

[Residential Water Conservation Ordinance Amendments.]

Ordinance amending Chapters 12A of the San Francisco Housing Code to achieve water conservation by improving the water efficiency of residential buildings by amending the standards for water closets, showerheads, and faucet aerators and requiring leak repair in all residential buildings, except for tourist hotels and motels, required upon the occurrence of specific events, amending Chapter 12A to allow an exemption to preserve historical integrity, amending Chapter 12 and 12 A to allow paper and/or electronic forms for compliance and providing that compliance records may be available via the internet, amending Section 1211 to clarify that domestic partners are entitled to the same exemptions from the definition of transfers as spouses, amending the Section 1216 fee provision for energy conservation compliance to include water conservation compliance, and providing that this ordinance shall be effective no earlier than July 1, 2009.

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

Section 1. The San Francisco Housing Code is hereby amended by amending Section 12A, to read as follows:

SEC. 12A01. TITLE.

This chapter shall be known as the Residential Water Conservation Ordinance.

SEC. 12A02. FINDINGS.

The Board of Supervisors finds that:

The application of proven water conservation measures will allow San Francisco's economy and population to prosper without placing additional demands on this valuable resource. Retrofitting water using devices such as water efficient_showerheads, faucet

aerators, and water closets is one of the most cost effective ways of reducing the City's potable water use.

As a signatory to the California Urban Water Conservation Council Memorandum of Understanding Regarding Urban Water Conservation, the San Francisco Public Utilities Commission has agreed to actively promote the replacement of high water volume water closets and showerheads, among other water using devices, with more efficient models in San Francisco. The purpose of this section is to reduce demand for potable water within the City and County of San Francisco by establishing water efficiency standards for plumbing fixtures. Water saved from these programs will help to ensure a reliable water supply for customers both within and outside of San Francisco. This ordinance is part of a continuing program to achieve the City's goal of reducing water consumption in all residential, commercial, industrial and municipal buildings in the City and County of San Francisco.

SEC. 12A03. INTENT.

It is the intent of this ordinance to conserve existing water supplies by reducing the overall demand for water in residential buildings by requiring the installation of water conservation devices in all residential buildings, except for tourist hotels and motels, upon the occurrence of specific events such as when the building undergoes major improvements, when there is a meter conversion, when there is a condominium conversion, and when there is a transfer of title.

SEC. 12A04. DEFINITIONS.

In addition to the definitions contained in Chapters 4 and 12 of this Code, for the purposes of this chapter the following words and phrases shall have the meanings ascribed to them by this Section:

(a) Qualified Inspector. A qualified inspector is an inspector defined in Chapter 13A, Section 1314A, of the San Francisco Building Code

(b) Water Conservation Inspection. Inspection of a residential building for compliance with the requirements of this ordinance.

(c) Residential Building. A residential building is as defined in 1204(i) of this Code.

SEC. 12A05. WATER CONSERVATION INSPECTIONS.

A water conservation inspection which satisfies the requirements of this chapter shall be performed concurrently with the energy inspection required by Chapter 12 of this Code and must be performed by a qualified inspector.

SEC. 12A06. PROOF OF COMPLIANCE WITH MINIMUM WATER CONSERVATION MEASURES.

(a) Inspection Form. The Department of Building Inspection shall provide a standardized form, that may be paper and/or electronic, suitable for conducting a valid water conservation inspection and certifying compliance with the requirements of this ordinance, which forms may be paper and/or electronic. Said form may be combined with the energy inspection form required by Section 1207 of this Code. The inspection form shall be completed and signed by any qualified inspector, furnished to the building owner or the owner's authorized representative, and submitted to the Department of Building Inspection within 15 days from the date of completing the inspection.

(b) Certificate of Compliance. When all of the water conservation requirements have been met, a certificate of compliance shall be submitted to the Department of Building Inspection and recorded. Proof of compliance with the requirements of this chapter shall be accomplished by submitting the completed certificate of compliance to the Department of

Building Inspection, which shall maintain either a paper or electronic copy. A copy of the completed certificate of compliance shall be recorded by the building owner, or the building owner's authorized representative, with the San Francisco County Recorder's Office. In the event of a title transfer, it shall be recorded prior to or concurrent with the transfer of title.

(c) Public Record. Water conservation inspection results and certificates of compliance shall be public information, shall be available for inspection by any interested person during regular business hours at the Department of Building Inspection, and may be made available electronically via the internet.

(d) Fees. Reasonable fees may be required to pay for, but not exceed, the cost of implementing this chapter and shall be established pursuant to Section 1216.

SEC. 12A07. POSTPONEMENT OF REQUIREMENTS.

Application of inspection and water conservation requirements for any residential building shall be postponed for one year from the date of application for a demolition permit for said building. If the residential building is demolished and Certificate of Completion issued by the Department of Building Inspection before the end of the one-year postponement, the requirements of this chapter shall not apply. If the residential building is not demolished after the expiration of one year, the provisions of this chapter shall apply, even though the demolition permit is still in effect or a new demolition permit has been issued.

SEC. 12A08. WATER CONSERVATION REQUIREMENTS UPON MAJOR IMPROVEMENT, METERING CONVERSION, RESIDENTIAL CONDOMINIUM CONVERSION, OR COMPLETE INSPECTION.

A valid water conservation inspection pursuant to Section 12A05 and subsequent compliance with required water conservation measures pursuant to Section 12A10 shall be

required of a residential building concurrently with the energy conservation inspection and compliance requirements set forth in Section 1210 and 1211 of this Code.

SEC. 12A09. WATER CONSERVATION INSPECTION REQUIREMENTS AT TRANSFER OF TITLE.

Prior to any transfer of title as a result of sale or exchange of any residential building subject to the provisions of this chapter, the seller or the seller's authorized representative shall obtain a valid water conservation inspection pursuant to Section 12A05 and shall install all applicable water conservation measures required by Section 12A10 as enumerated in the water conservation inspection form. Compliance with the Section shall be concurrent with the energy conservation inspection required by Section 1211 of this Code and shall be in accordance with the provisions set forth in said Section, including but not limited to the option to transfer responsibility for compliance with applicable water conservation measures required by Section 12A10 to the buyer through an Energy Conservation Escrow Account pursuant to Section 1211(c).

SEC. 12A10. REQUIRED WATER CONSERVATION MEASURES.

The following water conservation measures are required for residential buildings as defined in Section 1204(i) of this Code, notwithstanding Section 1209 of this Code:

(a) Replace all showerheads having a maximum flow rate exceeding 2.5 gallons per minute, with showerheads not exceeding the maximum flow rate established by the California Energy Commission, as set forth in the Appliance Efficiency Regulations, California Code of Regulations, Title 20, Sections 1601 to 1608, as it may be amended. Showers shall have no more than one showerhead per valve. For purposes of this subsection, the term

"showerheads" includes rain heads, rain tiles, or any other fitting that transmits water for purposes of showering.

(b) Replace all faucets and faucet aerators having a maximum flow rate exceeding 2.2 gallons per minute at a water pressure of 60 pounds per square inch, with plumbing fittings not exceeding the maximum flow rate established by the California Energy Commission, as set forth in the Appliance Efficiency Regulations, California Code of Regulations, Title 20, Sections 1601 to 1608, as it may be amended.

(c) Replace all water closets that have a rated water consumption exceeding 1.6 gallons per flush with fixtures not exceeding the maximum rated water consumption established in the San Francisco Plumbing Code, Chapter 4, Section 402.2, as it may be amended. A seller of a residential building may request an exemption from replacing a water closet in the building if the replacement would detract from the historical integrity of the building, as determined by the Director of the Department of Building Inspection pursuant to the California Historical Building Code and Section 12A11(b).

(d) Leak repair: All water leaks shall be located and repaired.

(1) For residential buildings with one and two units, water meter registration shall be used to determine the existence of leaks. Compliance is achieved if there is no meter movement for ten minutes while all household fixtures are shut off.

(2) For residential buildings with three or more units, visual inspection or water meter registration shall be used. If water meter registration is used, compliance is achieved if there is no meter movement for ten minutes while all household fixtures are shut off.

(3) In all residential buildings, all tank type water closets shall be tested with leak detector tablets or dye to detect slow valve leaks, and all flushometer type fixtures shall be visually checked for proper operation with respect to timing and leaks.

(e) An exemption from the requirement for showerheads listed in Paragraph (a) of this Section will be granted for a residence upon filing with the Public Utilities Commission a letter from a licensed physician specifying a valid medical reason on the part of the occupant of that residence for non-compliance. An exemption under this Section shall continue in force until the individual qualifying for the exemption no longer resides at the exempted property, or until the medical condition qualifying for the exemption terminates. Within one year following the departure of the individual qualifying for the exemption from the exempted residence or termination of the medical condition, all showerheads in the property shall be replaced in compliance with Section 12A10(a). Upon transfer of title of any building subject to an exemption in whole or in part under this Section, the provisions of Section 12A09 shall apply; however, proof of an exemption under this Section shall be sufficient to show compliance with the requirements of this chapter as to low-flow showerhead and/or an exempted residence within a multiple-family residential building. An exemption for a single residence under this Section shall not constitute an exemption for an entire multiple-family building wherein the single residence is located.

SEC. 12A11. APPEAL FROM RESULTS OF A WATER CONSERVATION INSPECTION, OR REQUEST FOR EXEMPTION.

(a) Any person with an interest in the property subject to a water conservation inspection who contests the determination of a qualified inspector regarding required water conservation measures, may appeal said decision to the Director of the Department of Building Inspection within ten working days from the date the completed inspection form was filed with the Department of Building Inspection. The notice of appeal shall state, clearly and concisely, the grounds upon which the appeal is based. The burden of proof shall be on the appellant to demonstrate that the water conservation measure is not required under this chapter. The

determination of the Director may be appealed to the Building Inspection Commission pursuant to the notice and appeal procedures established in the Administrative Code Chapter 77.

(b) Any person with an interest in the property subject to a water conservation inspection who claims an exemption pursuant to Section 12A10 (c) of this Chapter may request a determination of exemption from the Director of the Department of Building Inspection by filing the request and stating the basis for the claim. The burden of proof shall be on the applicant to demonstrate the qualifications for the exemption. The determination of the Director may be appealed to the Building Inspection Commission pursuant to the procedures for notice and appeal established in the Administrative Code Chapter 77.

(c) Any appeal or request for exemption to the Director filed pursuant to this Section shall be accompanied by payment of a filing fee, pursuant to Section 1216 of this Code.

SEC. 12A12. CIVIL REMEDIES.

(a) Remedies. The remedies for failure to comply with the requirements of Section 12A08 and 12A09 of this chapter shall be as set forth in Subsections (a) and (b) of Section 1215 of this Code for violations of the Residential Energy Conservation Ordinance.

(b) Exceptions. In undertaking this program of water conservation inspections, the City and County of San Francisco is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing on its offices 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. No civil liability, based on this ordinance, shall ensue from claims that the performance of, nonperformance of, negligent performance of, untimely performance of, or failure to perform in a proper manner, a water conservation inspection or audit shall cause injury to any person where that inspection or audit is conducted by a utility, or representative

of a utility, which offers inspection, water-use survey or audit service for which no charge is made to the homeowner.

SEC. 12A13. SEVERABILITY.

If any provision or clause of this ordinance or the application thereof to any person or circumstance is held to be unconstitutional or to be otherwise invalid by any court of competent jurisdiction, such invalidity shall not affect other provisions, and clauses of this ordinance are declared to be severable.

Section 2. The San Francisco Housing Code is hereby amended by amending Section 1207, to read as follows:

SEC. 1207. PROOF OF COMPLIANCE WITH MINIMUM ENERGY CONSERVATION MEASURES.

(a) Contents. The Department of Building Inspection shall provide a standardized form, that may be paper and/or electronic, suitable for conducting a valid energy inspection and certifying compliance with the requirements of this ordinance. Said form shall contain both an inspection form listing energy conservation measures required by the Chapter and a compliance certificate.

(b) Inspection Form. The inspection form shall be completed and signed by any qualified inspector, furnished to the building owner or the owner's authorized representative, and submitted to the Department of Building Inspection within 15 days from the date of completing the inspection.

(c) Certificate of Compliance. When all of the energy conservation requirements have been met, the certificate of compliance shall be submitted to the Department of Building Inspection by one of the following:

(1) A qualified energy inspector pursuant to Section 1206; or

(2) For a residential building containing one or two dwelling units only: the state licensed contractor who installed the energy conservation measures required as a result of the energy inspection; or

(3) An authorized agent of the Department of Building Inspection.

(d) Filing and Recording. Proof of compliance with the requirements of this Section shall be accomplished by submitting the completed certificate of compliance to the Department of Building Inspection which shall maintain a paper and/or electronic copy. A copy of the completed certificate of compliance shall be recorded by the building owner, or the building owner's authorized representative, with the San Francisco County Recorder's Office. In the event of a title transfer, it shall be recorded prior to or concurrent with transfer of title.

(e) Public Record. Energy inspection results and certificates of compliance shall be public information and shall be available for inspection by any interested person during regular business hours at the Department of Building Inspection.

(f) Limitation of Utility Inspections. Nothing in this Section nor in any other provision of this chapter shall impose any obligation on a utility to perform more than one visit to a dwelling unit for any purpose. Nothing in this Section nor in any other provision of this chapter shall impose any obligation on a utility energy auditor to visit a dwelling unit solely for certification of compliance purposes.

Section 3. The San Francisco Housing Code is hereby amended by amending Section 1211, to read as follows:

SEC. 1211. ENERGY INSPECTION REQUIREMENT AT TRANSFER OF TITLE.

(a) Prior to any transfer of title of any residential building subject to the provisions of this chapter as a result of sale or exchange, the seller, or the seller's authorized representative, shall obtain a valid energy inspection and shall install all applicable energy conservation measures required by Section 1212 as enumerated in the energy inspection form. The seller, or the seller's authorized representative, must furnish a copy of the completed inspection from showing compliance with this chapter to the buyer prior to transfer of title.

(b) Title Transfer Exemption. A transfer of a residential building by operation of law rather than by purchase is exempt from the provision of this chapter. This exemption includes, but is not limited to:

(1) Transfers pursuant to court order, including, but not limited to, transfers ordered by a probate court in administration of an estate, transfers pursuant to a writ of execution, transfers by a trustee in bankruptcy, transfers by eminent domain, or transfers resulting from a decree for specific performance;

(2) Transfers to a mortgagee by a mortgagor in default, transfers to a beneficiary of a deed of trust by a trustor in default, transfers by any foreclosure sale after default in an obligation secured by a mortgage, or transfer by a sale under a power of sale after a default in an obligation secured by a deed of trust or secured by any other instrument containing a power of sale;

(3) Transfers by a fiduciary in the course of the administration of a guardianship, conservatorship, or trust;

(4) Transfers from one co-owner to one or more co-owners;

(5) Transfers made to a spouse, or a domestic partner registered with the State of California, or to a person or persons in the lineal line of consanguinity of one or more of the transferors;

(6) Transfers between spouses or domestic partners resulting from a decree of dissolution of a marriage or a domestic partnership or a decree of legal separation or from a property settlement agreement incidental to such decrees;

(7) Transfers by the State Controller in the course of administering the Unclaimed Property Law, Chapter 7 (commencing with Section 1500) of Title 10 of Part 3 of the Code of Civil Procedure;

(8) Transfers under the provisions of Chapter 7 (commencing with Section 3691) and Chapter 8 (commencing with Section 3771) of Part 6 of Division 1 of the Revenue and Taxation Code;

(9) Transfers resulting by operation of law;

(10) Transfers by which title to real property is reconveyed pursuant to a deed of trust;

(11) Transfers for which a transfer agreement was entered into prior to the effective date of this ordinance.

(c) Energy and Water_Conservation Escrow Account. The seller, or the seller's authorized representative, may transfer responsibility for compliance with the minimum energy conservation measures of Section 1212 and the minimum water conservation measures of Section 12A10 to the buyer of the building if at the time of transfer of title:

(1) A valid energy inspection, within the meaning of Section 1205, and a valid water conservation inspection within the meaning of Section 12A09 have been made and the inspection form or forms filed with the Department of Building Inspection along with notification indicating that an escrow account has been set up pursuant to this Section and giving the escrow holder's name and address and the escrow number;

(2) A written agreement signed by the buyer and seller is deposited into the escrow containing the following;

(i) The buyer's agreement that the required energy and water conservation measures will be installed within 180 days of transfer of title,

(ii) The seller's agreement that funds equal to one percent of the purchase price indicated on the accepted purchase offer shall be retained by the escrow holder and disbursed as follow:

(a) Upon delivery to the escrow holder of a copy of the completed certificate of compliance as filed with the Department of Building Inspection within 180 days after the close of escrow, the escrow holder shall, upon written instructions of the buyer, disburse so much of these funds as are required to pay the provider(s) of the materials and labor used to bring the property into compliance with the provisions of this chapter and Chapter 12A and shall disburse any surplus thereafter remaining to the seller;

(b) If such certificate of compliance is not delivered to the escrow holder within 180 days after the close of escrow, all said funds shall be deposited into the Residential Energy Conservation Account of the Repair and Demolition Fund of the City and County of San Francisco established pursuant to Section 102.13 of the San Francisco Building Code (Part II, Chapter I of the San Francisco Municipal Code) to be used exclusively to bring the building into compliance with the provisions of this chapter and Chapter 12A, with any surplus funds to be returned to the seller once compliance is achieved. No funds shall be deposited in the Residential Energy Conservation Account under this Subsection as long as, in the case of the subject building: (A) an appeal is pending or an extension has been granted pursuant to Section 1213 of this chapter; (B) an appeal is pending pursuant to Section 12A11 of this Code; or (C) a complaint is pending in court on behalf of the buyer or seller, or an arbitration proceeding is underway between the buyer and seller, with respect to the disposition of the escrow fund for the purpose of completing energy or water conservation measures pursuant to this Code.

(d) Notice of the Requirements of This Ordinance. The seller, or the seller's authorized representative involved in the sale or exchange of residential building subject to the provisions of this chapter and Chapter 12A, shall give written notice of the requirements of this ordinance to the buyers. Prior to the effective date of this ordinance an informational brochure specifying the energy and water conservation requirements shall be made available by the Department of Building Inspection. Delivery of this brochure to the buyer shall satisfy the notice requirements of this Section. Failure to give notice as required by this Section shall not excuse or exempt the seller or buyer of a residential building from compliance with the requirements of this chapter and Chapter 12A.

Section 4. The San Francisco Housing Code is hereby amended by amending Section 1212, to read as follows:

SEC. 1212. REQUIRED ENERGY CONSERVATION MEASURES.

The following energy conservation measures are required by this ordinance for a residential building; provided, however, that if the owner proves, pursuant to Section 1213, that the application of any energy conservation measure is not cost-effective, that measure shall not be required.

(a) Building containing one or two dwelling units:

(1) Ceiling insulation to a minimum resistance level of R-19 over the entire accessible attic space, provided that the existing ceiling insulation is less than R-11. Before insulation is installed in a building not meeting this standard, dropped spaces in attic floors, such as those above stairwells, shall be sealed effectively to limit air infiltration. Installation of ceiling insulation shall be required to conform to Section 719 of the Building Code (Part II, Chapter I of the San Francisco Municipal Code).

(2) Weatherstripping of all doors, unless fire-rated, which lead to unheated areas as effectively and reliably to limit air infiltration. Doors which cannot be weatherstripped without the replacement of the entire door or doorframe are exempted from this requirement, unless the door is, for other reasons, being repaired or replaced. The Director, in the guidelines, shall specify those types of weatherstripping which are acceptable. In determining which types of weatherstripping are acceptable, the Director shall consider, among other matters, whether the weatherstripping meets the energy conservation goals of this chapter and is cost-effective.

(3) An external water heater insulation blanket with a minimum installed thermal resistance of R-6 on accessible water heaters. Installation of external water heater insulation blankets shall meet any safety standards set by the Director in the guidelines. In addition, the first four feet of accessible hot water pipe leading from the heater shall be insulated to a minimum resistance value of R-4. If foam is used to meet the R-4 standard, it shall be a closed-cell type with a minimum wall thickness of three-quarters of an inch.

(4) Caulking or sealing of all accessible major cracks and joints and other openings in building exterior to reduce the loss of heated air or the entry of outside air where feasible. Sealing of all accessible major openings from the conditioned living space into unheated areas, including, but not limited to, those found around plumbing vent pipes, electrical wiring, or furnace flue pipes.

(5) Insulating all accessible supply and return heating and cooling system ducts and plenums, which are located in unheated areas, to a minimum resistance value of R-3 and sealing of all accessible duct and plenum joints with pressure-sensitive tape or mastic.

(b) Building containing three or more dwelling units:

(1) All measures specified in Subsection (a) of this Section to the extent applicable to the structure.

(2) Insulation of all accessible recirculating hot water, steam, or steam condensate return piping throughout the structure to a minimum resistance value of R-4 and all hot water storage tanks to a minimum resistance value of R-6;

(3) Cleaning and tuning of boiler units to improve combustion efficiency. Unless the boiler has been cleaned and tuned to ensure peak combustion efficiency within the last five years and bears a tag so certifying issued by a utility inspector or contractor regularly engaged in the field of combustion efficiency, the boiler shall be cleaned and tested for combustion efficiency and appropriate adjustments made to ensure peak combustion efficiency by such a utility inspector or a contractor, who shall post a tag on or near the boiler stating that a combustion efficiency test has been performed and peak efficiency has been obtained through adjustment of the boiler's controls and cleaning where needed, and the date the test was performed. In addition, all boilers shall have a permit required by Chapter 1, Schedule 1-M of the Building Code;

(4) Repair of all hot water and steam leaks on boiler units, including replacement of defective steam traps and valves;

(5) Time clock control burner; and

(6) Any interim measures adopted by the Director pursuant to Section 1217 or 1218 of this chapter.

Section 5. The San Francisco Housing Code is hereby amended by amending Section 1216, to read as follows:

SEC. 1216. FEES.

(a) Fees. Reasonable fees shall be required to pay for, but not exceed, the costs of implementing this chapter and Chapter 12A. Such fees shall be established by the Board of Supervisors upon recommendation of the Director of the Department of Building Inspection and shall include:

- (1) The cost of inspections performed by the Department of Building Inspection;
- (2) The cost of the appeal and request for exemption process;
- (3) The cost of filing and processing documents at the Department of Building Inspection;
- (4) The cost of printing forms and informational brochures by the Department of Building Inspection;
- (5) Other expenses incurred by the City and County of San Francisco in implementing this ordinance.

(b) Fee Schedule. See Building Code Section 110A, Table 1A-N, for the applicable fees.

(c) Fee Review. The Director of the Department of Building Inspection shall cause an annual report of fees to be made and filed with the Controller as set forth in Section 3.17-2 of the San Francisco Administrative Code. The Controller shall review the report and file it with the Board of Supervisors along with proposed ordinance readjusting the fee rates as necessary.

Section 6. This Ordinance shall be effective no earlier than July 1, 2009.

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

By: _____
Noreen Ambrose
Deputy City Attorney