

1 [Planning - Administrative Enforcement Remedies]

2
3 **Ordinance amending the San Francisco Planning Code by amending Section 176 to**
4 **authorize the Zoning Administrator to assess administrative penalties for a Planning**
5 **Code violation; adding Section 176.1 to establish Planning Code enforcement remedies**
6 **of the Director, which include issuance and recording of orders of abatement,**
7 **assessment of administrative penalties, and a hearing and appeal process; amending**
8 **Sections 1013 and 1119 to refer to Sections 176 and 176.1 as the applicable**
9 **enforcement and penalty provisions; adopting findings including environmental**
10 **findings, Planning Code Section 302 findings, and findings of consistency with the**
11 **General Plan and the Priority Policies of Planning Code Section 101.1.**

12 Note: Additions are *single-underline italics Times New Roman*;
13 deletions are *strikethrough italics Times New Roman*.
14 Board amendment additions are double underlined.
Board amendment deletions are ~~strikethrough-normal~~.

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

16 Section 1. Findings.

17 (a) Environmental Findings. The Planning Department has determined that the
18 actions contemplated in this ordinance are in compliance with the California Environmental
19 Quality Act (California Public Resources Code sections 21000 et seq.). This determination is
20 on file with the Clerk of the Board of Supervisors in File No. 071651 and
21 is incorporated in this ordinance by reference.

22 (b) Section 302 Findings. Under Planning Code Section 302, the Board of
23 Supervisors finds that this ordinance will serve the public necessity, convenience, and welfare
24 for the reasons set forth in Planning Commission Resolution No. 17545 and
25 incorporates those reasons in this ordinance by reference. A copy of the Planning

Supervisor Sandoval, Maxwell, Peskin
BOARD OF SUPERVISORS

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1 Commission resolution is on file with the Clerk of the Board of Supervisors in File No.

0725 071651.

3 (c) General Plan and Planning Code Findings. The Board of Supervisors finds that
4 this ordinance is in conformity with the General Plan and the Priority Policies of Section 101.1
5 of the Planning Code. The Board adopts the findings set forth in Planning Commission
6 Resolution No. 17545 and incorporates those findings in this ordinance by
7 reference.

8 Section 2. The San Francisco Planning Code is hereby amended by amending Section
9 176, to read as follows:

10 SEC. 176. ENFORCEMENT AGAINST VIOLATIONS.

11 (a) Violations Unlawful. Any use, structure, lot, feature or condition in violation of
12 this Code is hereby found and declared to be unlawful and a public nuisance. Should any
13 permit or license have been issued that was not then in conformity with the provisions of this
14 Code, such permit or license shall be null and void.

15 (b) Methods of Enforcement. The Zoning Administrator shall have authority to
16 enforce this Code against violations thereof by any of the following actions:

17 (1) Serving notice requiring the cessation, removal or correction of any violation of
18 this Code upon the owner, agent or tenant of the property that is the subject of the violation, or
19 upon the architect, builder, contractor or other person who commits or assists in such
20 violation;

21 (2) Calling upon the City Attorney to maintain an action for injunction to restrain or
22 abatement to cause the correction or removal of any such violation, and for assessment and
23 recovery of a civil penalty for such violation as well as any attorneys' fees or costs, including
24 but not limited to expert witness fees, incurred in maintaining such an action;

1 (3) Calling upon the District Attorney to institute criminal proceedings in
2 enforcement of this Code against any such violation; and

3 (4) Calling upon the Chief of Police and authorized agents to assist in the
4 enforcement of this Code.

5 (c) Penalties.

6 (1) Administrative Penalties. In the notice requiring the cessation, removal or correction of
7 any violation of this Code, the Zoning Administrator may assess upon the responsible party an
8 administrative penalty for each violation in an amount up to ~~\$200.00~~ \$250.00 for each day the
9 violation continues unabated. The "responsible party" is the owners(s) of the real property on which
10 the code violation is located, as listed in the records of the San Francisco Assessor, and the current
11 leaseholder if different from the current owner(s) of the real property.

12 The responsible party may request a Zoning Administrator's hearing in order to show cause
13 why the notice requiring the cessation, removal or correction of the violation and any assessment of
14 administrative penalties is in error and should be rescinded. The Zoning Administrator may designate a
15 member of Department staff to act as the hearing officer in his or her place. The Department shall
16 send a notice of the date, hour, and place of the hearing to the responsible party at the address
17 specified in the request for hearing and to any member of the public who has expressed an interest in
18 the matter.

19 The responsible party may also request that the Zoning Administrator terminate abatement
20 proceedings under Section 176 and refer the matter to the Director for enforcement action under the
21 process set forth in Section 176.1 of this Code. If the Zoning Administrator determines that the
22 enforcement case will proceed under Section 176, that determination shall be made as part of the final
23 written decision and is not appealable separately from the decision on the merits.

1 The responsible party may waive the right to a Zoning Administrator's hearing and proceed
2 directly to an appeal to the Board of Appeals under Section 308.2 of this Code. Administrative
3 penalties shall not accrue during the period of time that the matter is pending before the Zoning
4 Administrator on a request for hearing or before the Board of Appeals on appeal. If the responsible
5 party elects to request a Zoning Administrator's hearing, the request for hearing must be in writing and
6 submitted to the Zoning Administrator prior to expiration of the time for appeal of the Zoning
7 Administrator's determination to the Board of Appeals. If a request for a Zoning Administrator's
8 hearing is timely filed, any appeal to the Board of Appeals shall be from the decision of the Zoning
9 Administrator rendered after the hearing.

10 The Zoning Administrator or the Zoning Administrator's designee, after a full and fair
11 consideration of the evidence and testimony received at the hearing, shall render within thirty days
12 following the conclusion of the hearing a written decision that either rescinds the notice of violation
13 and dismisses the proceedings, upholds the original decision, or modifies the original decision. In
14 rendering a decision, the Zoning Administrator or the Zoning Administrator's designee shall consider:

15 (A) whether the responsible party was properly identified;

16 (B) whether the accrual dates for the administrative penalties are accurate;

17 (C) -the amount of documented staff time spent in order to secure abatement of the
18 violation;

19 (D) the nature of the violation;

20 (E) the duration of the violation;

21 (F) efforts made by the responsible party to correct the violation;

22 (G) the impact of the violation upon the community;

23 (H) any instance in which the responsible party has been in violation of the same or similar
24 laws at the same or other locations in the City and County of San Francisco;

1 (I) the responsible party's good faith efforts to comply;

2 (J) whether the violation is easy to correct; and

3 (K) such other factors as the Zoning Administrator or his or her designee may consider
4 relevant.

5 In hearing any appeal of the Zoning Administrator's determination, the Board of Appeals shall
6 consider the above factors. If the Board upholds the Zoning Administrator's decision in whole or in
7 part but reduces the amount of the penalty, it may not reduce the amount of the penalty below \$100.00
8 for each day that the violation exists, excluding the period of time that the matter has been pending
9 either before the Zoning Administrator on a request for hearing or before the Board of Appeals on
10 appeal, or a flat amount of \$1,000, whichever is less.

11 The provision of administrative penalties is not intended to be punitive in nature but is intended
12 to secure compliance with the Planning Code and to compensate the City for its costs of enforcement.

13 (2) Civil Penalties. Any individual, firm, partnership, corporation, company,
14 association, society, group or other person or legal entity that violates any provision of this
15 Code shall be liable for the City's costs of enforcement and a civil penalty, of not less than
16 \$200.00 for each day such violation is committed or permitted to continue, which penalty shall
17 be assessed and recovered in a civil action brought in the name of the people of the City and
18 County of San Francisco by the City Attorney in any court of competent jurisdiction. The City
19 Attorney may seek recovery of any attorneys' fees and costs, including but not limited to
20 expert witness fees, incurred by the City in bringing such civil action. For civil actions to
21 enforce Municipal Code provisions related to general advertising signs, the penalties,
22 attorneys' fees and costs set forth in this Section 176 shall be in addition to those authorized
23 by Section 610 of this Code.

1 ~~(2)~~ (3) Criminal Penalties. Any individual, firm, partnership, corporation, company,
2 association, society, group or other person or legal entity that violates any provision of this
3 Code shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in
4 an amount not less than \$200.00 or be imprisoned for a period not exceeding six months or
5 be both so fined and imprisoned. Each day such violation is committed or permitted to
6 continue shall constitute a separate offense and shall be punishable as such hereunder.

7 ~~(3)~~ (4) Planning Code Enforcement Fund. Any fees and penalties collected pursuant to
8 this Section 176 shall be deposited in the Planning Code Enforcement Fund established by
9 Administrative Code Section 10.100-166. The Planning Department, through the Planning
10 Code Enforcement Fund, shall reimburse City departments and agencies, including the City
11 Attorney's Office, for all costs and fees incurred in the enforcement of this Section 176.

12 (d) Additional ~~m~~Methods of Enforcement and Penalties for Violation of Sign
13 Regulations. Violation of the general advertising sign regulations set forth in Article 6 are
14 subject to the administrative penalties and enforcement procedures set forth in Section 610 of
15 this Code, in addition to those set forth in this Section 176.

16 ~~(e)~~ Use of Penalties Collected. *All penalties collected under this Section 176 shall be*
17 *deposited in the Planning Code Enforcement Fund established in Administrative Code Section*
18 *10.100.166 and shall be used for the purposes specified in that section.*

19 Section 3. The San Francisco Planning Code is hereby amended by adding Section
20 176.1, to read as follows:

21 SEC. 176.1. ADMINISTRATIVE ENFORCEMENT PROCEDURES.

22 ~~(a)~~ Purpose and Intent.

23 ~~(1)~~ The Board of Supervisors finds that enforcement of the Planning Code is vital to
24 ensuring the quality of life in San Francisco's neighborhoods and in the City as a whole. A
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1 comprehensive code enforcement program using a combination of judicial and administrative remedies
2 is likely to be the most successful approach to secure compliance with Planning Code requirements.
3 Therefore, it is in the best interests of the City and its citizens to provide an alternative method of
4 administrative enforcement that is designed to induce compliance with the Planning Code through
5 action by the Director to issue and record orders of abatement and assess administrative penalties.

6 (2) The alternative methods of administrative enforcement established by this section do not
7 replace but rather are intended to supplement the enforcement remedies established in Section 176 and
8 other penalties or methods of enforcement, both civil and criminal, that are authorized by law. The
9 provision for administrative penalties is not intended to be punitive in nature but is intended to secure
10 compliance with the Planning Code and to compensate the City for its costs of enforcement.

11 (3) By establishing multiple enforcement mechanisms, it is intended that the Department
12 will elect to use the mechanism most likely to achieve an expeditious and effective resolution of the
13 violation in a particular case with the best use of the City's resources. In exercising this discretion, the
14 Department should usually elect to use the Director's authority under this Section 176.1 in those cases
15 where the legal or factual issues are not complex and where an interpretation of the Planning Code is
16 not at issue, and reserve the enforcement mechanisms in Section 176 for those cases that are more
17 complex or where interpretations of the Planning Code are at issue.

18 (b) Authority of the Director. The Director may enforce against violations of the Planning
19 Code through the alternative administrative remedies of this Section 176.1. The Director may
20 designate a member of Department staff to act under his or her authority with respect to any action the
21 Director is authorized to take in this Section 176.1.

22 If the Department elects to use the administrative remedies of this Section, the Department must
23 use the abatement process set forth in this Section. However, as provided in Section (d)(3) below, the
24 Department is not precluded from pursuing the alternative remedies of Section 176 if abatement of the
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1 violation has not been achieved under this Section 176.1. In addition, the Department's election of this
2 process shall not affect the City Attorney's Charter authority to pursue a civil action. If the City
3 Attorney filed a civil action against the property prior to the Director's issuance of the notice of
4 violation under this Section 176.1, at the City Attorney's election the process under this Section 176.1
5 shall be terminated and abatement of the alleged violations shall be pursued by the City Attorney in the
6 ongoing civil action.

7 (c) Notice of Violation.

8 (1) Issuance. After the Department has determined that a violation of this Code exists, the
9 Director shall give written notice of the violation to the responsible party. For purposes of this Section
10 176.1, "responsible party" means the owners(s) of the real property on which the code violation is
11 located, as listed in the records of the San Francisco Assessor, and the current leaseholder if different
12 from the current owner(s) of the real property.

13 (2) Contents of Notice. The notice shall cite to this Section 176.1 and describe the
14 violation(s) with specificity, including: the date and location of the violations and the approximate time
15 the violations were observed; citation to applicable Code sections; and a description of how what was
16 observed violated the Code sections. The notice of violation shall state that the responsible party has
17 thirty days from the date of service to (i) correct all violations or (ii) file an application for a building
18 permit or other authorization necessary to abate the violations and proceed diligently to obtain all
19 approvals and complete the work, as specified by the Director's order and within the time periods
20 required.

21 The notice of violation shall inform the responsible party that if the action required in the notice
22 of violation is not taken by the stipulated deadline, the Director will (i) will issue an order of
23 abatement, (ii) cause the order of abatement to be recorded against the property's records in the Office
24 of the Recorder of the City and County of San Francisco, and (iii) assess administrative penalties under
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1 Section 176.1(e). The notice of violation shall also inform the responsible party of the right to request
2 a Director's hearing under subsection (d)(3) below prior to issuance of an order of abatement and
3 assessment of administrative penalties. Service of the notice of violation shall be as specified in Section
4 (g) below.

5 (d) Order of Abatement.

6 (1) Issuance; Administrative Penalties; Request for Hearing. If a property remains in
7 violation after the deadlines established in the notice of violation, the Director shall issue an order of
8 abatement and assess administrative penalties against the responsible party by following the procedure
9 set forth in Section 176.1(e). The order of abatement shall state the amount of penalty imposed, explain
10 how and when the penalty shall be paid, and describe the consequences of failure to pay the penalty.

11 The order of abatement shall inform the responsible party of the right to appeal the order of abatement
12 and assessment of administrative penalties to an administrative law judge under subsection (f) below.

13 The Department shall not proceed to enforce the order of abatement or collect the administrative
14 penalties until the time for appeal has passed or the order and penalties have been upheld on appeal.

15 (2) Recording. The Director shall record the order of abatement against the property's
16 records in the Office of the Recorder of the City and County of San Francisco. The Department shall
17 not record the order of abatement until the time for appeal has passed or the Director's decision has
18 been upheld on appeal. Within fourteen business days after the violation has been finally abated and
19 all fees and penalties have been paid, the Director shall record a notice of compliance that cancels the
20 order of abatement.

21 (3) Request for Hearing. Prior to expiration of the compliance deadlines set forth in the
22 notice of violation, the responsible party may request a Director's hearing in order to show cause why
23 the order of abatement should not issue and administrative penalties should not be assessed. The
24 responsible party may also request that the Department not proceed with abatement proceedings under
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1 this Section 176.1 but instead proceed under Section 176. The Director's decision to continue
2 proceeding under Section 176.1 is final and not appealable.

3 The Director may designate a member of Department staff to may act in his or her place as the
4 hearing officer. The hearing officer shall have the same authority as the Director to hear and decide
5 the case and to make any order provided for in this section. The responsible party may waive the right
6 to a Director's hearing and proceed directly to an appeal under subsection (f) below after the order of
7 abatement is issued and administrative penalties have been assessed. If the responsible party requests
8 a Director's hearing, the following procedure shall apply:

9 (A) Request for hearing; notice. The responsible party shall submit a written request for a
10 Director's hearing prior to expiration of the compliance deadlines set forth in the notice of violation on
11 a form or in the manner required by the Director. The Director shall send a notice of the date, hour,
12 and place of the hearing to the responsible party at the address specified in the request for hearing and
13 to any member of the public who has expressed an interest in the matter.

14 (B) Decision. The Director or the Director's designee, after a full and fair consideration of
15 the evidence and testimony received at the hearing, shall render within thirty days following the
16 conclusion of the hearing a written decision which either dismisses the proceedings or orders issuance
17 of the order of abatement and assessment of the administrative penalties. In rendering a decision, the
18 Director or the Director's designee shall consider the following:

19 (i) whether the responsible party was properly identified;

20 (ii) whether the accrual dates for the administrative penalties are accurate;

21 (iii) the amount of documented staff time spent in order to secure abatement of the violation;

22 (iv) the nature of the violation;

23 (v) the duration of the violation;

24 (vi) efforts made by the responsible party to correct the violation;

1 (vii) the impact of the violation upon the community;

2 (viii) any instance in which the responsible party has been in violation of the same or similar
3 laws at the same or other locations in the City and County of San Francisco;

4 (ix) the responsible party's good faith efforts to comply;

5 (x) whether the violation is easy to correct; and

6 (xi) such other factors as the Director or the Director's designee may consider relevant.

7 (e) Administrative Penalties.

8 (1) Assessment. In an order of abatement issued under subsection (d) above, the Director
9 shall assess administrative penalties for violation of the Planning Code. A penalty shall be assessed
10 for each violation observed. Payment of the penalty shall not excuse failure to correct the violations
11 nor shall it bar further enforcement action by the City.

12 (2) Amount of Penalty. The penalty assessed for each violation shall be \$100 if the
13 violation has not been corrected within thirty days from the date of service of the notice of violation,
14 \$250 if the violation has not been corrected within sixty days from the date of service of the notice of
15 violation, and \$500 if the violation has not been corrected within ninety days from the date of service of
16 the notice of violation. If at the end of the 90-day period the violation has not been corrected and the
17 matter has not been appealed, the Zoning Administrator may exercise his or her discretion to initiate
18 abatement proceedings under Section 176 of this Code or to refer the matter to the City Attorney or
19 District Attorney for prosecution.

20 (3) Failure to Pay the Administrative Penalties.

21 If the responsible party fails to pay the administrative penalties to the Department within thirty
22 days of service of the order of abatement, or within thirty days of the date the penalties have been
23 upheld on appeal, the Director may take such action to collect the fees as he or she deems appropriate,
24 including (i) referral of the matter to the Bureau of Delinquent Revenue Collection under Article V,
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1 Section 10.39 of the San Francisco Administrative Code, initiation of lien proceedings under Article
2 XX, Section 10.230 et seq. of the San Francisco Administrative Code, and/or a requesting that the City
3 Attorney pursue collection of the penalties imposed against the Responsible Party in a civil action. The
4 City Attorney may request its attorneys' fees in any action that he or she pursues to collect the
5 administrative penalties or to enforce collection of the penalties.

6 (f) Appeal of Order of Abatement and Administrative Penalties.

7 (1) Method of Appeal; Fee. The responsible party may appeal the issuance of an order of
8 abatement and any the administrative penalties assessed in the order by filing a written request in the
9 form required by the Department within fifteen days of the service of the order. The appeal shall
10 describe in detail why the appellant believes that the order of abatement was issued in error or why the
11 administrative penalty was assessed in error or should be modified.

12 The appeal shall be filed on a form or in the manner required by the Director and be
13 accompanied by the payment of a fee of \$400. The Department shall increase this fee on an annual
14 basis at a rate equal to that of the Consumer Price Index (CPI). In addition to the appeal fee and
15 administrative penalties assessed in the order of abatement, the Director shall assess upon the
16 responsible party the Department's cost of preparation for and appearance at the hearing and all prior
17 and subsequent attendant costs of the enforcement action. These fees shall be waived if the responsible
18 party would qualify for a waiver of court fees and costs under California Government Code Section
19 68511.3.

20 (2) Scheduling of Hearing. Upon timely filing of the appeal and payment of the appeal fee,
21 the Director shall schedule a hearing before an administrative law judge, who shall serve as the
22 hearing officer. The hearing shall be scheduled for a date no later than thirty days after the request.
23 The Director shall notify the responsible party and the appellant, if different from the responsible party,
24 of the hearing date, hour, and place of the hearing as soon as the hearing is scheduled and in no event
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1 later than ten days prior to the hearing. Notice of the hearing shall also be given to any member of the
2 public who has expressed interest in the matter. Notice shall be given in the manner specified in
3 subsection (g) below.

4 (3) Documentation to be Provided to the Administrative Law Judge. The Director shall
5 provide to the administrative law judge no later than ten days prior to the hearing a copy of the
6 Department's case file, which shall include at a minimum the notice of violation, the order of
7 abatement, other written communications between the Department and the responsible party, and
8 communications submitted by interested members of the public concerning the case. The Director may
9 also submit, but is not required to do so, written arguments on why the Director's order should be
10 upheld. Anything submitted to the administrative law judge by either party to the appeal shall be
11 served upon the other party at the same time and in the same manner as it is submitted to the
12 administrative law judge.

13 (4) Hearing and Decision. The administrative law judge shall hold a public hearing to hear
14 the appeal of the Director's order of abatement and/or assessment of administrative penalties. In
15 considering the appeal, the administrative law judge shall consider the following:

16 (A) whether the responsible party was properly identified;

17 (B) whether the accrual dates for the administrative penalties are accurate;

18 (C) the amount of documented staff time spent in order to secure abatement of the violation;

19 (D) the nature of the violation;

20 (E) the duration of the violation;

21 (F) efforts made by the responsible party to correct the violation;

22 (G) the impact of the violation upon the community;

23 (H) any instance in which the responsible party has been in violation of the same or similar
24 laws at the same or other locations in the City and County of San Francisco;

1 (I) the responsible party's good faith efforts to comply; and

2 (J) whether the violation is easy to correct; and

3 (K) such other factors as the administrative law judge may consider relevant.

4 The decision of the administrative law judge shall be based upon, but not limited to, provisions
5 of the San Francisco Planning Code, any final Zoning Administrator interpretations, the San Francisco
6 Building Code, building permits issued by the City, and any final decisions of the San Francisco Board
7 of Appeals concerning the subject building or property.

8 The administrative law judge shall issue a written decision on the appeal within thirty days of
9 the conclusion of the hearing. The decision shall be served on the responsible party by certified mail
10 by deposit in the United States mail in a sealed envelope, postage prepaid, addressed to the responsible
11 party at the address provided to the administrative law judge by the responsible party. Service shall be
12 considered to have been completed at the time of deposit in the United States mail. A copy of the
13 decision shall also be mailed to the Director of Planning at the offices of the Planning Department.

14 (5) Continuance of Hearing. The parties may by mutual agreement continue the hearing
15 date. If the parties do not mutually agree on another hearing date, the party wanting a continuance
16 may request the administrative law judge to grant the continuance by submitting a written request for a
17 continuance and demonstrating good cause with supporting documentation. A written request for a
18 continuance shall be made at the earliest possible date but in no event less than five days before the
19 hearing unless unforeseen circumstances prevent such notification. The party requesting the
20 continuance shall notify any other parties of the request in the most expeditious manner and provide
21 them with copies of the complete request and the supporting documentation. A request for continuance
22 made at the time of the hearing may be granted only in those exceptional cases where the requesting
23 party demonstrates both good cause and that the party was unable through no fault of their own to
24 make the request at an earlier time. The administrative law judge may grant more than one
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1 continuance, but the combination of all continuances granted shall be for no longer than forty-five
2 days.

3 For purposes of this section, "good cause" may include:

4 (A) the illness of a party, an attorney or other authorized representative of a party, or a
5 material witness of a party;

6 (B) verified travel of a party, attorney, or material witness outside of San Francisco
7 scheduled before receipt of the notice of hearing;

8 (C) failure to receive timely notice of the hearing date; or

9 (D) any other reason which makes it impossible or infeasible to appear on the scheduled
10 date due to unforeseen circumstances or verified pre-arranged plans that cannot be changed. Mere
11 inconvenience in appearing shall not be considered sufficient good cause.

12 In deciding whether to grant the request for continuance, the administrative law judge shall
13 also take into consideration the nature of the alleged violation and its impact on neighboring properties
14 and the general public if the alleged violations are allowed to continue for an additional period of time.

15 (6) Finality and Effect of the Decision. The decision of the administrative law judge shall
16 be the City's final administrative action on the matter and there shall be no further administrative
17 appeals.

18 (7) Compliance with Decision. If the administrative law judge upholds the Director's order
19 of abatement in whole or in part, the responsible party shall comply with the decision and pay to the
20 Department any administrative penalties that were upheld within thirty days of the date the decision
21 was served. If the responsible party is proceeding diligently to obtain required permits and to complete
22 the abatement work, the Director may grant additional time to comply with the decision. If the
23 responsible party fails to comply with the decision and/or to pay the administrative penalties within the
24 time period required, the Director may take such action to collect the fees and enforce the decision as
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1 he or she deems appropriate, including (i) referral of the matter to the Bureau of Delinquent Revenue
2 Collection under Article V, Section 10.39 of the San Francisco Administrative Code, initiation of lien
3 proceedings under Article XX, Section 10.230 et seq. of the San Francisco Administrative Code, and/or
4 a requesting that the City Attorney pursue enforcement of the decision and collection of the penalties
5 imposed against the responsible party in a civil action.

6 If the administrative law judge overrules the Director and determines that the order of
7 abatement was issued in error, the Department shall consider the case abated and all administrative
8 penalties rescinded.

9 (8) Rescission of Order of Abatement or Withdrawal of Appeal Prior to the Hearing.

10 If the Director rescinds the order of abatement in its entirety prior to the hearing, the case shall
11 be considered abated and the appeal withdrawn, and any assessed administrative penalties shall be
12 considered rescinded. The Department shall refund to the responsible party in a timely manner any
13 appeal fees that he or she has paid.

14 If the responsible party elects to withdraw the appeal and comply with the order of abatement,
15 the Department shall refund in a timely manner any appeal fees that he or she has paid. Any
16 administrative penalties already assessed must be paid in full before the Department will consider the
17 case abated. If the responsible party withdraws the appeal within ten days of the date the appeal was
18 filed, he or she may apply to the Director in writing for a reduction in the amount of any assessed
19 administrative penalties based upon the number of days between the filing of the appeal and its
20 withdrawal. Any decision by the Director to grant or deny the request shall be at the Director's sole
21 discretion and is not appealable.

22 (g) Service of Notices and Orders; Proof of Service. Service of a notice of violation, order
23 of abatement, or other notice or order required by this Section 176.1 shall be given to the owner of the
24 property or other person to be notified by depositing the notice or order in the United States mail in a
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1 sealed envelope, postage prepaid, addressed to the person to be notified at that person's last known
2 business or residence address as shown in the Assessor's records. Service by mail shall be considered
3 to have been completed at the time of deposit in the United States mail.

4 If the identity of the person or business entity owning the property in question is unknown, the
5 notice of violation shall be posted in a conspicuous location on, or if access to the property is not
6 available in a conspicuous location as close as practicable to, the building or property. The notice
7 shall also be hand delivered to the person, if any, in real or apparent charge and control of the subject
8 premises or property. Once the identity of the person or business entity is known, the notice of
9 violation shall be mailed to such person or business entity without the delay affecting the time limits,
10 fees, or administrative penalties imposed by this Section 176.1.

11 Proof of giving any notice may be made by the certificate of any officer or employee of the City
12 and County of San Francisco or by affidavit of any person over the age of 18 years, which shows
13 service in conformity with the San Francisco Municipal Code or any other applicable provisions of
14 law.

15 (h) Failure of the City to Comply with Timelines. The failure of the Director, the
16 Department, or the administrative law judge to comply with any of the timelines set forth in this Section
17 176.1 shall not render the code violations unenforceable.

18 (i) Use of Fees and Penalties Collected. All fees and penalties collected under this Section
19 176.1 shall be deposited in the Planning Code Enforcement Fund established in Administrative Code
20 Section 10.100.166 and shall be used for the purposes specified in that section.

21 Section 3. The San Francisco Planning Code is hereby amended by amending Section
22 1013, to read as follows:

23 SEC. 1013. ENFORCEMENT AND PENALTIES.
24
25

1 (a) Enforcement and Penalties shall be as provided in Sections 176 and 176.1 of
2 this Code. ~~Duty to Administer and Enforce.~~ It shall be the duty of the Director of Planning, or
3 his delegate, to administer and enforce the provisions of this Article 10. Upon request, the
4 Bureau of Building Inspection shall assist the Director of Planning in the performance of this
5 duty.

6 (b) ~~Inspection of Premises.~~ In the performance of his duties, the Director of
7 Planning and employees of the Department properly authorized to represent him shall have
8 the right to enter any building or premises for the purposes of investigation and inspection;
9 provided, that such right of entry shall be exercised only at reasonable hours, and that in no
10 case shall entry be made to any building in the absence of the owner or tenant thereof without
11 the written order of a court of competent jurisdiction.

12 (c) ~~Methods of Enforcement.~~ In addition to the regulations of this Article 10, other
13 Articles of this Code and provisions of the Charter which govern the approval or disapproval of
14 applications for building permits or other permits or licenses affecting the use of land or
15 buildings, the Director of Planning shall have the authority to implement the enforcement
16 thereof by any of the following means:

17 (1) ~~He may serve notice requiring the removal of any violation of this Article 10 upon~~
18 ~~the owner, agent or tenant of the building or land, or upon the architect, builder, contractor or~~
19 ~~other person who commits or assists in any such violation;~~

20 (2) ~~He may call upon the District Attorney to institute any necessary legal~~
21 ~~proceedings to enforce the provisions of this Article 10, and the District Attorney is hereby~~
22 ~~authorized to institute appropriate actions to that end;~~

23 (3) ~~He may call upon the Chief of Police and his authorized agents to assist in the~~
24 ~~enforcement of this Article 10.~~

1 In addition to any of the foregoing remedies, the City Attorney may maintain an action
2 for injunction to restrain or abatement to cause the correction or removal of any violation of
3 this Article 10, or for a mandatory injunction in appropriate cases.

4 (d) — Penalties. Any person, firm or corporation violating any of the provisions of this
5 Article 10 shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined
6 in an amount not exceeding \$500 or be imprisoned for a period not exceeding six months or
7 be both so fined and imprisoned. Each day such a violation is committed or permitted to
8 continue, shall constitute a separate offense and shall be punishable as such hereunder.

9 Section 4. The San Francisco Planning Code is hereby amended by amending Section
10 1119, to read as follows:

11 SEC. 1119. ENFORCEMENT AND PENALTIES.

12 Enforcement and Penalties shall be as provided in Sections 176 and 176.1 of this
13 Code.

14 The provisions of this Article 11 will be enforced and penalties for violations of the
15 provisions of this Article 11 shall accrue in the manner provided in Section 1013 of Article 10
16 of this Code. The City Attorney may maintain an action for injunctive relief to cause, where
17 possible, the complete or partial restoration or reconstruction of any building altered or
18 demolished in violation of this Article, as well as the site of the building.

19 Section 3 5. Review of Effectiveness. One year after enactment and implementation
20 of this ordinance, the Planning Commission shall review the effectiveness of the enforcement
21 program established by this ordinance in securing compliance with the Planning Code and
22 compensating the Department for the costs of enforcement, and shall recommend to the
23 Board any amendments that it deems necessary to improve the program's effectiveness.

1 Section 4 6. Severability. In the event that a court of competent jurisdiction holds that
2 federal or state law, rule or regulation invalidates any clause, sentence, paragraph or section
3 of this ordinance or the application thereof to any person or circumstances, it is the intent of
4 the Board of Supervisors that the court or agency sever such clause, sentence, paragraph or
5 section so that the remainder of this ordinance shall remain in effect.

6
7 APPROVED AS TO FORM:
8 DENNIS J. HERRERA, City Attorney

9 By:

Judith A. Boyajian
10 JUDITH A. BOYAJIAN
11 Deputy City Attorney
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City and County of San Francisco

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

Tails Ordinance

File Number: 071651

Date Passed:

Ordinance amending the San Francisco Planning Code by amending Section 176 to authorize the Zoning Administrator to assess administrative penalties for a Planning Code violation; adding Section 176.1 to establish Planning Code enforcement remedies of the Director, which include issuance and recording of orders of abatement, assessment of administrative penalties, and a hearing and appeal process; amending Sections 1013 and 1119 to refer to Sections 176 and 176.1 as the applicable enforcement and penalty provisions; adopting findings including environmental findings, Planning Code Section 302 findings, and findings of consistency with the General Plan and the Priority Policies of Planning Code Section 101.1.

March 25, 2008 Board of Supervisors — PASSED ON FIRST READING

Ayes: 10 - Ammiano, Chu, Daly, Dufty, Elsbernd, Maxwell, McGoldrick,
Mirkarimi, Peskin, Sandoval

Absent: 1 - Alioto-Pier

April 1, 2008 Board of Supervisors — FINALLY PASSED

Ayes: 11 - Alioto-Pier, Ammiano, Chu, Daly, Dufty, Elsbernd, Maxwell,
McGoldrick, Mirkarimi, Peskin, Sandoval

File No. 071651

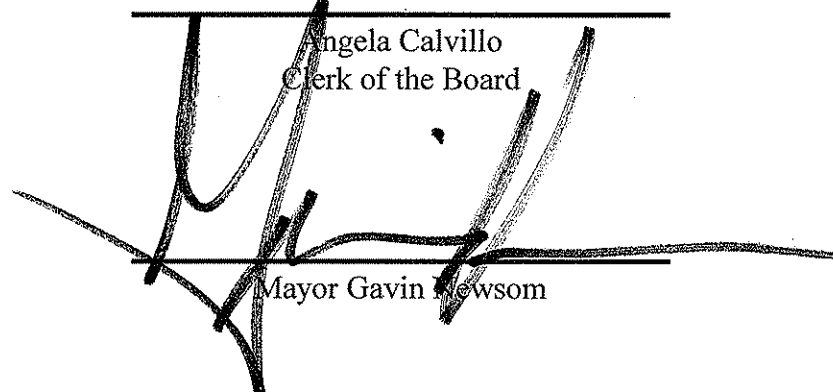
I hereby certify that the foregoing Ordinance
was FINALLY PASSED on April 1, 2008 by
the Board of Supervisors of the City and
County of San Francisco.



Angela Calvillo
Clerk of the Board

4.10.08

Date Approved



Mayor Gavin Newsom