[Permit Regulation of Hazardous Wastes on Private Property]

REPEALING THE DEFINITION OF "HAZARDOUS WASTE" IN SECTION 1000; AND
SECTIONS 1002, 1003, 1005, 1007, 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1015 OF ARTICLE 20 OF THE SAN FRANCISCO PUBLIC WORKS CODE; AND AMENDING THE SAN FRANCISCO HEALTH CODE BY REENACTING THE REPEALED PROVISIONS AS NEW ARTICLE 22A; AMENDING THE REMAINING PROVISIONS OF ARTICLE 20 OF THE SAN FRANCISCO PUBLIC WORKS CODE TO REFERENCE NEW ARTICLE 22A OF THE SAN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 COSTS OF IMPLEMENTING THIS ARTICLE.

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

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

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

Section 2: The following portions of Article 20 of the San Francisco Public Works Code are hereby repealed:
(a) the definition of “hazardous waste” in Section 1000;
(b) Section 1002;
(c) Section 1003;
(d) Section 1005;
(e) Section 1007;
(f) Section 1008;
(g) Section 1009;
(h) Section 1010;
(i) Section 1011;
(j) Section 1013; and
(k) Section 1015.

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

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

1. The permit is for a construction project that involves the disturbance of at least 50 cubic yards of soil; and
2. The parcel of land or part thereof on which the construction or part thereof will occur is located

(A) Bayward of the high-tide line as indicated on the Historic San Francisco Maps, prepared by the State of California, State Lands Commission, State Lands Division and filed with the Recorder of the City and County of San Francisco pursuant to Chapter 1333 of the 1968 Statues, as amended by the California Legislature, for reference in conjunction with the map and description of lands, situated in the City and County of San Francisco, that were
transferred to the City and County of San Francisco under Chapter 1333. The Director of Public Health shall prepare and maintain for public distribution a map that reflects this line.

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

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

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

SEC. 1004. Permit approval.

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

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

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

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

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

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

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

i. A determination by the qualified person as to whether the hazardous wastes in the soil are causing or are likely to cause significant environmental or health and safety risks, and if so, recommended measures that will mitigate the significant environmental or health and safety risks caused or likely to be caused by the presence of the hazardous waste in the soil.

If the report recommends mitigation measures it shall identify any soil sampling and analysis that it recommends the project applicant conduct following completion of the mitigation measures to verify that mitigation is complete.

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

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

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

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

Section 4. Article 22A of the San Francisco Health Code is hereby added, to read as follows:
ARTICLE 22A
ANALYZING SOILS FOR HAZARDOUS WASTE

SEC. 1220. DEFINITIONS. In addition to the general definitions applicable to this Code, whenever used in this Article, the following terms shall have the meanings set forth below:

(a) "Applicant" means a person applying for any building permit as specified by Section 106.1 of the San Francisco Building Code.

(b) "Certified laboratory" means a laboratory certified by the California Department of Health Services, pursuant to the provisions of Section 25198 of the California Health and Safety Code, for analyzing samples for the presence of hazardous waste.

(c) "Director" means the Director of the San Francisco Department of Public Health or the Director's designee.

(d) "Director of Building Inspection" means the Director of the Department of Building Inspection of the City and County of San Francisco.

(e) "Hazardous waste" means any substance that meets the definition of hazardous waste in Section 25117 of the California Health and Safety Code or Appendix X of Division 4.5, Chapter 10, Article 5 of Title 22 California Administrative Code.

SEC. 1221. APPLICABILITY OF ARTICLE. Pursuant to Section 1001 of the San Francisco Public Works Code, an Applicant shall comply with this Article.

SEC. 1222. WAIVER OF REQUIREMENTS FOR COMPLIANCE. Director may waive the requirements imposed by this Article if the Applicant demonstrates that the property has been continuously zoned as residential under the City Planning Code since 1921, has been in residential use since that time, and no evidence has been presented to create a reasonable belief that the soil may contain hazardous wastes. The Director shall provide the Applicant...
and the Director of Building Inspection with written notification that the requirements of this
Article have been waived.

SEC. 1223. DIRECTOR'S DISCRETIONARY AUTHORITY TO REQUIRE

COMPLIANCE. In addition to those areas defined pursuant to Section 1221, the Director has
authority to require soil analysis pursuant to the provisions of this Article as part of any
building permit application when the Director has reason to believe that hazardous wastes
may be present in the soil at the property.

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

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

(1) inorganic persistent and bioaccumulative toxic substances as listed in
Section 66261.24(a)(2)(A) of Title 22 of the California Administrative Code;
(2) volatile organic toxic pollutants as listed in 40 Code of Federal Regulations, Part 122, Appendix D, Table II;

(3) PCBs;

(4) pH levels;

(5) cyanides;

(6) methane and other flammable gases;

(7) total petroleum hydrocarbons;

(8) semi-volatile compounds;

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

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

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

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

SEC. 1226. SOIL ANALYSIS REPORT. (a) Contents. The Applicant shall submit a soil analysis report prepared by the persons conducting the soil sampling and analysis to the Director, the California Department of Toxic Substances Control, the San Francisco Bay
Regional Water Quality Control Board and to other agencies as directed by the Director. The
report shall include the following information:

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

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

(3) The results of the soil analyses;

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

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

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

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

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

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

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

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

(1) A determination by the qualified person as to whether the hazardous wastes in the soil are causing or are likely to cause significant environmental or health and safety risks, and if so, recommend measures that will mitigate the significant environmental or health and safety risks caused or likely to be caused by the presence of the hazardous waste in the soil. If the report recommends mitigation measures it shall identify any soil sampling and analysis that it recommends the project applicant conduct following completion of the mitigation measures to verify that mitigation is complete.
(2) A statement signed by the person who prepared the report certifying that the person is a qualified person within the meaning of this section and that in his or her judgment either no mitigation is required or the mitigation measures identified, if completed, will mitigate the significant environmental or health and safety risks caused by or likely to be caused by the hazardous wastes in the soil.

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

(4) Complete the certification required by Section 1229.

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

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

(2) If Section 1228 is applicable:

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

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

(b) Applicant Declarations. The certification shall state:

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

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

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

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

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

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

(1) Minimum standards for acceptable site histories. The minimum standards
shall be designed to assist interested persons including, but not limited to, the Director of
Building Inspection, other state and local public agencies and certified testing laboratories, to
evaluate whether analyses, other than those required by Section 1225(a)(1) through (a)(9),
must be conducted to detect the presence in the soil of hazardous wastes and to determine
what analyses are appropriate.

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

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

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

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

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

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

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

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

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

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

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

By: William Chan
Deputy City Attorney for
Rona H. Sandler
Deputy City Attorney

By: Sandy Mori
Clerk, Health Commission

DEPARTMENT OF PUBLIC HEALTH
BOARD OF SUPERVISORS
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.

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
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

Mayor Willie L. Brown Jr.