



Lori Droste  
Vice Mayor District 8

Consent Calendar  
February 9, 2021

To: Honorable Mayor and Members of the City Council  
From: Vice Mayor Lori Droste, Mayor Jesse Arreguín, Councilmember Terry Taplin,  
Councilmember Rigel Robinson  
Subject: Right to Choose Communications Services Provider

**Recommendation:** Refer to the City Manager and City Attorney to explore, and if deemed feasible, draft ordinance language to clarify that property owners of multi-unit properties cannot interfere with tenants' choice of communications services providers.

The City of San Francisco has implemented such an ordinance, which has since been challenged. This recommendation requests the City Attorney to review the San Francisco law and Federal Communications Commission rulings pertaining to this topic to determine if Berkeley could effectively adopt a similar ordinance.

**Background:**

*Problem Statement*

At a time when many more people are working remotely because of COVID-19, tenants are unable to access the communications provider of their choice no matter where they live. Some property owners only allow specific communications services providers, or just one provider, to install necessary equipment and provide services, leaving tenants with no ability to choose a provider of their choice.

*Consultation and Outreach to Stakeholders*

This came to our attention through a local resident who is unable to access the wireless technology they need to work remotely.

**Alternative Actions Considered:**

*Current situation*

If no action is taken, some tenants will have limited access to communications services. Given the current COVID-19 pandemic, more people are working from home and are reliant on various telecommunications.

### *Alternatives Considered*

In 2016, the City of San Francisco passed an [ordinance](#), [Article 52](#) or the “Occupant’s Right to Choose a Communications Services Provider,” to ensure tenants in multi-unit buildings can choose their preferred utility provider. The ordinance mandated that property owners must allow tenants, if they so choose, to utilize any utility company of their choice.

Specifically, property owners cannot:

- enforce exclusivity agreements
- prevent a communications services provider from entering the property (under tenants request for service)
- Prevent a communications services provider from installing necessary equipment to serve tenant or use existing equipment to provide essential services

Two years after San Francisco’s law passed, small internet providers indicated that they were able to gain access to buildings to which they were previously denied access. The CEO of Sonic, the internet service provider, also indicated having greater ability to provide its services.<sup>1</sup>

Despite the success of the law, it was challenged by trade groups. In 2019, the Federal Communications Commission adopted a [Notice of Proposed Rulemaking and Declaratory Ruling](#) pertaining to the San Francisco law to which Mayor Breed [responded](#). Interpretation of that ruling is still unclear.

### **Criteria Considered**

#### *Effectiveness*

Pursuing an ordinance similar to that of San Francisco’s maximizes public interest by providing tenants with more choices for communications services providers and allowing them to select the one that best suits their needs.

#### *Environmental Impacts*

None

#### *Fiscal Impacts and Operational Considerations*

Staff time. Since this is a new concept, there is no current budget allocation for developing ordinance language. This ordinance is unlikely to generate funds or savings for the City.

#### *Strategic Plan Alignment (?)*

This referral will further the City’s Strategic Plan goal to provide state-of-the-art, well-maintained infrastructure, amenities, and facilities. It will expand residents’ ability to utilize the most up to date telecommunications that meet their needs.

#### *Equity*

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<sup>1</sup> <https://www.bloomberg.com/news/articles/2019-07-11/fcc-s-san-francisco-decision-causes-confusion>

This referral seeks to ensure that regardless of living situation, residents can obtain the communications services provider of their choice. Since this is particularly focused on protecting tenants in multi-unit buildings, it will be most beneficial to those who rent units (students, low-income residents, etc.).

**Rationale for Recommendation**

Tenants should be able to choose their preferred communication services provider. Though this may be a legally complicated task (as demonstrated by San Francisco's experience), there are few other alternatives that can assist tenants in accessing providers of their choice if their landlord refuses entry or does not allow installation from other providers.

**Contact info**

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Attachment 1: [San Francisco Article 52](#)

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**ARTICLE 52:**

**OCCUPANT'S RIGHT TO CHOOSE A COMMUNICATIONS SERVICES PROVIDER**

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- Sec. 5200. Definitions.
- Sec. 5201. No Interference by Property Owner.
- Sec. 5202. No Discrimination by Property Owner Against Occupant.
- Sec. 5203. Applicability.
- Sec. 5204. Request to Inspect a Multiple Occupancy Building.
- Sec. 5205. Notice of Intent to Provide Service.
- Sec. 5206. Permitted Refusal of Access.
- Sec. 5207. Permitted Limitations on Access.
- Sec. 5208. Just and Reasonable Compensation.
- Sec. 5209. Notice of Violation.
- Sec. 5210. Enforcement by the City Attorney.
- Sec. 5211. Enforcement by Communications Services Providers and Occupants.
- Sec. 5212. Attorneys' Fees and Costs.
- Sec. 5213. Civil Penalties.
- Sec. 5214. Statute of Limitations.
- Sec. 5215. Extensions of Time.
- Sec. 5216. Undertaking for General Welfare.
- Sec. 5217. Severability.
- Sec. 5218. No Conflict with Federal or State Law.

**\*Editor's Note:**

*Ord. 250-16, which added Sections 5200 through 5218, set forth this Article heading but did not mark it as an addition to the Code. The heading was subsequently added by Ord. [250-18](#), File No. 180002, approved 11/2/2018, effective 12/3/2018.*

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**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.

“Communications services provider” means a person that: (a) has obtained a franchise to provide video service from the California Public Utilities Commission under California Public Utilities Code § 5840; (b) has obtained a certificate of public convenience and necessity from the California Public Utilities Commission under California Public Utilities Code § 1001 to provide telecommunications services; or (c) is a telephone corporation as that term is defined in California Public Utilities Code § 234. In addition, a communications services provider must have obtained a Utility Conditions Permit from the City under Administrative Code Section 11.9.

“Existing wiring” means both home run wiring and cable home wiring, as those terms are defined by the Federal Communications Commission in 47 C.F.R. § 76.800(d) and 47 C.F.R. § 76.5(II) respectively, except that those terms as used herein shall apply only to the home run wiring or cable home wiring owned by a property owner.

“Just and reasonable compensation” means the “fair market value” of the impact on the multiple occupancy building as that term is defined in California Code of Civil Procedure § 1263.320.

“Multiple occupancy building” means: (a) an apartment building, apartment complex, or any other group of residential units located upon a single premises or lot, provided that such multiple dwelling unit contains at least four separate units; and (b) a multi-tenant building used for business purposes that has separate units occupied by at least four different persons. Hotels, guesthouses, and motels, consisting primarily of guest rooms and/or transient accommodations, are not multiple occupancy buildings. Multiple occupancy buildings include properties that are rented to tenants, owned and occupied by individual owners, or occupied by shareholders/tenants of a cooperative.

“Occupant” means a person occupying a unit in a multiple occupancy building.

“Person” means any natural person or an entity including but not limited to a corporation or partnership.

“Property owner” means a person that owns a multiple occupancy building or controls or manages a multiple occupancy building on behalf of other persons.

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

– (Added by Ord. [250-16](#), File No. 161110, App. 12/22/2016, Eff. 1/21/2017)

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## **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) A property owner interferes with the occupant’s choice of communications services 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.

– (Added by Ord. [250-16](#), File No. 161110, App. 12/22/2016, Eff. 1/21/2017)

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## **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.

– (Added by Ord. [250-16](#), File No. 161110, App. 12/22/2016, Eff. 1/21/2017)

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## **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 a multiple occupancy building and/or the existing wiring to provide services is not exempt from the requirements of this Article.

– (Added by Ord. [250-16](#), File No. 161110, App. 12/22/2016, Eff. 1/21/2017)

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## **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) A communications services provider shall request in writing that the property owner 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; (B) the facilities and equipment the communications services provider anticipates installing on the property; (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.

(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.

■ (Added by Ord. [250-16](#), File No. 161110, App. 12/22/2016, Eff. 1/21/2017)

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## **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 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 30-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 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 the communications services to be offered to occupants; 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 52; 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 owner shall state:

(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.

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

■ (Added by Ord. [250-16](#), File No. 161110, App. 12/22/2016, Eff. 1/21/2017)

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## **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 facilities and equipment in existing space that are necessary to provide communications services and/or from using existing wiring to provide such services;

(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;

(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) The property owner and communications services provider have not reached an 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 52.

■ (Added by Ord. [250-16](#), File No. 161110, App. 12/22/2016, Eff. 1/21/2017)

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## **SEC. 5207. PERMITTED LIMITATIONS ON ACCESS.**

(a) A property owner that grants a communications services provider access to its property to inspect the property may require the communications services provider 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:

(1) 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;

(2) Provide a certificate of insurance evidencing coverages generally required by the property owner for contractors performing comparable work at the property;

(3) Demonstrate that any contractors installing facilities and equipment on 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;

(6) Allow the property owner to inspect the communication services provider's installation and construction of any facilities and equipment for compliance with the San Francisco Building Code and generally acceptable construction standards; and

(7) Remove its facilities and equipment and restore any area of the property 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.

(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 subsections (a) or (b) that the communications services provider must comply with while inspecting the property or installing facilities or equipment on the property.

■ (Added by Ord. [250-16](#), File No. 161110, App. 12/22/2016, Eff. 1/21/2017)

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## **SEC. 5208. JUST AND REASONABLE COMPENSATION.**

A property owner is entitled to just and reasonable compensation from a communications services provider that obtains access to a multiple occupancy building from a property owner pursuant to this Article 52 to provide communications services to occupants.

■ (Added by Ord. [250-16](#), File No. 161110, App. 12/22/2016, Eff. 1/21/2017)

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## **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).

■ (Added by Ord. [250-16](#), File No. 161110, App. 12/22/2016, Eff. 1/21/2017)

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## **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 5213 of this Article 52, to enforce this Article against a property owner that has violated this Article.

■ (Added by Ord. [250-16](#), File No. 161110, App. 12/22/2016, Eff. 1/21/2017)

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

(a) A 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 Article 52 in San Francisco Superior Court against such property owner for injunctive and monetary relief.

(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.

(c) Subject to subsection (d), a communications services provider or occupant that has complied with subsection (b) may commence such a proceeding 30 days after notice was sent to the City Attorney.

(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.

(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.

■ (Added by Ord. [250-16](#), File No. 161110, App. 12/22/2016, Eff. 1/21/2017)

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## **SEC. 5212. ATTORNEYS' FEES AND COSTS.**

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

■ (Added by Ord. [250-16](#), File No. 161110, App. 12/22/2016, Eff. 1/21/2017)

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## **SEC. 5213. 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 individual.

(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.



▫ (Added by Ord. [250-16](#), File No. 161110, App. 12/22/2016, Eff. 1/21/2017)

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## **SEC. 5214. STATUTE OF LIMITATIONS.**

(a) Any court proceeding by a communications services provider or occupant to enforce this Article 52 against a property owner 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.

(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.

▫ (Added by Ord. [250-16](#), File No. 161110, App. 12/22/2016, Eff. 1/21/2017)

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## **SEC. 5215. EXTENSIONS OF TIME.**

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.

▫ (Added by Ord. [250-16](#), File No. 161110, App. 12/22/2016, Eff. 1/21/2017)

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## **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.

▫ (Added by Ord. [250-16](#), File No. 161110, App. 12/22/2016, Eff. 1/21/2017)

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## **SEC. 5217. 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.

▫ (Added by Ord. [250-16](#), File No. 161110, App. 12/22/2016, Eff. 1/21/2017)

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## **SEC. 5218. 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.

(Added by Ord. [250-16](#), File No. 161110, App. 12/22/2016, Eff. 1/21/2017)

