

1 [Public Works - Administrative Penalties for Excavation]
2 AMENDING PART II, CHAPTER X OF THE SAN FRANCISCO MUNICIPAL CODE (PUBLIC
3 WORKS CODE) BY AMENDING ARTICLE 2.4, SECTIONS 2.4.80 AND 2.4.81 TO ALLOW
4 THE DIRECTOR OF PUBLIC WORKS TO CHARGE MUNICIPAL EXCAVATORS THAT
5 VIOLATE ARTICLE 2.4 WITH ADMINISTRATIVE PENALTIES AND TO INCREASE THE
6 ADMINISTRATIVE PENALTY ASSESSED FOR EXCAVATION WORK WITHOUT A PERMIT.

7 Note: Additions are underlined; deletions are in ((double parentheses)).

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

9 Section 1. Article 2.4 of Part II, Chapter X of the San Francisco Municipal Code (Public
10 Works Code) is hereby amended by amending Sections 2.4.80 and 2.4.81 to read as follows:

11 **SEC. 2.4.80. VIOLATION OF ARTICLE.** (a) The Director shall have authority to
12 enforce this Article against violations thereof. Upon the Director's determination that a Person
13 has violated any provision of this Article, the Standard Plans and Specifications, notices,
14 orders, or regulations of the Department; any term, condition, or limitation of any Permit; or is
15 subject to any outstanding fees, Deposits, or other charges, the Director shall serve notice on
16 said Person to abate the violation. Any Person whom the Director determines to be
17 responsible for violating this Article may be subject to any or all of the enforcement
18 mechanisms specified in Sections 2.4.81, 82, and 83.

19 (b) ((Violations by)) Municipal Excavators are not subject to the penalties and fines
20 specified in Sections ((2.4.81, 82, and 83)) 2.4.82 and .83; however, Municipal Excavators
21 that violate Article 2.4 may be subject to administrative penalties and costs as specified in
22 Section 2.4.81. The Director is empowered to charge Municipal Excavators with such
23 penalties and costs, abate violations by Municipal Excavators, or both. ((and)) The Director
24 may ((charge)) assess such penalties, costs, and abatement charges against ((the cost of
25

1 such abatement to)) the Deposit or budget of the Municipal Excavator, take other appropriate
2 action against such Excavator within the Director's authority, or both.

3 **SEC. 2.4.81. ADMINISTRATIVE PENALTIES AND COSTS. (a) Notice of**
4 **violation.** The Director shall notify the Person responsible for a violation that he or she has
5 seventy-two (72) hours to correct or otherwise remedy the violation or be subject to the
6 imposition of administrative penalties. For those violations subject to the incomplete
7 Excavation provisions of Section 2.4.55(d), the Person responsible shall have twenty-four (24)
8 hours to remedy the violation or be subject to the imposition of administrative penalties. For
9 violations that create an imminent danger to public health, safety, or welfare or are otherwise
10 subject to Section 2.4.73, the Director shall notify the Person responsible to immediately
11 remedy the violation or be subject to the imposition of administrative penalties. The Director's
12 notice of violation shall be a written, electronic, or facsimile communication and shall specify
13 the manner in which the violation must be remedied.

14 **(b) Amount of administrative penalties.** Administrative penalties assessed pursuant
15 to Subsection (a) shall not exceed one thousand dollars (\$1,000.00) per day, per violation.
16 Notwithstanding the penalty limitation set forth above, a Person who excavates without a valid
17 Permit may be assessed a penalty not to exceed ten thousand dollars (\$10,000.00) per day,
18 per violation. In assessing the amount of the administrative penalty, the Director may
19 consider any one or more of the following: the nature and seriousness of the misconduct, the
20 number of violations, the persistence of the misconduct, the length of time over which the
21 misconduct occurred, the willfulness of the violator's misconduct, and the violator's assets,
22 liabilities, and net worth.

23 **(c) Enforcement costs.** In addition to the administrative penalty assessed pursuant
24 to Subsection (a), the Director may assess enforcement costs to cover the reasonable costs
25 incurred in enforcing the administrative penalty, including reasonable attorneys' fees. Any

1 enforcement costs imposed and recovered shall be distributed according to the purpose for
2 which the Director imposed them.

3 (d) **Accrual of penalties and costs.** Penalties and costs assessed under this Section
4 shall continue to accrue against the Person responsible for the violation until the violation of
5 this Article is corrected or otherwise remedied in the judgment of the Director or the
6 responsible party pays the assessed penalties and costs. If such penalties and costs are the
7 subject of a request for administrative review or an appeal, then the accrual of such penalties
8 and costs shall be stayed until the determination concerning the administrative penalties is
9 final.

10 (e) **Notice imposing administrative penalties.** If the Person designated as the
11 responsible party fails to remedy the violation within the time specified in the notice of
12 violation, the Director shall notify in writing the responsible party of the Director's imposition of
13 administrative penalties. This notice shall include the amount of the penalties and costs and
14 declare that such penalties and costs are due and payable to the City Treasurer within thirty
15 (30) calendar days. The notice also shall state that the Person designated as the responsible
16 party has the right, pursuant to Subsection (g), to request administrative review of the
17 Director's determination as to the designation of the responsible party and the assessment of
18 penalties.

19 (f) **Finality of the Director's determination and collection of assessed penalties.**
20 If no request for administrative review is filed pursuant to Subsection (g), the Director's
21 determination is final. Thereafter, if the penalties and costs are not paid within the time
22 specified in Subsection (e), the Director is empowered to pursue any method of collection of
23 such penalties and costs authorized by local law including, but not limited to deductions of the
24 Permittee's Deposit pursuant to Section 2.4.46(c).
25

1 (g) **Administrative review.** Any Person that is designated as the party responsible for
2 a violation or is subject to an administrative penalty may seek administrative review of the
3 designation or the assessment of the penalty within ten (10) calendar days of the date of
4 notification imposing administrative penalties. Administrative review shall be initiated by filing
5 with the Director a request for review that specifies in detail the basis for contesting the
6 designation of the responsible party or the assessment of the penalty or cost.

7 (h) **Notice for and scheduling of administrative hearing.** Whenever an
8 administrative review hearing is requested pursuant to Subsection (g), the Director, within ten
9 (10) calendar days of the date of receipt of the request, shall notify the affected parties of the
10 date, time, and place of the hearing by certified mail. Such hearing shall be held no later than
11 thirty (30) calendar days after the Director received the request for administrative review,
12 unless extended by mutual agreement of the affected parties. The Director shall appoint a
13 hearing officer for such hearing.

14 (i) **Submittals for the administrative review hearing.** The parties to the hearing
15 shall submit written information to the hearing officer including, but not limited to, the following:
16 the statement of issues to be determined by the hearing officer and a statement of the
17 evidence to be offered at the hearing.

18 (j) **Conduct of the administrative review hearing.** The administrative review hearing
19 is a public hearing and shall be tape recorded. Any party to the hearing may at his or her own
20 expense, cause the hearing to be recorded by a certified court reporter. During the hearing,
21 evidence and testimony may be presented to the hearing officer. Written decisions and
22 findings shall be rendered by the hearing officer within ten (10) calendar days of the hearing.
23 Copies of the findings and decision shall be served upon the parties to the hearing by certified
24 mail. A notice that a copy of the findings and decisions is available for inspection between the
25

1 hours of 9:00 a.m. and 5:00 p.m. Monday through Friday shall be posted at the offices of the
2 Department of Public Works.

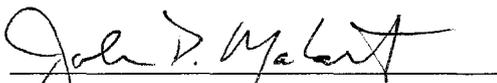
3 (k) **((Appeals of the)) Director's decision on the hearing officer's**
4 **recommendation.** The decision of the hearing officer shall be a recommendation to the
5 Director, and the Director, within five (5) calendar days of receipt of such recommendation,
6 shall adopt, modify, or deny such recommendation. The Director's decision on the hearing
7 officer's recommendation is final. Such decision shall be served upon the parties to the
8 hearing and posted in the same manner as the hearing officer's decision as set forth in
9 Subsection (j). ((Within twenty (20) calendar days after service of the Director's decision, any
10 aggrieved party may seek review of the decision by the municipal court according to the
11 procedures set forth in California Government Code Section 53069.4.))

12 (l) **Finality of Director's decision.** ((If no notice of appeal of the Director's decision is
13 timely filed, the)) The Director's decision shall be deemed final. If any imposed administrative
14 penalties and costs have not been deposited at this time, the Director may proceed to collect
15 the penalties and costs pursuant to Subsection (f).

16 APPROVED AS TO FORM:

17 LOUISE H. RENNE, City Attorney

18
19 By:



20 JOHN D. MALAMUT
21 Deputy City Attorney
22
23
24
25

SUPERVISOR KATZ
BOARD OF SUPERVISORS



City and County of San Francisco

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

Tails Ordinance

File Number: 991177

Date Passed:

Ordinance amending Public Works Code Sections 2.4.80 and 2.4.81 to allow the Director of Public Works to charge municipal excavators that violate Article 2.4 with administrative penalties and to increase the administrative penalty assessed for excavation work without a permit.

August 16, 1999 Board of Supervisors — PASSED, ON FIRST READING

Ayes: 10 - Ammiano, Becerril, Bierman, Brown, Katz, Kaufman, Leno, Newsom, Yaki, Yee

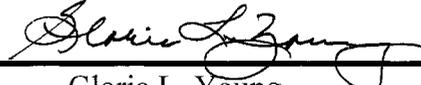
Absent: 1 - Teng

August 23, 1999 Board of Supervisors — FINALLY PASSED

Ayes: 11 - Ammiano, Becerril, Bierman, Brown, Katz, Kaufman, Leno, Newsom, Teng, Yaki, Yee

File No. 991177

I hereby certify that the foregoing Ordinance
was **FINALLY PASSED** on August 23, 1999
by the Board of Supervisors of the City and
County of San Francisco.



Gloria L. Young
Clerk of the Board

SEP - 3 1999

Date Approved



Mayor Willie L. Brown Jr.