that any contractors installing facilities and equipment on (3)the property are licensed; (4)Obtain any permits that might be required to install facilities and equipment on the property: (5) Accept responsibility for the cost: (A) to install any electrical facilities needed to serve the facilities and equipment installed by the provider; and (B) of any electricity to be used by those facilities and equipment; Allow the property owner to inspect the communication services (6) provider's installation and construction of any facilities and equipment for compliance with the San Francisco Building Code and generally acceptable construction standards; and Remove its facilities and equipment and restore any area of the property (7)occupied by the communications services provider to its prior condition when: (A) those facilities and equipment are no longer being used to provide communications services to any occupant; or (B) any access agreement between the property owner and the communication services provider has expired or been terminated. (b)(c) A property owner that has received an inspection request under Section 5204(a) of this Article 52 or an installation notice under Section 5205(b) of this Article shall notify the communications services provider in writing at least five days before the inspection or installation of any conditions authorized under subsection subsections (a) or (b) that the communications services

Supervisor Farrell BOARD OF SUPERVISORS

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

1

2

3

provider must comply with while inspecting the property or installing facilities or equipment on the property.

SEC. 5208. JUST AND REASONABLE COMPENSATION.

(a) <u>A property owner is entitled to just and reasonable compensation from a</u> <u>communications service services provider that obtains access to a multiple occupancy building</u> <u>from a property owner pursuant to this Article 52</u> for installing, operating, and maintaining on its property the facilities and equipment necessary to provide communications services to <u>occupants.</u>

(b) In accordance with Section 5205(b)(4) of this Article 52, a property owner shall notify a communications services provider in writing at least five days before the proposed installation date if the property owner disagrees with the amount of the just and reasonable compensation that the communications services provider has proposed to pay. The property owner shall include in such notice the amount of just and reasonable compensation the property owner will require the communications services provider to pay.

SEC. 5209. NOTICE OF VIOLATION.

(a) A communications services provider or occupant that believes that a property owner has failed to comply with the requirements of this Article 52 shall notify the property owner in writing that: (1) the property owner is in violation of this Article; and (2) unless the property owner agrees to come into compliance with this Article within 10 days the communications services provider or occupant may take action against the property owner pursuant to Section 5211 of this Article.

(b) The notice required by subsection (a) shall: (1) describe the manner in which the property owner is in violation of this Article 52; and (2) identify any actions the property owner is required to take to come into compliance with this Article.

(c) No communications services provider or occupant may enforce the requirements of this Article 52, as permitted under Section 5211, unless and until the communications services provider or occupant has complied with subsection (a).

SEC. 5210. ENFORCEMENT BY THE CITY ATTORNEY.

The City Attorney may institute a civil proceeding in the San Francisco Superior Court on behalf of the City, for injunctive and monetary relief, including civil penalties as specified more fully in Section 5212 5213 of this Article 52, to enforce this Article against a property owner that has violated this Article.

SEC. 5211. ENFORCEMENT BY COMMUNICATIONS SERVICES PROVIDERS AND OCCUPANTS.

(a) Except as stated in subsection (b), any <u>A</u> communications services provider or occupant of a multiple occupancy building where the property owner has refused to allow the communications services provider to provide service may institute a civil proceeding to enforce this <u>Article 52 in San Francisco Superior Court against such property owner for injunctive and monetary</u> <u>relief.</u>

(b) Prior to filing a civil proceeding in accordance with subsection (a), the communications services provider or occupant shall: (1) comply with the notice requirements contained in Section 5209 of this Article 52, and (2) notify the City Attorney in writing of its intent to proceed against a property owner.

<u>(c)</u> Subject to subsection (d), a No communications service services provider or occupant that has complied with subsection (b) may commence such a proceeding until at least 30 days after this notice has been was sent to the City Attorney.

(c)(d) If the City Attorney institutes a civil proceeding against the property owner before or during the 30-day notice period, then no communications services provider or occupant may file a proceeding under subsection (a). If the City Attorney institutes a civil proceeding after the 30-day notice period has elapsed, any communications services provider or occupant that provides the notice required under subsection (b) may file a separate civil proceeding.

(d)(e) The City Attorney shall notify any person submitting a notice under subsection (b) that the City Attorney has instituted a civil proceeding or decided not to institute a civil proceeding.

SEC. 52115212. ATTORNEYS' FEES AND COSTS.

(a) A court may award reasonable attorneys' fees and costs to the City if it obtains injunctive relief under Section 5209 5210 of this Article 52 or to any person who obtains injunctive and monetary relief under Section 5210 5211 of this Article.

(b) If a court finds that any action brought under this Article 52 is frivolous, the court may award the property owner reasonable attorneys' fees and costs.

(c) If a proceeding brought against a property owner under this Article 52 concerns a multiple occupancy building that contains fewer than 25,000 square feet of space available for occupants to rent or own, the attorneys' fees and costs recoverable against the property owner pursuant to subsection (a), or recoverable against a person commencing the action pursuant to subsection (b), shall be limited to \$5,000.

<u>SEC. 52125213</u>. CIVIL PENALTIES.

(a) Any property owner that violates this Article 52 may be liable for a civil penalty not to exceed \$500 for each day such violation is committed or continues. Such penalty shall be assessed and recovered in a civil action brought in the name of the people of the City by the City Attorney.

(b) In assessing the amount of a civil penalty, a court may consider any of the relevant circumstances, including, but not limited to, the following:

(1) The number of occupants affected by the violation;

(2) The number of communications services providers affected by the violation;

(3) Whether the property owner has violated this Article 52 at other properties;

(4) The amount of revenues the property owner receives from any existing

communications services providers serving the property;

(5) Whether the property owner has a legitimate reason for refusing access to its property by the communications services provider; and

(6) The net assets and liabilities of the property owner, whether corporate or <u>individual.</u>

(c) Any civil penalty under subsection (a) will start to accrue following the completion of the notice required by Section 5209 of this Article 52.

SEC. 52135214. STATUTE OF LIMITATIONS.

(a) Any_After satisfying the preconditions for filing suit under Section 5210 of this Article 52, any person so authorized under Section 5210 may institute a *court proceeding* by a communications services provider or occupant *to enforce this Article* 52 *against a property owner*. Such proceeding *must be brought within 180 days* of the communications services provider or occupant completing the notice requirements contained in Sections 5209 and 5211 of this Article. of the earliest of the following occurrences:

(1) The receipt of notice from the property owner refusing to allow a
communications services provider to enter the premises for an inspection;
(2) The date the property owner was required by Section 5204(c)(4) of this
Article to object to a request for an inspection if the property owner does not respond to the
request;
(3) The receipt of notice from the property owner refusing to allow the
communications services provider to enter the premises to provide communications services
to occupants or use existing wiring to provide service to occupants; or
(4) The date the property owner was required by Section 5205(b)(4) of this
Article to object to a notice of intent to provide communications services if the property owner
does not respond to the notice.
(b) The City Attorney may institute a court proceeding to enforce this Article 52 within 180
days of the City Attorney receiving written notice that a property owner has violated this Article.
<u>SEC. 52145215. EXTENSIONS OF TIME.</u>
Any of the deadlines set forth in Sections 5204, 5205, 5207, or 5209 of this Article 52
may be extended by agreement between a communications services provider or occupant
and property owner, as applicable.
SEC. 5216. UNDERTAKING FOR GENERAL WELFARE.
In enacting or implementing this Article 52, 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.

Supervisor Farrell BOARD OF SUPERVISORS

SEC. 52155217. SEVERABILITY.

If any section, subsection, sentence, clause, phrase, or word of this Article 52, or any application thereof to any person or circumstance, is held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or applications of the ordinance. The Board of Supervisors hereby declares that it would have passed this Article, and each and every section, subsection, sentence, clause, phrase, and word not declared invalid or unconstitutional, without regard to whether any other portion of this Article or application thereof would be subsequently declared invalid or unconstitutional.

SEC. 52165218. NO CONFLICT WITH FEDERAL OR STATE LAW.

Nothing in this Article 52 shall be interpreted or applied so as to create any requirement, power, or duty in conflict with any federal or state law.

Section 3. 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.

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

By: LIAM K. SANDERS

Deputy City Attorney

n:\legana\as2016\1700051\01153556.docx



City and County of San Francisco Tails

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

Ordinance

File Number: 161110

Date Passed: December 13, 2016

Ordinance amending the Police Code to prohibit owners of multiple occupancy buildings from interfering with the choice of communications services providers by occupants, establish requirements for communications services providers to obtain access to multiple occupancy buildings, and establish remedies for violation of the access requirement.

November 30, 2016 Budget and Finance Committee - AMENDED, AN AMENDMENT OF THE WHOLE BEARING SAME TITLE

November 30, 2016 Budget and Finance Committee - RECOMMENDED AS AMENDED

December 06, 2016 Board of Supervisors - NOT CONTINUED

Ayes: 3 - Campos, Kim and Peskin

Noes: 7 - Avalos, Breed, Cohen, Farrell, Mar, Tang and Yee

December 06, 2016 Board of Supervisors - PASSED ON FIRST READING

Ayes: 9 - Avalos, Breed, Campos, Cohen, Farrell, Kim, Mar, Tang and Yee Noes: 1 - Peskin

December 13, 2016 Board of Supervisors - FINALLY PASSED

Ayes: 10 - Avalos, Breed, Campos, Cohen, Farrell, Kim, Mar, Peskin, Tang and Yee Vacant: 1 - District 8

City and County of San Francisco

File No. 161110

I hereby certify that the foregoing Ordinance was FINALLY PASSED on 12/13/2016 by the Board of Supervisors of the City and County of San Francisco.

Nera

Angela Calvillo Clerk of the Board

will Mayor

12/22/16

Date Approved