

1 [Permit Regulation of Hazardous Wastes on Private Property]  
2 REPEALING THE DEFINITION OF "HAZARDOUS WASTE" IN SECTION 1000; AND  
3 SECTIONS 1002, 1003, 1005, 1007, 1008, 1009, 1010, 1011, 1013, AND 1015 OF ARTICLE  
4 20 OF THE SAN FRANCISCO PUBLIC WORKS CODE; AND AMENDING THE SAN  
5 FRANCISCO HEALTH CODE BY REENACTING THE REPEALED PROVISIONS AS NEW  
6 ARTICLE 22A; AMENDING THE REMAINING PROVISIONS OF ARTICLE 20 OF THE SAN  
7 FRANCISCO PUBLIC WORKS CODE TO REFERENCE NEW ARTICLE 22A OF THE SAN  
8 FRANCISCO HEALTH CODE; AND PROVIDING THE DEPARTMENT OF PUBLIC HEALTH  
9 WITH THE AUTHORITY TO CHARGE FEES TO DEFRAY THE COSTS OF IMPLEMENTING  
10 THIS ARTICLE.

11  
12 Note: Section 1 contains findings. Section 2 repeals certain  
13 portions of Article 20 of the Public Works Code. In Section 3, which  
14 amends the Public Works Code, additions are underlined and  
15 deletions are in ((double parenthesis)). Section 4 is new.

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

17 Section 1. FINDINGS. The Board of Supervisors of the City and County of San  
18 Francisco hereby finds and declares that relocating the substantive health protection  
19 requirements of the hazardous waste program presently codified in Article 20 of the Public  
20 Works Code (also known as the "Maher Ordinance") to a new Article codified in the Health  
21 Code will promote greater efficiency in the administration of the program, thereby benefiting  
22 the public and regulated community.

23 Section 2: The following portions of Article 20 of the San Francisco Public Works  
24 Code are hereby repealed:  
25

- 1 (a) the definition of "hazardous waste" in Section 1000;
- 2 (b) Section 1002;
- 3 (c) Section 1003;
- 4 (d) Section 1005;
- 5 (e) Section 1007;
- 6 (f) Section 1008;
- 7 (g) Section 1009;
- 8 (h) Section 1010;
- 9 (i) Section 1011;
- 10 (j) Section 1013; and
- 11 (k) Section 1015.

12 Section 3. Article 20 of the Public Works Code is amended to read as follows:

13 **SEC. 1001 Analysis required.** (a) Applicants for any building permit shall comply with  
14 the requirements of ((Section 1002)) Article 22A of the San Francisco Public Health Code  
15 when:

16 1. The permit is for a construction project that involves the disturbance of at least 50  
17 cubic yards of soil; and

18 2. The parcel of land or part thereof on which the construction or part thereof will occur  
19 is located

20 (A) Bayward of the high-tide line as indicated on the Historic San Francisco Maps,  
21 prepared by the State of California, State Lands Commission, State Lands Division and filed  
22 with the Recorder of the City and County of San Francisco pursuant to Chapter 1333 of the  
23 1968 Statues, as amended by the California Legislature, for reference in conjunction with the  
24 map and description of lands, situated in the City and County of San Francisco, that were  
25

1 transferred to the City and County of San Francisco under Chapter 1333. The Director of  
2 Public Health shall prepare and maintain for public distribution a map that reflects this line.

3 (B) In any area of the City and County of San Francisco designated by the Director of  
4 Public Health pursuant to Section ((1008)) 1232 of the Health Code.

5 (((b) The Director may waive the requirements imposed by this Section if the  
6 applicant demonstrates that the property has been continuously zoned as residential under  
7 the City Planning Code since 1921, has been in residential use since that time, and the  
8 Director has no other reason to believe that the soil may contain hazardous wastes.

9 (c) Notwithstanding the provisions of Subsection (a), the Director has authority to  
10 require soil analysis pursuant to the provisions of this Article as part of any building permit  
11 application when the Director has reason to believe that hazardous wastes may be present in  
12 the soil at the construction site.))

13 **SEC. 1004. Permit approval.**

14 (a) Except for site permits issued pursuant to San Francisco Building Code Section  
15 303(g), once the Director of Public Health has determined that the required site history, soil  
16 sampling and analyses were conducted and the report contains the information required by  
17 Section 1003, the Director of Public Works may approve or disapprove the application subject  
18 to the terms and limitations of this Section. The Director of Public Works may issue a site  
19 permit pursuant to San Francisco Building Code Section 303(g) prior to the time an applicant  
20 complies with this Article, provided, however, that the Director of Public Works shall not issue  
21 any addenda pursuant to Building Code Section 303(g), except addenda necessary to carry  
22 out the soil sampling or site mitigation measures required by this Article, until the applicant  
23 has complied with all applicable provisions of this Article. The holder of a site permit and any  
24 addenda necessary to comply with this Article shall proceed with approved addenda work at  
25 his own risk, without assurance that approvals for the remaining addenda or for the entire

1 building will be granted.

2 ((a) If the soil sampling and analysis report indicates that there are no hazardous  
3 wastes present in the soil, the Director of Public Health shall provide the applicant and the  
4 Director of Public Works with written notification that the applicant has complied with the  
5 requirements of this Article. The Director of Public Works may thereafter approve or  
6 disapprove the building permit application.

7 (b) If the soil sampling and analysis report indicates that the site is listed on the  
8 National Priorities List or the list of hazardous substances release sites published by the  
9 California Department of Health Services, the project applicant shall provide to the Director of  
10 Public Health certification or verification from the appropriate federal or state agency that any  
11 site mitigation required by the federal or state agency has been completed and complete the  
12 certification procedure set forth in Section 1005. After receipt of the certification required by  
13 Section 1005, the Director of Public Health shall provide the applicant and the Director of  
14 Public Works with written notification that the applicant has complied with the requirements of  
15 this Article. Thereafter, the Director of Public Works may approve or disapprove a building  
16 permit.

17 (c) Unless Subsection (b) is applicable, if the soil sampling and analysis report  
18 indicates that hazardous wastes are present in the soil, the applicant shall do the following  
19 before the Director of Public Works may approve or disapprove the building permit  
20 application:

21 1. Submit a site mitigation report prepared by a qualified person to the Director of  
22 Public Works and the Director of Public Health.

23 A. For the purposes of this Section, a qualified person is defined as one or more of the  
24 following who is registered or certified by the State of California: soil engineer, civil engineer,  
25 chemical engineer, engineering geologist, geologist, hydrogeologist, industrial hygienist or

1 environmental assessor.

2 B. The site mitigation report shall contain the following information:

3 i. A determination by the qualified person as to whether the hazardous wastes in the  
4 soil are causing or are likely to cause significant environmental or health and safety risks, and  
5 if so, recommended measures that will mitigate the significant environmental or health and  
6 safety risks caused or likely to be caused by the presence of the hazardous waste in the soil.  
7 If the report recommends mitigation measures it shall identify any soil sampling and analysis  
8 that it recommends the project applicant conduct following completion of the mitigation  
9 measures to verify that mitigation is complete.

10 ii. A statement signed by the person who prepared the report certifying that the person  
11 is a qualified person within the meaning of this Section and that in his or her judgment either  
12 no mitigation is required or the mitigation measures identified, if completed, will mitigate the  
13 significant environmental or health and safety risks caused by or likely to be caused by the  
14 hazardous wastes in the soil.

15 2. Complete the site mitigation measures identified by the qualified person in the site  
16 mitigation report. The Director of Public Works may issue any permits or addenda to site  
17 permits necessary for the applicant to carry out the site mitigation measures; and

18 3. Complete the certification procedure set forth in Section 1005. After receipt of the  
19 certification required by Section 1005, the Director of Public Health shall provide the applicant  
20 and the Director of Public Works with written notification that the applicant has complied with  
21 the requirements of this Article.))

22 ~~(((d)))~~(b) For the purposes of completing the requirements of this Article, the time  
23 limitations set forth in Section 303(a)1.B. of the San Francisco Building Code do not apply.

24 Section 4. Article 22A of the San Francisco Health Code is hereby added, to read as  
25 follows:



1 and the Director of Building Inspection with written notification that the requirements of this  
2 Article have been waived.

3 **SEC. 1223. DIRECTOR'S DISCRETIONARY AUTHORITY TO REQUIRE**  
4 **COMPLIANCE.** In addition to those areas defined pursuant to Section 1221, the Director has  
5 authority to require soil analysis pursuant to the provisions of this Article as part of any  
6 building permit application when the Director has reason to believe that hazardous wastes  
7 may be present in the soil at the property.

8 **SEC. 1224. SITE HISTORY.** The Applicant shall provide to the Director a site history  
9 for the property prepared by an individual with the requisite training and experience described  
10 in regulations adopted pursuant to Section 1232. The site history shall contain a statement  
11 indicating whether the property is listed on the National Priorities List, published by the United  
12 States Environmental Protection Agency pursuant to the federal Comprehensive  
13 Environmental Response Compensation and Liability Act, 42 U.S.C. Section 9604(c)(3) or  
14 listed as a hazardous substance release site by the California Department of Toxic  
15 Substances Control or the State Water Resources Control Board pursuant to the California  
16 Hazardous Substances Account Act, Health and Safety Code Section 25356. The applicant  
17 shall file the site history with the Director and the certified laboratory.

18 **SEC. 1225. SOIL SAMPLING AND ANALYSIS.** (a) Analysis of Sampled Soil. The  
19 Applicant shall cause a professional geologist, civil engineer, or engineering geologist who is  
20 registered or certified by the State of California, or a certified laboratory to take samples of the  
21 soil on the property to determine the presence of hazardous wastes in the soil. The following  
22 types of analyses shall be conducted, unless an alternative proposal is approved by the  
23 Director:

24 (1) inorganic persistent and bioaccumulative toxic substances as listed in  
25 Section 66261.24(a)(2)(A) of Title 22 of the California Administrative Code;

1 (2) volatile organic toxic pollutants as listed in 40 Code of Federal Regulations,  
2 Part 122, Appendix D, Table II;

3 (3) PCBs;

4 (4) pH levels;

5 (5) cyanides;

6 (6) methane and other flammable gases;

7 (7) total petroleum hydrocarbons;

8 (8) semi-volatile compounds;

9 (9) hazardous wastes designated by the Director pursuant to Section 1232  
10 and;

11 (10) any other hazardous waste that either the Director or the certified  
12 laboratory, after an examination of the site history, has reason to conclude may be present on  
13 the property. The Director shall make any such determination within 30 days of filing by the  
14 applicant of the site history.

15 (b) Procedures for Soil Sampling. Soil sampling shall be conducted in accordance  
16 with procedures for sampling soils approved by the California Department of Toxic  
17 Substances Control or the State Water Resources Control Board and the San Francisco Bay  
18 Regional Water Quality Control Board.

19 (c) Testing of Sampled Soil. Samples shall be analyzed by a certified laboratory in  
20 accordance with methods for analyzing samples for the presence of hazardous wastes  
21 approved by the California Department of Toxic Substances Control or the State Water  
22 Resources Control Board and the San Francisco Bay Regional Water Quality Control Board.

23 **SEC. 1226. SOIL ANALYSIS REPORT.** (a) Contents. The Applicant shall submit a  
24 soil analysis report prepared by the persons conducting the soil sampling and analysis to the  
25 Director, the California Department of Toxic Substances Control, the San Francisco Bay



1 Regional Water Quality Control Board and to other agencies as directed by the Director. The  
2 report shall include the following information:

3 (1) The names and addresses of the persons and the certified laboratory that  
4 conducted the soil sampling, the soil analysis and prepared the report;

5 (2) An explanation of the sampling and testing methodology;

6 (3) The results of the soil analyses;

7 (4) Whether any of the analyses conducted indicate the presence of hazardous  
8 wastes and, for each, the level detected and the state and federal minimum standards, if any;

9 (5) The state and federal agencies to which the presence of the hazardous  
10 wastes has been reported and the date of the report;

11 (6) A statement that the certified laboratory, after examination of the site  
12 history, has no reason to conclude that hazardous wastes other than those listed in Section  
13 1225(a)(1) through (a)(9) were likely to be present on the property;

14 (b) Review by Director. The Director shall determine whether the site history, soil  
15 sampling and analyses required by this Article were conducted and whether the report  
16 required by this Section is complete. If the site history, soil sampling or analyses were not  
17 conducted or the report does not comply with the requirements of this Section, the Director  
18 shall notify the applicant in writing within 30 days of receipt of the report, indicating the  
19 reasons the report is unacceptable. A copy of the notification shall be sent to the Director of  
20 Building Inspection.

21 (c) No Wastes Present. If the soil sampling and analysis report indicates that there  
22 are no hazardous wastes present in the soil, the Director shall provide the Applicant and the  
23 Director of Building Inspection with written notification that the Applicant has complied with  
24 the requirements of this Article.  
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1           **SEC. 1227. KNOWN HAZARDOUS WASTE SITE.** If the soil sampling and analysis  
2 report or site history indicates that the property is listed on the National Priorities List or the  
3 list of California Hazardous Substances Account Act release sites, the Applicant shall provide  
4 to the Director certification or verification from the appropriate federal or state agency that any  
5 site mitigation required by the federal or state agency has been completed and complete the  
6 certification procedure set forth in Section 1229. Certification by a competent state or federal  
7 agency that mitigation measures have been properly completed shall constitute a conclusive  
8 determination and shall be binding upon the Director.

9           **SEC. 1228. APPLICANT'S RESPONSIBILITY UPON DISCOVERY OF**  
10 **HAZARDOUS WASTES.** Unless Section 1227 is applicable, if the soil sampling and analysis  
11 report indicates that hazardous wastes are present in the soil, the Applicant shall submit a  
12 site mitigation report prepared by a qualified person to the Director.

13           (a) For the purposes of this section, a qualified person is defined as one or more of  
14 the following who is registered or certified by the State of California: soil engineer, civil  
15 engineer, chemical engineer, engineering geologist, geologist, hydrologist, industrial hygienist  
16 or environmental assessor.

17           (b) The site mitigation report shall contain the following information:

18           (1) A determination by the qualified person as to whether the hazardous wastes  
19 in the soil are causing or are likely to cause significant environmental or health and safety  
20 risks, and if so, recommend measures that will mitigate the significant environmental or health  
21 and safety risks caused or likely to be caused by the presence of the hazardous waste in the  
22 soil. If the report recommends mitigation measures it shall identify any soil sampling and  
23 analysis that it recommends the project applicant conduct following completion of the  
24 mitigation measures to verify that mitigation is complete.

1 (2) A statement signed by the person who prepared the report certifying that  
2 the person is a qualified person within the meaning of this section and that in his or her  
3 judgment either no mitigation is required or the mitigation measures identified, if completed,  
4 will mitigate the significant environmental or health and safety risks caused by or likely to be  
5 caused by the hazardous wastes in the soil.

6 (3) Complete the site mitigation measures identified by the qualified person in  
7 the site mitigation report.; and

8 (4) Complete the certification required by Section 1229.

9 **SEC. 1229. CERTIFICATION.** (a) Contents. The Applicant shall certify under  
10 penalty of perjury to the Director that:

11 (1) If Section 1227 is applicable, the Applicant has received certification or  
12 verification from the appropriate state or federal agency that mitigation is complete.

13 (2) If Section 1228 is applicable:

14 (A) A qualified person has determined in the site mitigation report that no  
15 hazardous wastes in the soil are causing or are likely to cause significant environmental or  
16 health and safety risks, and the qualified person recommends no mitigation measures; or

17 (B) The Applicant has performed all mitigation measures recommended  
18 in the site mitigation report, and has verified that mitigation is complete by conducting follow-  
19 up soil sampling and analysis, if recommended in the site mitigation report.

20 (b) Applicant Declarations. The certification shall state:

21 "The Applicant recognizes that it has a nondelegable duty to perform site  
22 mitigation; that it, and not the City, is responsible for site mitigation; that it, not the City,  
23 attests to and is responsible for the accuracy the representations made in the  
24 certification, and that it will continue to remain liable and responsible, to the extent  
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1 such liability or responsibility is imposed by state and federal law, for its failure to  
2 perform the site mitigation.”

3 **SEC. 1230. NOTIFICATION TO DIRECTOR OF BUILDING INSPECTION.** After  
4 receipt of the certification required by Section 1229, the Director shall provide the Applicant  
5 and the Director of Building Inspection with written notification that the Applicant has complied  
6 with the requirements of this Article.

7 **SEC. 1231. MAINTENANCE OF REPORT BY DIRECTOR.** The site history, soil  
8 analysis report certification and related documents shall become a part of the file maintained  
9 by the Department.

10 **SEC. 1232. RULES AND REGULATIONS.** (a) Adoption of Rules. The Director  
11 may adopt, and may thereafter amend, rules, regulations and guidelines that the Director  
12 deems necessary to implement the provisions of this ordinance. For the purposes of this  
13 Article, a public hearing before the Health Commission shall be held prior to the adoption or  
14 any amendment of the rules, regulations and guidelines recommended for implementation. In  
15 addition to notices required by law, the Director shall send written notice, at least 15 days  
16 prior to the hearing, to any interested party who sends a written request to the Director for  
17 notice of hearings related to the adoption of rules, regulations and guidelines pursuant to this  
18 Section.

19 In developing such regulations, the Director shall consider, inter alia, state and federal  
20 statutes and regulations pertaining to hazardous wastes with the purpose of coordinating  
21 local regulations with them.

22 (b) Guidelines for Regulations. Rules, regulations and guidelines may address among  
23 others, the following subjects:

24 (1) Minimum standards for acceptable site histories. The minimum standards  
25 shall be designed to assist interested persons including, but not limited to, the Director of

1 Building Inspection, other state and local public agencies and certified testing laboratories, to  
2 evaluate whether analyses, other than those required by Section 1225(a)(1) through (a)(9),  
3 must be conducted to detect the presence in the soil of hazardous wastes and to determine  
4 what analyses are appropriate.

5 (2) Minimum education and experience requirements for the persons who  
6 prepare site histories pursuant to Section 1224. In making this determination, the Director  
7 shall consider relevant those academic disciplines and practical experience which would  
8 qualify an individual to evaluate a property in San Francisco and identify prior uses made of  
9 the property that may be relevant in determining whether there are hazardous wastes in the  
10 soil and what analyses, if any, are appropriate to identify them.

11 (3) Precautionary measures to minimize long-term exposure to hazardous  
12 wastes that cannot be removed or are not required to be removed by the site mitigation plan.

13 (4) Designation of areas. Designation of areas in the City, in addition to the  
14 area described in Section 1001 of the San Francisco Public Works Code, where the Director  
15 has reason to believe that the soils may contain hazardous wastes and the designation of the  
16 analyses specified in Section 1225 that shall be conducted in each area.

17 (5) Designation of additional hazardous wastes. The designation of additional  
18 hazardous wastes, other than those listed in Section 1225(a)(1) through (a)(9), for which  
19 analyses must be conducted. The designation shall be based on a determination by the  
20 Director that there is a reasonable basis to conclude that such other hazardous wastes may  
21 be in the soil. The designation may be made applicable to a specified area or areas of the  
22 City or city-wide as determined by the Director.

23 (6) Waiver from Requirements for Analyses. The exclusion of hazardous  
24 wastes from the analysis requirements set forth in Section 1225 upon a determination that the  
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1 hazardous waste does not pose a significant present or potential hazard to human health and  
2 safety or to the environment.

3       **SEC. 1233. NOTIFICATION TO BUYER.** The Director shall prepare and maintain for  
4 public distribution a summary of the requirements of this Article. The seller or the seller's  
5 agent involved in the sale or exchange of any real property located bayward of the high-tide  
6 line as indicated on the Historic San Francisco Maps as described in Article 20 of the Public  
7 Works Code and as reflected on the map prepared and maintained for public distribution by  
8 the Director and in those areas designated by the Director pursuant to section 1223 shall  
9 provide a copy of the summary to the buyer or buyers and shall obtain a written receipt from  
10 the buyer or buyers acknowledging receipt of the summary. Failure to give notice as required  
11 by this section shall not excuse or exempt the buyer of the property from compliance with the  
12 requirements of this Article.

13       **SEC. 1234 NONASSUMPTION OF LIABILITY.** In undertaking to require certain  
14 building or grading permits to include soil analyses for the presence of hazardous wastes, the  
15 City and County of San Francisco is assuming an undertaking only to promote the general  
16 welfare. It is not assuming, nor is it imposing on itself or on its officers and employees, any  
17 obligation for breach of which it is liable for money damages to any person who claims that  
18 such breach proximately caused injury.


19       **SEC. 1235. CONSTRUCTION ON CITY PROPERTY.** All departments, boards,  
20 commissions and agencies of the City and County of San Francisco that authorize  
21 construction or improvements on land under their jurisdiction under circumstances where no  
22 building or grading permit needs to be obtained pursuant to the San Francisco Building Code  
23 shall adopt rules and regulations to insure that the same site history, soil sampling, analyzing,  
24 reporting, site mitigation and certification procedures as set forth in this Article are followed.


1 The Directors of Public Health and Building Inspection shall assist the departments, boards,  
2 commissions and agencies to insure that these requirements are met.

3 **SEC. 1236. SEVERABILITY.** If any section, subsection, subdivision, paragraph,  
4 sentence, clause or phrase of this Article or any part thereof, is for any reason to be held  
5 unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision  
6 shall not affect the validity or effectiveness of the remaining portions of this Section or any  
7 part thereof. The Board of Supervisors hereby declares that it would have passed each  
8 section, subsection, subdivision, paragraph, sentence, clause or phrase thereof irrespective  
9 of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences,  
10 clauses or phrases be declared unconstitutional or invalid or ineffective.

11 **SEC. 1237. FEES.** The Director is authorized to charge the following fees to defray  
12 the costs of document processing and review, consultation with applicants, and administration  
13 of this Article: (1) an initial fee of \$390, payable to the Department, upon filing a site history  
14 report with the Department; and (2) an additional fee of \$130 per hour for document  
15 processing and review and applicant consultation exceeding three hours or portion thereof,  
16 payable to the Department, upon filing of the certification required pursuant to Section 1229.

17  
18  
19 APPROVED AS TO FORM:  
LOUISE H. RENNE, City Attorney

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21  
22 By:  \_\_\_\_\_  
23 William Chan  
24 Deputy City Attorney for  
Rona H. Sandler  
25 Deputy City Attorney

By:  \_\_\_\_\_  
Sandy Mori  
Clerk, Health Commission



# City and County of San Francisco

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

## Tails Ordinance

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**File Number:** 990026

**Date Passed:**

Ordinance repealing the definition of "Hazardous Waste" in Section 1000, and Sections 1002, 1003, 1005, 1007, 1008, 1009, 1010, 1011, 1013, and 1015 of Article 20 of the San Francisco Public Works Code; and amending the San Francisco Health Code by reenacting the repealed provisions as new Article 22A; amending the remaining provisions of Article 20 of the San Francisco Public Works Code to reference new Article 22A of the San Francisco Health Code; and providing the Department of Public Health with the authority to charge fees to defray the cost of implementing this article.

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February 22, 1999 Board of Supervisors — PASSED, ON FIRST READING

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

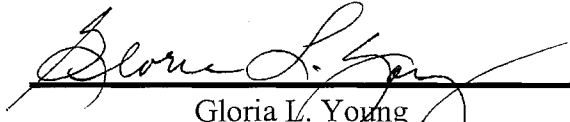
March 1, 1999 Board of Supervisors — FINALLY PASSED

Ayes: 10 - Ammiano, Becerril, Bierman, Brown, Katz, Kaufman, Leno, Newsom, Yaki, Yee  
Absent: 1 - Teng



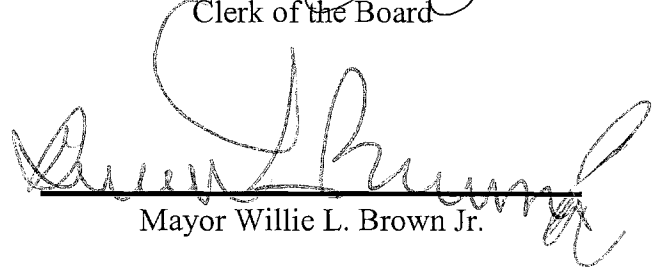
File No. 990026

I hereby certify that the foregoing Ordinance  
was **FINALLY PASSED** on March 1, 1999 by  
the Board of Supervisors of the City and  
County of San Francisco.

  
Gloria L. Young  
Clerk of the Board

**MAR 12 1999**

Date Approved

  
Mayor Willie L. Brown Jr.