



## REAL ESTATE | San Francisco Passes “Healthy Buildings Ordinance”

On July 7, 2020, the San Francisco Board of Supervisors passed an emergency ordinance referred to as the “Healthy Buildings Ordinance” (the “Ordinance”) requiring all large non-city-owned commercial office buildings and tourist hotels to comply with heightened cleaning and employee training regulations. Mayor London Breed signed the Ordinance into law on July 17, 2020. The Ordinance comes after a string of new city measures seeking to slow the spread of COVID-19.

Although the Ordinance is temporary, for a 60-day period, the Board of Supervisors has the option to extend it through a simple majority vote. Several hotel trade groups immediately filed a lawsuit in state court seeking an injunction to block the Ordinance. Owners of, and investors in, hotel and large commercial office buildings in San Francisco should carefully review their property management practices, investment strategy, rental rate and leasing strategy in light of the new requirements imposed by the Ordinance.

***Covered Buildings and Persons:*** The Ordinance applies to any “tourist hotel” or “large commercial office building” located in the city. A tourist hotel is defined as any building or set of buildings containing six or more guest rooms or suites that are intended for commercial tourism by providing accommodation to transient guests on a nightly basis or longer. A large commercial office building includes any building or set of buildings with more than 50,000 square feet of office space. The Ordinance, however, excludes buildings owned by the city, state or federal government.

The obligations are imposed on the “operators,” which include any person or entity that employs or hires employees directly or indirectly at a covered building. And the term “employees” is defined broadly to include:

- Full-time and part-time employees

- Casual or on-call employees and
- Independent contractors and their employees who perform work at a covered building, whether employed or hired directly by the operator or by another entity

**Summary of the Training and Cleaning Requirements:** Among other things, the Ordinance will impose the following requirements:

- The employees must be provided with “comprehensive and ongoing training” as to the new standards and equipment, including proper use of cleaning and disinfectant products. Trainings must also cover how the virus is spread and prevented and its symptoms. All employee training must be conducted during paid time.
- Employers must provide Personal Protective Equipment (PPE) at no cost to employees.
- Operators must also provide testing for COVID-19, free of charge, to an employee if the Department of Public Health recommends it. This testing is considered paid time off.
- The Ordinance also includes protocol in the event there is reason to believe that a guest room was occupied by someone infected with COVID-19.
- Operators must identify “high-contact areas,” which include items and fixtures with which employees or guests are expected to have regular physical contact—at a minimum, the high-contact areas listed in the Ordinance. Operators must mandate multiple daily cleanings of these areas or any open space accessible to the public.

**Prohibition Against Retaliation:** The Ordinance prohibits any type of retaliation against an employee (including failure to promote, reduction of compensation or wrongful discharge) for either reporting/disclosing conditions, or refusing to perform work, that “the employee believes poses a personal health risk or a health risk to others because of a failure to adhere to the requirements of” the Ordinance. The Ordinance does not provide any objective factors for considering what constitutes a health risk nor does it state if the belief must be reasonable.

#### **Remedies:**

Violations of any of the measures set out in the Ordinance will be considered a nuisance under the San Francisco Health Code. The San Francisco Department of Public Health has the authority to enforce the new standards, including the authority to shut down an operation that violates the Ordinance.

An employee may bring a civil action against the employer. Potential remedies include actual damages (including lost pay and benefits) or, if greater, total statutory damages, at \$1,000 per violation; exemplary damages; and attorney’s fees and costs.

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