

BOARD of SUPERVISORS



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MEMORANDUM

TO: Tom Hui, Acting Director, Department of Building Inspection
Sonya Harris, Secretary, Building Inspection Commission

FROM: Alisa Miller, Clerk, Land Use and Economic Development Committee
Board of Supervisors

DATE: May 1, 2013

SUBJECT: LEGISLATION INTRODUCED: FIRE CODE AMENDMENT

The Board of Supervisors' Land Use and Economic Development Committee has received the following proposed legislation, introduced by Mayor Lee on April 23, 2013:

File No. 130369

Ordinance amending Building Code, Section 106A.3.2.4, and Health Code, Sections 1220 through 1237, and adding Section 1219, to expand the boundaries and types of projects for which soil testing is required and to require testing of groundwater under specified circumstances; amending Public Works Code, Article 20, to eliminate soil testing provisions; renumbering code sections in Health Code, Article 22A; and making environmental findings.

The proposed ordinance is being transmitted pursuant to Charter Section D3.750-5 for public hearing and recommendation. It is pending before the Land Use & Economic Development Committee and will be scheduled for hearing upon receipt of your response.

Please forward me the Commission's recommendation and reports at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

c: William Strawn, Department of Building Inspection
Carolyn Jayin, Department of Building Inspection

1 [Building, Health, Public Works Codes - Soil and/or Groundwater Testing Requirements]

2
3 **Ordinance amending Building Code, Section 106A.3.2.4, and Health Code, Sections**
4 **1220 through 1237, and adding Section 1219, to expand the boundaries and types of**
5 **projects for which soil testing is required and to require testing of groundwater under**
6 **specified circumstances; amending Public Works Code, Article 20, to eliminate soil**
7 **testing provisions; renumbering code sections in Health Code, Article 22A; and making**
8 **environmental findings.**

9 NOTE: Additions are *single-underline italics Times New Roman*;
10 deletions are *strike-through italics Times New Roman*.
11 Board amendment additions are double-underlined;
12 Board amendment deletions are ~~strikethrough-normal~~.

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

14 Section 1. The Planning Department has determined that the actions contemplated in
15 this ordinance comply with the California Environmental Quality Act (California Public
16 Resources Code Section 21000 et seq.). Said determination is on file with the Clerk of the
17 Board of Supervisors in File No. _____ and is incorporated herein by reference.

18 Section 2. The Building Code is hereby amended by amending Section 106A.3.2.4,
19 (specifically, Sections 106A.3.2.4.1, 106A.3.2.4.2, and 106A.3.2.4.4) to read as follows:

20 **106A.3.2.4 HAZARDOUS SUBSTANCESWASTES.**

21 **106A.3.2.4.1** Soil and/or groundwater sampling and analysis required. Applicants for
22 any building or grading permit which involves the disturbance of at least 50 cubic yards (38.23
23 m3) of soil shall comply with the requirements for soil and/or groundwater sampling and
24 analysis of Article 22A of the ~~Public~~Health Code, unless such property is subject to Health Code
25 22A.9, when any part of the work will occur *either*

1 (a) bayward of the 1851 high-tide line as indicated on the Map of the City and County of
2 San Francisco (adopted June 27, 1986) (see Figure 1A-1) which is maintained for public
3 distribution by the Building Official;

4 (b) ~~or~~ in any area of the City designated by the Director of Public Health under Article 22A of
5 the Health Code;

6 (c) on any lot within the City either presently or previously zoned for industrial use as defined in
7 Article 22A of the Health Code;

8 (d) on any lot within the City either presently or previously permitted for industrial use;

9 (e) on any lot within the City within 150 feet of any of the following highways and streets: U.S.
10 Highway 101, Interstate 80, Interstate 280;

11 (f) on any lot in the City known or suspected by the Department of Public Health to contain
12 hazardous substances in the soil and/or groundwater, using the definition of hazardous substance
13 contained in Article 22A of the Health Code, or;

14 (g) on any lot of the City known or suspected by the Department of Public Health to contain or
15 to be within 100 feet of the lot or property line that contains an underground storage tank~~in any area~~
16 ~~of the City and County of San Francisco where the Director of Public Health has reason to believe that~~
17 ~~the soils may contain hazardous wastes.~~

18 Note: Figure 1A-1 is included at the end of this chapter.

19 **106A.3.2.4.2 Permit approval.**

20 (a) Except as provided in subsection (b) no~~no~~ building permit application subject to the
21 requirements of this Section shall be considered acceptable for review and approved until the
22 Department receives written notification from the Director of Public Health that the applicant
23 has complied with all applicable provisions of Article 22A of the ~~Public~~ Health Code that can be
24 completed without a permit, or that the requirements have been waived.

25 ~~Exception:~~

1 (b) Subsection (a) does not apply to the following extent:

2 (1-) The Building Official may consider an application acceptable for review and issue a
3 site permit pursuant to Section 106A.3.4.2 prior to the time an applicant complies with this
4 Section.

5 (2-) The Building Official may consider an application acceptable for review and issue Site
6 site permit addenda and other permit(s) may be issued to undertake soil sampling or mitigation
7 measures to comply with this section.

8 **106A.3.2.4.4 Permit Notification and Warning.**

9 (a) The Building Department shall provide information to all permit applicants of Bay Area Air
10 Quality Management District and California Air Resources Board regulations, as well as San
11 Francisco Health Code Article 22B and Building Code requirements regarding construction dust
12 control to mitigate potential adverse public health effects from dust in general, and from naturally
13 occurring asbestos that may be released during construction activities.

14 (b) All building permits and grading permits issued by the Building Department under this
15 Section 106A.3.2.4 shall bear notice of the above requirements and of the owner's responsibility of
16 identifying and mitigating hazardous wastes the following printed warning:

17 **WARNING**

18 Under San Francisco Building Code Section 106A.3.2.4.2, certain building permits may be issued only
19 after the permittee analyzes the soil and/or groundwater for the presence of hazardous substances and,
20 where applicable, the Department of Public Health has approved the permittee's site mitigation plan.
21 In issuing this permit, neither the City nor any of its officers or employees make any representation that
22 the soil and/or groundwater on or about the site is free from the presence of hazardous substances. Nor
23 does the City's implementation of this process relieve any person from their duties and responsibilities
24 relating to hazardous substance contamination under state and federal law. Neither subsurface soil
25

1 analysis under Building Code Section 106A.3.2.4.2 nor the issuance of this permit is intended to alter,
2 extinguish, or transfer these responsibilities.

3 ~~notification. All building permits and grading permits issued by the Department of Building~~
4 ~~Inspection shall bear notice of the above requirements and of the owner's responsibility for identifying~~
5 ~~and mitigating hazardous wastes.~~

6 Section 3. The Health Code is hereby amended by adding Section 1219 and
7 amending Sections 1220, 1221, 1222, 1223, 1224, 1225, 1226, 1227, 1228, 1229, 1230,
8 1231, 1232, 1233, 1234, 1235, 1236, and 1237 to read as follows:

9 **SEC. ~~1219~~22A.1. FINDINGS.**

10 1. Health Code Article 22A and Building Code Section 106A.3.2.4 work in concert to provide
11 an important City process for identifying, investigating, analyzing and, when deemed necessary,
12 remediating or mitigating hazardous substances in soils within specified areas of the City and County
13 of San Francisco ("City").

14 2. These codes provide a specific, well-explained and equitable City process for investigating,
15 analyzing and, when deemed necessary, remediating or mitigating hazardous substances in soils, under
16 the oversight and supervision of the Department of Public Health ("Department"), the City agency with
17 expertise in these matters.

18 3. The Department has overseen the Article 22A process for many years and it is the experience
19 of the Department, given the nature of contamination that has been found on City sites, that these sites
20 can be remediated or mitigated through methods such as removal, treatment, installation of vapor
21 barriers, or covers, or by placing restrictions on uses or activities on the site to protect the environment
22 or public health.

23 4. Health Code Article 22A, Public Works Code Article 20, and Building Code Section
24 106A.3.2.4 were previously limited in terms of their geographic coverage throughout the City, applying
25

1 exclusively on the Eastern side of City, more specifically in areas near the Bay shoreline, and areas of
2 known bay fill.

3 5. These Articles were also presently limited in terms of types of potential public health and
4 safety hazards that they address.

5 6. There may be hazardous substances and conditions (e.g., groundwater contamination) that
6 pose a potential threat to the public health and safety but were not previously within the scope of
7 Article 22A.

8 7. Areas outside of the boundaries previously set in Health Code Article 22A, Public Works
9 Code Article 20, and Building Code Section 106A.3.2.4 exist where, based upon historic zoning
10 designation, land use, or site activity, there is a reasonable expectation of the potential for the soil
11 and/or groundwater to contain hazardous substances that may pose public health or safety hazards
12 during construction and with new uses authorized on the site.

13 8. In urban areas, emissions from paved roadways are a major source of atmospheric
14 particulate matter. Paved road dust originates from pavement wear and decomposition, dustfall, litter,
15 mud and dirt carryout, spills, biological debris, and erosion from adjacent areas. In an urban setting,
16 vehicle exhaust and vehicle brake and tire wear are a source of zinc and copper in paved road dust.
17 The authors of a 2006 study found that metal deposits increased in the immediate vicinity of a large
18 freeway, and quickly reduced to urban background deposition rates between 10 meters (30 feet) and
19 150 meters (450 feet) downwind of the freeway, especially for copper, lead and zinc. Their results
20 suggest: 1) the freeway is a significant source of copper, lead and zinc; and 2) these metals have
21 substantial concentrations of larger particles emitted from the freeway due to the dispersion of road
22 dust by vehicles traveling at high speeds. Lisa D. Sabin, et al., Dry Deposition and Resuspension of
23 Particle-Associated Metals Near a Freeway in Los Angeles, Atmospheric Environment 40 (2006) 7528-
24 7538.

1 9. The benefits of Health Code Article 22A to the City, the environment and the public health
2 and safety can be expanded by broadening the geographic coverage and the types of potential
3 contamination that fall within the scope of the law.

4 10. City departments that engage in regular maintenance and repair of City property and
5 assets, long term capital projects, and emergency work are subject to these same public health and
6 safety requirements with regard to soil and/or groundwater sampling and analysis. These departments
7 will work with the Department of Public Health to develop protocols that use City resources efficiently
8 and facilitate prompt response to emergencies, for any projects that may require soil and/or
9 groundwater testing.

10 **SEC. ~~1220~~22A.2. DEFINITIONS.**

11 In addition to the general definitions applicable to this Code, whenever used in this
12 Article, the following terms shall have the meanings set forth below:

13 (a) "Applicant" means a person applying for any building permit as specified by Section
14 106.1 of the San Francisco Building Code.

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

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

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

22 (e) "Hazardous Substanceswaste" means any hazardous substance as defined in the
23 Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C.
24 §9601(14) and petroleum products and byproducts that meets the definition of hazardous waste in
25

1 ~~Section 25117 of the California Health and Safety Code or Appendix X of Division 4.5, Chapter 10,~~
2 ~~Article 5 of Title 22 California Administrative Code.~~

3 (f) "Industrial Use" means a use described in the San Francisco Planning Code Sections 220
4 (Laundering, Cleaning and Pressing), 222 (Home and Business Services), 223 (Automotive), 224
5 (Animal Services), 225 (Wholesaling, Storage, Distribution, and Open-Air Handling of Materials and
6 Equipment) and 226 (Manufacturing and Processing).

7 (g) "Industrially Zoned (i.e. zoned for industrial use)" means one of the following zoning
8 districts, as further described in Article 2 of the San Francisco Planning Code: M-1 (Light Industrial),
9 M-2 (Heavy Industrial), PDR-1-B (Light Industrial Buffer), PDR-1-D (Light Industrial Design), PDR-
10 1-G (Light Industrial General), PDR-2 (Core Production, Distribution and Repair), C-M (Heavy
11 Commercial), SPD (South Park), RSD (Residential/Service Mixed Use), SLR (Service/Light
12 Industrial/Residential Mixed Use), SLI (Service/Light Industrial), SSO (Service/Secondary Office),
13 MUG (Mixed Use – General), MUR (Mixed Use – Residential), MUO (Mixed Use – Office), and UMU
14 (Urban Mixed Use) or any other zoning district that allows for industrial uses, either as a principal
15 permitted use or as a conditional use, as determined by the Zoning Administrator.

16 "Intended Use" means the land uses allowed at the site under the building permit sought and
17 any construction activities required to carry out the permitted work.

18 (i) "Qualified Person" means a professional geologist, licensed civil engineer, or engineering
19 geologist.

20 **SEC. ~~122122A.3.~~ 122122A.3. APPLICABILITY OF ARTICLE.**

21 ~~Pursuant to Section 1001 of the San Francisco Public Works Code, an~~ An applicant shall
22 comply with this Article as specified by San Francisco Building Code Section 106A.3.2.4.

23 **SEC. ~~122222A.4.~~ 122222A.4. WAIVER OF REQUIREMENTS FOR COMPLIANCE.**

24 The Director may waive the requirements imposed by this Article if the applicant
25 demonstrates that the property has been continuously zoned as residential under the City

1 Planning Code since 1921, has been in residential use since that time, and no evidence has
2 been presented to create a reasonable belief that the soil and/or groundwater may contain
3 hazardous ~~substances~~~~wastes~~. ~~The~~ In these circumstances, the Director shall provide the applicant
4 and the Director of Building Inspection with written notification that the requirements of this
5 Article have been waived.

6 **SEC. ~~122322A.5~~. DIRECTOR'S DISCRETIONARY AUTHORITY TO REQUIRE**
7 **COMPLIANCE.**

8 In addition to those areas defined pursuant to Section ~~122122A.3~~, the Director has
9 authority to require soil and/or groundwater analysis pursuant to the provisions of this Article as
10 part of any building permit application when the Director has reason to believe that a
11 hazardous ~~wastes~~ substance may be present in the soil and/or groundwater at the property.

12 **SEC. ~~122422A.6~~. SITE HISTORY.**

13 (a) The applicant shall provide to the Director a site history for the property, prepared
14 by an individual with the requisite training and experience, as described in regulations
15 adopted pursuant to Section ~~123222A.14~~. The site history shall contain a statement indicating
16 whether the property is listed on the National Priorities List, published by the United States
17 Environmental Protection Agency pursuant to the federal Comprehensive Environmental
18 Response Compensation and Liability Act, 42 U.S.C. Section 9604(c)(3) or listed as a
19 hazardous substance release site by the California Department of Toxic Substances Control
20 or the State Water Resources Control Board pursuant to the California Hazardous
21 Substances Account Act, California Health and Safety Code Section 25356. The site history
22 shall also include results of a permit records search investigating the history of permitted uses on the
23 site, as well as any known or discovered unpermitted uses or activities on site that would generate a
24 reasonable expectation that hazardous substances may be present in the soil and/or groundwater. The
25 applicant shall file the site history with the Director and the Director shall accept the report if the

1 requirements of this section are met and the certified laboratory. If the site history does not comply with
2 the requirements of this Section, the Director shall notify the applicant in writing within 30 days of
3 receipt of the report, indicating the reasons the report is unacceptable.

4 (b) If the site history indicates that there is no information that hazardous substances may be
5 present in the soil or groundwater at concentrations exceeding either the Department of Toxic
6 Substances Control's or Regional Water Quality Control Board's health risk levels, or other applicable
7 standards, given the intended use, the Director shall provide the applicant and the Director of
8 Building Inspection with written notification that the applicant has complied with the requirements of
9 this Article.

10 **SEC. ~~1225~~22A.7. SUBSURFACE SOIL SAMPLING AND ANALYSIS.**

11 (a) Analysis of Sampled Soil and/or Groundwater. Unless the Director provides written
12 notification that the applicant has complied with the requirements of this Article as provided in Section
13 22A.6(b) or 22A.9(a), the applicant shall submit a work plan to the Director for soil and/or
14 groundwater sampling and testing. The applicant shall demonstrate in the work plan how the sampling
15 and testing requirements of this Section will be satisfied, including the sampling locations, sampling
16 protocol, laboratory analyses to be conducted on the samples, and any other information required by
17 the Director to provide an accurate assessment of hazardous substances present at the site that may be
18 disturbed, or may cause a public health or safety hazard given the intended use. Upon approval of the
19 work plan by the Director, if so directed by the Department of Public Health, the The applicant shall
20 cause a Qualified Person or a certified laboratory to take, or supervise the collection of soil
21 samples on the property to determine the presence of hazardous substanceswastes in the soil
22 and/or samples of groundwater, the top surface of which is within ten feet of the lower limit of the
23 project excavation. The applicant shall conduct tests for hazardous substances that will accurately
24 assess the site, as determined by the Director.

1 (b) Such tests as referenced in subsection (a), may include the following types of hazardous
2 substances analyses shall be conducted, unless an alternative proposal is approved by the Director:

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

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

7 (3) PCBs;

8 (4) pH levels;

9 (5) Cyanides;

10 (6) Methane and other flammable or volatile gases;

11 (7) Total petroleum hydrocarbons;

12 (8) Semi-volatile compounds;

13 (9) Hazardous substances~~wastes~~ designated by the Director pursuant to Section
14 22A.14; and

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

19 (bc) **Procedures for Soil and/or Groundwater Sampling.** Soil and/or groundwater
20 sampling shall be conducted in accordance with procedures for sampling soils and/or
21 groundwater approved by the California Department of Toxic Substances Control or the State
22 Water Resources Control Board and the San Francisco Bay Regional Water Quality Control
23 Board. The Director shall maintain a list of such approved sampling procedures.

24 (ed) **Testing of Samples Soil.** Samples shall be analyzed by a certified laboratory in
25 accordance with methods for analyzing samples for the presence of hazardous

1 ~~substanceswastes~~ approved by the California Department of Toxic Substances Control or the
2 State Water Resources Control Board and the San Francisco Bay Regional Water Quality
3 Control Board.

4 **SEC. ~~122622A.8.~~ SUBSURFACE ~~SOIL~~ ANALYSIS REPORT.**

5 (a) Contents. The Applicant shall submit a soil and/or groundwater analysis report
6 prepared by the persons conducting the soil and/or groundwater sampling and analysis to the
7 Director, ~~the California Department of Toxic Substances Control, the San Francisco Bay Regional~~
8 ~~Water Quality Control Board~~ and to other agencies as directed by the Director. The report shall
9 include the following information:

10 (1) The names and addresses of the Qualified Persons ~~persons who~~ ~~and the certified~~
11 ~~laboratory that~~ conducted the soil and/or groundwater sampling, and the soil and/or groundwater
12 analysis and who prepared the report;

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

14 (3) The results of the soil and/or groundwater analyses;

15 (4) Whether any of the analyses conducted indicate the presence of a
16 hazardous ~~substanceswastes~~ and, for each, the level detected and the State and federal
17 minimum standards for public health risks, if any;

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

20 ~~(5)(6)~~ If applicable, a statement that the Qualified Person ~~certified laboratory~~, after
21 examination of the site history, has no reason to conclude that hazardous ~~substanceswastes~~,
22 other than those listed in Section ~~122522A.7(a)(1)~~ through (a)(~~109~~), ~~were~~ are likely to be present
23 on the property;

24 (6) If applicable, a statement that the Qualified Person, based upon the analyses conducted,
25 recommends site mitigation given the intended use of the site.

1 (b) Review by Director. The Director shall determine whether the ~~site history~~, soil and/or
2 groundwater sampling and analyses required by this Article were conducted in accordance with
3 the approved work plan and whether the report required by this Section is complete. If the ~~site~~
4 ~~history~~, soil and/or groundwater sampling or analyses were not conducted in accordance with the
5 approved work plan or the report does not comply with the requirements of this Section, the
6 Director shall notify the applicant in writing within 30 days of receipt of the report, indicating
7 the reasons the report is unacceptable. A copy of the notification shall be sent to the Director
8 of Building Inspection. Until the Director certifies a report as final, the Director may require
9 additional soil and/or groundwater sampling and analysis.

10 (c) No Hazardous Substances Wastes Present. If the soil and/or groundwater sampling and
11 analysis report indicates that there are no hazardous substanceswastes present in the soil or
12 groundwater that exceed the Department of Toxic Substances Control's or Regional Water Quality
13 Control Board's public health risk levels, or other applicable standards, given the intended use, the
14 Director shall provide the applicant and the Director of Building Inspection with written
15 notification that the applicant has complied with the requirements of this Article.

16 **SEC. ~~122722A.9.~~ KNOWN HAZARDOUS SUBSTANCEWASTE SITE; HUNTERS**
17 **POINT SHIPYARD PARCEL A.**

18 (a) ~~If the soil sampling and analysis report or site history indicates that the property is listed~~
19 ~~on the National Priorities List or the list of California Hazardous Substances Account Act release sites,~~
20 ~~the applicant shall provide to the Director certification or verification from the appropriate federal or~~
21 ~~State agency that any site mitigation required by the federal or State agency has been completed and~~
22 ~~complete the certification procedure set forth in Section 1229. Certification by a competent State or~~
23 ~~federal agency that mitigation measures have been properly completed shall constitute a conclusive~~
24 ~~determination and shall be binding upon the Director. At the request of an applicant, the Director may~~
25 ~~determine that one or more of the requirements of this Article have been met if an applicant provides~~

1 satisfactory documentation to the Director that the applicant or other party responsible for the site
2 conditions, has completed a process equivalent to the process required by this Article under the
3 oversight of a federal or state agency with jurisdiction to oversee the investigation and remediation of
4 hazardous substances at the site and the process has taken into account the intended use for which the
5 applicant seeks a building permit.

6 (b) Applicant's activities on the Hunters Point Shipyard, as defined in Article 31, are
7 governed by Article 31 of the Health Code and not by this Article.

8 **SEC. ~~122822A.10~~. APPLICANT'S RESPONSIBILITY UPON DISCOVERY OF**
9 **HAZARDOUS SUBSTANCESWASTES.**

10 Unless Section ~~122722A.9~~ is applicable, if ~~the~~ a soil and/or groundwater sampling and
11 analysis report indicates that hazardous ~~substances~~wastes are present in the soil or hazardous
12 substances in groundwater exceed the Department of Toxic Substances Control's or Regional Water
13 Quality Control Board's public health risk levels given the intended use, the applicant shall:

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

18 ~~(a)~~ Prepare a The-site mitigation ~~plan~~report shall ~~that~~ contains the following information:

19 (1) A determination by the Qualified Person~~qualified person~~ as to whether the hazardous
20 ~~substances~~wastes in the soil and/or groundwater are causing or are likely to cause significant
21 ~~environmental or~~ health and safety risks given the intended use.

22 (2) If a determination of a significant health and safety risk is made under subsection (a)(1), a
23 and if so, recommendation by the Qualified Person of measures that will assure that the intended
24 use will not result in public health or safety hazards in excess of the acceptable public health risk levels
25 established by the Department of Toxic Substances Control or the Regional Water Quality Control

1 Board, or other applicable regulatory standards and, therefore, will mitigate the significant health
2 and safety risks caused or likely to be caused by the presence of the hazardous
3 substanceswaste in the soil and/or groundwater given the intended use. If the report recommends
4 mitigation measures it shall identify any soil and/or groundwater sampling and analysis that it
5 recommends the project applicant conduct following completion of the mitigation measures to
6 verify that mitigation is complete;

7 (23) A statement signed by the person who prepared the report certifying that the
8 person is a Qualified Person~~qualified person within the meaning of this Section~~ and that in his or
9 her judgment either no mitigation is required or the mitigation measures identified, if
10 completed, will mitigate the significant ~~environmental or~~ health and safety risks caused by or
11 likely to be caused by the hazardous substanceswastes in the soil and/or groundwater given the
12 intended use;

13 (b)(3) Complete the site mitigation measures identified by the Qualified Person~~qualified~~
14 ~~person~~ in the site mitigation report; *and*

15 (c)(4) Complete the certification required by Section ~~122922A.11~~, *and*.

16 (d) Complete and record a deed restriction approved by the Director if the Applicant chooses
17 to mitigate public health or safety hazards from hazardous substances through land use or activity
18 restrictions.

19 **SEC. ~~122922A.11~~. FINAL REPORT AND CERTIFICATION.**

20 (a) Contents. The applicant shall certify under penalty of perjury to the Director that:

21 (1) If Section ~~122722A.9~~ is applicable, the applicant has received certification or
22 verification from the appropriate State or federal agency that mitigation is complete.

23 (2) If Section ~~122822A.10~~ is applicable:

24 (A) A Qualified Person~~qualified person~~ has determined in the site mitigation
25 report that no hazardous substance levels~~wastes~~ in the soil and/or groundwater are causing or are

1 likely to cause significant environmental or *public* health and safety risks as set forth in Section
2 22A.8(c), and the Qualified Person~~qualified person~~ recommends no mitigation measures; or

3 (B) The applicant has performed all mitigation measures recommended
4 in the site mitigation plan, and has verified that mitigation is complete by conducting follow-up
5 soil and/or groundwater sampling and analysis, if recommended in the site mitigation report.

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

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

12 (c) Following successful completion of the final report and certification, and if applicable, a
13 deed restriction, the Director shall issue a letter of no further action.

14 **SEC. ~~1230~~22A.12. NOTIFICATION TO DIRECTOR OF BUILDING**
15 **INSPECTION.**

16 ___After receipt of the certification required by Section ~~1229~~22A.11, the Director shall provide
17 the applicant and the Director of Building Inspection with written notification that the applicant
18 has complied with the requirements of this Article.

19 **SEC. ~~1231~~22A.13. MAINTENANCE OF REPORT BY DIRECTOR.**

20 The site history, ~~soil~~ subsurface sampling analysis report, certification and related
21 documents shall become a part of the file maintained by the Department.

22 **SEC. ~~1232~~22A.14. RULES AND REGULATIONS.**

23 (a) Adoption of Rules. The Director may adopt, and may thereafter amend, rules,
24 regulations and guidelines that the Director deems necessary to implement the provisions of
25 this ordinance. For the purposes of this Article, a public hearing before the Health

1 Commission shall be held prior to the adoption or any amendment of the rules, regulations
2 and guidelines recommended for implementation. In addition to notices required by law, the
3 Director shall send written notice, at least 15 days prior to the hearing, to any interested party
4 who sends a written request to the Director for notice of hearings related to the adoption of
5 rules, regulations and guidelines pursuant to this Section.

6 (b) Consideration of state and federal law. In developing such rules, regulations, and
7 guidelines, the Director shall consider, inter alia among other things, State and federal statutes
8 and regulations pertaining to hazardous ~~substances~~wastes with the purpose of coordinating local
9 regulations with them.

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

12 (1) Minimum standards for acceptable site histories. The minimum standards
13 shall be designed to assist interested persons including, but not limited to, the Director of
14 Building Inspection, and other state and local public agencies ~~and certified testing laboratories~~,
15 to evaluate whether analyses, other than those required by Section ~~122522A.7(a)(1)~~ through
16 (a)(~~109~~), must be conducted to detect the presence in the soil and/or groundwater of hazardous
17 ~~substances~~wastes and to determine what analyses are appropriate. These are the minimum
18 standards and the Director may require additional information on the site.

19 (2) Minimum education and experience requirements for the persons who
20 prepare site histories pursuant to Section ~~122422A.6~~. In making this determination, the
21 Director shall consider relevant those academic disciplines and practical experience which
22 would qualify an individual to evaluate a property in San Francisco and identify prior uses
23 made of the property that may be relevant in determining whether there are hazardous
24 ~~substances~~wastes in the soil and/or groundwater and what analyses, if any, are appropriate to
25 identify them.

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

4 (4) Designation of areas ~~and analyses~~. Designation of areas in the City, in
5 addition to the areas described in ~~Section 1001 of the San Francisco Public Works~~ San Francisco
6 Building Code Section 106A.3.2.4, where the Director has reason to believe that the soils or
7 groundwater may contain hazardous ~~substanceswastes~~ and the designation of the analyses
8 specified in Section ~~122522A.7~~ that shall be conducted in each area.

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

15 (6) Waiver from Requirements for Analyses. The exclusion of hazardous
16 ~~substanceswastes~~ from the analysis requirements set forth in Section ~~122522A.7~~ upon a
17 determination that the hazardous ~~substancewaste~~ does not pose a significant present or
18 potential hazard to ~~human public~~ health and safety or to the environment.

19 **SEC. ~~123322A.15~~. NOTIFICATION TO BUYER.**

20 The Director shall prepare and maintain for public distribution a summary of the
21 requirements of this Article. The seller or the seller's agent involved in the sale or exchange of
22 any real property located on any parcel of land identified in San Francisco Building Code Sec.
23 106A.3.2.4 and bayward of the high tide line as indicated on the Historic San Francisco Maps as
24 described in Article 20 of the Public Works Code and as reflected on the map prepared and maintained
25 for public distribution by the Director and in those areas designated by the Director pursuant to

1 Section ~~1223~~22A.5 shall provide a copy of the summary to the buyer or buyers and shall obtain
2 a written receipt from the buyer or buyers acknowledging receipt of the summary. Failure to
3 give notice as required by this Section shall not excuse or exempt the buyer of the property
4 from compliance with the requirements of this Article.

5 **SEC. ~~1234~~22A.16. NONASSUMPTION OF LIABILITY.**

6 In undertaking to require certain building or grading permits to include soil and/or
7 groundwater analyses for the presence of hazardous ~~substances~~wastes, the City and County of
8 San Francisco is assuming an undertaking only to promote the general welfare. It is not
9 assuming, nor is it imposing on itself or on its officers and employees, any obligation for
10 breach of which it is liable for money damages to any person who claims that such breach
11 proximately caused injury.

12 **SEC. ~~1235~~22A.17. CONSTRUCTION ON CITY PROPERTY.**

13 The Department of Public Health shall work with ~~a~~All departments boards, commissions
14 and agencies of the City and County of San Francisco that authorize construction or
15 improvements on land under their jurisdiction under circumstances where no building or
16 grading permit needs to be obtained pursuant to the San Francisco Building Code ~~shall adopt~~
17 to develop interdepartmental coordination protocols ~~rules and regulations~~ to ~~insure~~ensure that the same site
18 ~~history, soil sampling, analyzing, reporting, site mitigation and certification procedures~~ ensure that the
19 goals of this Article 22A to protect the environment and the public health and safety are achieved ~~as set~~
20 ~~forth in this Article are followed~~. The Directors of Public Health and Building Inspection shall
21 assist the departments, boards, commissions and agencies to ~~insure~~ensure that these protocols
22 ~~requirements~~ are followed ~~met~~. Additionally, such protocols shall define and address emergency
23 situations, and a process for waiving testing or procedures that may delay emergency work.
24 Compliance by a City department or agency with this section shall constitute compliance with the
25 requirements of this Article 22A.

1 **SEC. ~~123622A.18.~~ SEVERABILITY.**

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

10 **SEC. ~~123722A.19.~~ FEES.**

11 (a) The Director is authorized to charge the following fees to defray the costs of
12 document processing and review, consultation with applicants, and administration of this
13 Article: (1) an initial fee of \$501, payable to the Department, upon filing a site history report
14 with the Department; and (2) an additional fee of \$167 per hour for document processing and
15 review and applicant consultation exceeding three hours or portion thereof, payable to the
16 Department, upon filing of the certification required pursuant to Section ~~122922A.11.~~

17 (b) Beginning with fiscal year 2008-2009 and annually thereafter, the fees set
18 forth in this Section may be adjusted each year, without further action by the Board of
19 Supervisors, as set forth in this Section.

20 Not later than April 1, the Director shall report to the Controller the revenues
21 generated by the fees for the prior fiscal year and the prior fiscal year's costs of operation, as
22 well as any other information that the Controller determines appropriate to the performance of
23 the duties set forth in this Section.

24 Not later than May 15, the Controller shall determine whether the current fees
25 have produced or are projected to produce revenues sufficient to support the costs of

1 providing the services for which the fees are assessed and that the fees will not produce
2 revenue which is significantly more than the costs of providing the services for which the fees
3 are assessed.

4
5 The Controller shall, if necessary, adjust the fees upward or downward for the
6 upcoming fiscal year as appropriate to ensure that the program recovers the costs of
7 operation without producing revenue which is significantly more than such costs. The adjusted
8 rates shall become operative on July 1.

9 Section 4. The Public Works Code is hereby amended by repealing Article 20 in its
10 entirety, including Sections 1000, 1001, 1004, 1006, 1012, and 1014, to read as follows:

11 ~~**ARTICLE 20: ANALYZING THE SOILS FOR HAZARDOUS WASTES**~~

12 ~~**SEC. 1000. DEFINITIONS.**~~

13 ~~*For the purposes of this Article the following definitions shall apply:*~~

14 ~~*"Certified laboratory" mean a laboratory certified by the California Department of Health*~~
15 ~~*Services, pursuant to the provisions of Section 25198 of the California Health and Safety Code, for*~~
16 ~~*analyzing samples for the presence of hazardous waste.*~~

17 ~~*"Director" means the Director of the Department of Public Works of the City and County of San*~~
18 ~~*Francisco.*~~

19 ~~*"Director of Public Health" shall means the Director of the Department of Public Health of the*~~
20 ~~*City and County of San Francisco.*~~

21 ~~**SEC. 1001. ANALYSIS REQUIRED.**~~

22 ~~*(a) Applicants for any building permit shall comply with the requirements of Article 22A of the*~~
23 ~~*San Francisco Public Health Code when:*~~

24 ~~*1. The permit is for a construction project that involves the disturbance of at least 50 cubic*~~
25 ~~*yards of soil; and*~~

1 ~~2. The parcel of land or part thereof on which the construction or part thereof will occur is~~
2 ~~located:~~

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

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

12 **~~SEC. 1004. PERMIT APPROVAL.~~**

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

1 ~~federal law. Neither soil analysis pursuant to Article 20 of the Public Works Code nor the issuance of~~
2 ~~this permit is intended to alter, extinguish, or transfer these responsibilities.~~

3 **~~SEC. 1014. SEVERABILITY~~**

4 ~~If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Article or any~~
5 ~~part thereof, is for any reason to be held unconstitutional or invalid or ineffective by any court of~~
6 ~~competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining~~
7 ~~portions of this Article or any part thereof. The Board of Supervisors hereby declares that it would~~
8 ~~have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof~~
9 ~~irrespective 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 Section 5. Effective Date. This ordinance shall become effective 30 days from the
12 date of passage.

13 Section 6. This section is uncodified. In enacting this Ordinance, the Board intends to
14 amend only those words, phrases, paragraphs, subsections, sections, articles, numbers,
15 punctuation, charts, diagrams, or any other constituent part of the Health Code, Building
16 Code, or Public Works Code that are explicitly shown in this legislation as additions, deletions,
17 Board amendment additions, and Board amendment deletions in accordance with the "Note"
18 that appears under the official title of the legislation.

19 APPROVED AS TO FORM:
20 DENNIS J. HERRERA, City Attorney

21 By: 
22 VIRGINIA DARIO ELIZONDO
23 Deputy City Attorney

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25

LEGISLATIVE DIGEST

[Building, Health, Public Works Codes - Soil and/or Groundwater Testing Requirements]

Ordinance amending Building Code, Section 106A.3.2.4, and Health Code, Sections 1220 through 1237, and adding Section 1219, to expand the boundaries and types of projects for which soil testing is required and to require testing of groundwater under specified circumstances; amending Public Works Code, Article 20, to eliminate soil testing provisions; renumbering code sections in Health Code, Article 22A; and making environmental findings.

Existing Law

Article 22A of the Health Code, Article 20 of the Public Works Code, and Section 106A.3.2.4 of the Building Code (collectively referred to as the "Maher Ordinance," adopted 1986) require applicants for building permits to develop site histories and, if necessary, to test soils for hazardous substances and perform appropriate handling, clean-up or capping of contaminated sites, for development projects that:

- Would disturb 50 + cubic yards soil; and
- Are located near the City's eastern shoreline

These ordinances are administered by the Department of Public Health (DPH - oversight of site history, work plan and mitigation plan) and the Department of Building Inspection (DBI - permit review and site inspection).

For projects located within designated area that would disturb 50 or more cubic yards of soil, permit applicants are required to submit site histories (permit history, record of past known uses, etc.) to DPH. If DPH determines, based upon site history, that there is no information to indicate the site may contain hazardous substances that pose risk to public health, then no further action required. If DPH determines that site may contain hazardous substances that pose risk to public health, then the permit applicant must submit work plans to DPH for taking and analyzing soils samples on site. If analysis shows the site is clean, then no further action required. If soils analysis indicates hazardous substances present on site, then the permit applicant must prepare a site mitigation plan for soils handling, disposal of contaminated soils and/or capping of site, under supervision of DPH. These actions, under supervision of DPH, must occur before DBI may issue a permit to commence building the project.

Amendments to Current Law

The proposed ordinance amendments will:

- Expand the geographic scope of Article 22A of the Health Code to cover all known areas throughout City with the potential to encounter hazardous substances, primarily areas currently or formerly zoned for industrial uses, sites with industrial uses or underground storage tanks, sites with historic bay fill, sites in close proximity to freeways or underground storage tanks.
- Expand Article 22A of the Health Code to include testing of groundwater when hazardous substances and groundwater are found on building sites.
- Codify a process for building site reporting, analysis processes that will result in improved consistency, certainty, and equity.
- Ensure consistency between Article 22A and applicable Building Code requirements.

The proposed ordinance amendments also repeal obsolete portions of the Public Works Code.

Background Information

In 1986, the San Francisco Board of Supervisors adopted an ordinance to address public concerns about hazardous materials exposure. The ordinance required that the Department of Health determine whether applicants for certain building permits observe and complete the requirements for analyzing the soil for the presence of hazardous waste. At that time, City engineers delineated areas of concern on a map which identified areas bayward of the historic 1851 shoreline.

The ordinance required specific soils analysis for inorganic and organic chemicals at construction sites where at least 50 cubic yards of soil are to be disturbed, the site is bayward of the historic high tide line, and a building permit is needed.

Since this time, the Planning Department and DPH have recognized that other areas of the City have hazardous substances in the soil and groundwater that could affect public health and safety. According to the departments, the geographic extent of the current ordinance is too limited – potential hazardous substance contamination of building sites occurs throughout a much larger area of City than the current boundaries of the area covered by the ordinance. In addition, the ordinance does not cover groundwater contamination - if a building site has contaminated soils, the groundwater also present at the site is likely to be contaminated as well.

For building sites outside of area delineated by the current ordinance, site histories, testing for and remediation of contaminated soils and groundwater are still required for development projects, but only on a case-by-case basis through CEQA mitigation measures and conditions of project approval. This process is cumbersome and time-consuming, and provides for less

certainty and consistency for projects located outside the area delineated by the current ordinance.

The Planning Department and the DPH have proposed amendments to Article 22A to address other areas of San Francisco that have been filled with soils that may contain hazardous substances, industrial zoned areas, areas within 150 feet of elevated freeways and properties within 100 feet of underground storage tanks, and the groundwater associated with such areas. DPH also recognizes that improved and more effective scientific and health risk exposure levels have been developed since 1986, and proposes to use these considerations for reviewing analytical reports and the proposed uses of developed properties.

The purposes of the proposed amendments are to:

- Ensure that contaminated soils and/or groundwater are managed, cleaned up or appropriately capped throughout the City, in order to protect public health and worker safety and in a consistent and equitable manner, as building sites are developed.
- Codify consistent responsibilities and processes, for all projects with similar circumstances and concerns.
- Allow DPH flexibility to adopt practical and effective protocols for City infrastructure projects.
- Provide more certainty and fewer surprises for project applicants.