

FILE NO.

ORDINANCE NO.

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

3 **Ordinance amending the Health and Building Codes to 1) expand the boundaries and**
4 **types of projects for which soil testing is required, 2) require testing of groundwater**
5 **under specified circumstances; 3) change references from the Public Works Code to**
6 **the Building Code; 4) eliminate soil testing references from the Public Works Code; and**
7 **5) adopt findings, including environmental findings.**

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

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

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

17 Section 2. The San Francisco Health Code is hereby amended by adding Section
18 1219 and amending Sections 1220, 1221, 1222, 1223, 1224, 1225, 1226, 1227, 1228, 1229,
19 1231, 1232, 1233, 1234, and 1235, to read as follows:

20 **SEC. 1219. FINDINGS.**

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

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

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

12 4. Health Code Article 22A, Public Works Code Article 20, and Building Code Section
13 106A.3.2.4 are presently limited in terms of their geographic coverage throughout the City, applying
14 exclusively on the Eastern side of City, more specifically in areas near the Bay shoreline, and areas of
15 known bay fill.

16 5. These Articles are also presently limited in terms of types of potential public health and
17 safety hazards that they address.

18 6. There may be hazardous substances and conditions (e.g., groundwater contamination) that
19 pose a potential threat to the public health and safety but are not currently within the scope of Article
20 22A.

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

3 8. In urban areas, emissions from paved roadways are a major source of atmospheric
4 particulate matter. Paved road dust originates from pavement wear and decomposition, dustfall, litter,
5 mud and dirt carryout, spills, biological debris, and erosion from adjacent areas. In an urban setting,
6 vehicle exhaust and vehicle brake and tire wear are a source of zinc and copper in paved road dust.
7 The authors of a 2006 study found that metal deposits increased in the immediate vicinity of a large
8 freeway, and quickly reduced to urban background deposition rates between 10 meters (30 feet) and
9 150 meters (450 feet) downwind of the freeway, especially for copper, lead and zinc. Their results
10 suggest: 1) the freeway is a significant source of copper, lead and zinc; and 2) these metals have
11 substantial concentrations of larger particles emitted from the freeway due to the dispersion of road
12 dust by vehicles traveling at high speeds. Lisa D. Sabin, et al., *Dry Deposition and Resuspension of*
13 *Particle-Associated Metals Near a Freeway in Los Angeles, Atmospheric Environment 40 (2006) 7528-*
14 *7538.*

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

18 10. City departments that engage in regular maintenance and repair of City property and
19 assets, long term capital projects, and emergency work are subject to these same public health and
20 safety requirements. These departments will work with the Department of Public Health to develop
21 protocols that use City resources efficiently and facilitate prompt response to emergencies, for any
22 projects that may require soil and/or groundwater testing.

23 **SEC. 1220. DEFINITIONS.**

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

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

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

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

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

12 (e) "Hazardous ~~Substance~~ waste" means any hazardous substance as defined in the
13 Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C.
14 §9601(14) and petroleum products and byproducts that meets the definition of hazardous waste in
15 Section 25117 of the California Health and Safety Code or Appendix X of Division 4.5, Chapter 10,
16 Article 5 of Title 22 California Administrative Code.

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

21 (g) "Industrially Zoned (i.e. zoned for industrial use)" means one of the following zoning
22 districts, as further described in Article 2 of the San Francisco Planning Code: M-1 (Light Industrial),
23 M-2 (Heavy Industrial), PDR-1-B (Light Industrial Buffer), PDR-1-D (Light Industrial Design), PDR-
24 1-G (Light Industrial General), PDR-2 (Core Production, Distribution and Repair), C-M (Heavy

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1 Commercial), SPD (South Park), RSD (Residential/Service Mixed Use), SLR (Service/Light
2 Industrial/Residential Mixed Use), SLI (Service/Light Industrial), SSO (Service/Secondary Office),
3 MUG (Mixed Use – General), MUR (Mixed Use – Residential), MUO (Mixed Use – Office), and UMU
4 (Urban Mixed Use) or any other zoning district that allows for industrial uses, either as a principal
5 permitted use or as a conditional use, as determined by the Zoning Administrator.

6 (h) "Intended Use" means the land uses allowed at the site under the building permit sought
7 and any construction activities required to carry out the permitted work.

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

10 **SEC. 1221. APPLICABILITY OF ARTICLE.**

11 Pursuant to Section 1001 of the San Francisco Public Works Code, anAn applicant shall
12 comply with this Article as specified by San Francisco Building Code Section 106A.3.2.4).

13 **SEC. 1222. WAIVER OF REQUIREMENTS FOR COMPLIANCE.**

14 Director may waive the requirements imposed by this Article if the applicant
15 demonstrates that the property has been continuously zoned as residential under the City
16 Planning Code since 1921, has been in residential use since that time, and no evidence has
17 been presented to create a reasonable belief that the soil and/or groundwater may contain
18 hazardous substances~~wastes~~. The In these circumstances, the Director shall provide the applicant
19 and the Director of Building Inspection with written notification that the requirements of this
20 Article have been waived.

21 **SEC. 1223. DIRECTOR'S DISCRETIONARY AUTHORITY TO REQUIRE**
22 **COMPLIANCE.**

23 In addition to those areas defined pursuant to Section 1221, the Director has authority
24 to require soil and/or groundwater analysis pursuant to the provisions of this Article as part of

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1 any building permit application when the Director has reason to believe that a hazardous
2 ~~waste substance~~ may be present in the soil and/or groundwater at the property.

3 **SEC. 1224. SITE HISTORY.**

4 (a) The applicant shall provide to the Director a site history for the property prepared
5 by an individual with the requisite training and experience described in regulations adopted
6 pursuant to Section 1232. The site history shall contain a statement indicating whether the
7 property is listed on the National Priorities List, published by the United States Environmental
8 Protection Agency pursuant to the federal Comprehensive Environmental Response
9 Compensation and Liability Act, 42 U.S.C. Section 9604(c)(3) or listed as a hazardous
10 substance release site by the California Department of Toxic Substances Control or the State
11 Water Resources Control Board pursuant to the California Hazardous Substances Account
12 Act, Health and Safety Code Section 25356. The site history shall also include results of a permit
13 records search investigating the history of permitted uses on the site, as well as any known or
14 discovered unpermitted uses or activities on site that would generate a reasonable expectation that
15 hazardous substances may be present in the soil and/or groundwater. The applicant shall file the
16 site history with the Director and the Director shall accept the report if the requirements of this
17 section are met and the certified laboratory. If the site history does not comply with the requirements of
18 this Section, the Director shall notify the applicant in writing within 30 days of receipt of the report,
19 indicating the reasons the report is unacceptable.

20 (b) If the site history indicates that there is no information that hazardous substances may be
21 present in the soil and no information that hazardous substances in groundwater may exceed the
22 Department of Toxic Substances Control or Regional Water Quality Control Board's health risk levels
23 given the intended use, the Director shall provide the applicant and the Director of Building Inspection
24 with written notification that the applicant has complied with the requirements of this Article.

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1 **SEC. 1225. ~~SUBSURFACE SOIL~~ SAMPLING AND ANALYSIS.**

2 (a) **Analysis of Sampled Soil *and/or Groundwater.*** *Unless the Director provides written*
3 *notification that the applicant has complied with the requirements of this Article as provided in Section*
4 *1224(b) or 1227(a), the applicant shall submit a work plan to the Director for soil and/or groundwater*
5 *sampling and testing. The applicant shall demonstrate in the work plan how the sampling and testing*
6 *requirements of this section will be satisfied, including the sampling locations, sampling protocol,*
7 *laboratory analyses to be conducted on the samples, and any other information required by the*
8 *Director to provide an accurate assessment of hazardous substances present at the site that may be*
9 *disturbed by, or may cause a public health or safety hazard given the intended use. If so directed by*
10 *the Department of Public Health, the ~~The~~ applicant shall cause a Qualified Person ~~or a certified~~*
11 *laboratory to take, or supervise the taking of, soil samples on the property to determine the*
12 *presence of hazardous ~~substances~~ wastes in the soil. If so directed by the Department of Public*
13 *Health, the applicant shall cause a Qualified Person to take, or supervise the taking of, groundwater*
14 *samples that are within ten feet of the lower limit of the project excavation. The applicant shall*
15 *conduct tests for hazardous substances that will accurately assess the site, as determined by the*
16 *Director. Such tests may include the following types of ~~hazardous substances~~ analyses shall be*
17 *conducted, unless an alternative proposal is approved by the Director:*

- 18 (1) Inorganic persistent and bioaccumulative toxic substances as listed in Section
19 66261.24(a)(2)(A) of Title 22 of the California Administrative Code;
- 20 (2) Volatile organic toxic pollutants as listed in 40 Code of Federal Regulations, Part
21 122, Appendix D, Table II;
- 22 (3) PCBs;
- 23 (4) pH levels;
- 24 (5) Cyanides;

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- 1 (6) Methane and other flammable or volatile gases;
- 2 (7) Total petroleum hydrocarbons;
- 3 (8) Semi-volatile compounds;
- 4 (9) Hazardous ~~substances/wastes~~ designated by the Director pursuant to Section 1232;
- 5 and
- 6 (10) Any ~~other~~ hazardous substance/waste that ~~either~~ the Director ~~or the certified~~
- 7 ~~laboratory~~, after an examination of the site history, has reason to conclude may be present on
- 8 the property. The Director shall make any such determination within 30 days of filing the site
- 9 history by the applicant of the site history.

10 (b) **Procedures for Soil and/or Groundwater Sampling.** Soil and/or groundwater

11 sampling shall be conducted in accordance with procedures for sampling soils and/or

12 groundwater approved by the California Department of Toxic Substances Control or the State

13 Water Resources Control Board and the San Francisco Bay Regional Water Quality Control

14 Board. The Director shall maintain a list of such approved sampling procedures.

15 (c) **Testing of ~~Samples~~ Soil.** Samples shall be analyzed by a certified laboratory in

16 accordance with methods for analyzing samples for the presence of hazardous

17 ~~substances/wastes~~ approved by the California Department of Toxic Substances Control or the

18 State Water Resources Control Board and the San Francisco Bay Regional Water Quality

19 Control Board.

20 **SEC. 1226. ~~SUBSURFACE SOIL~~ ANALYSIS REPORT.**

21 (a) Contents. The Applicant shall submit a soil and/or groundwater analysis report

22 prepared by the persons conducting the soil and/or groundwater sampling and analysis to the

23 Director, ~~the California Department of Toxic Substances Control, the San Francisco Bay Regional~~

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

- 3 (1) The names and addresses of the Qualified Persons~~persons who~~ and the certified
4 ~~laboratory that~~ conducted the soil and/or groundwater sampling, the soil and/or groundwater
5 analysis and prepared the report;
- 6 (2) An explanation of the sampling and testing methodology;
- 7 (3) The results of the soil and/or groundwater analyses;
- 8 (4) Whether any of the analyses conducted indicate the presence of a hazardous
9 ~~substance/wastes~~ and, for each, the level detected and the State and federal minimum standards
10 for public health risks, if any;

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

13 ~~(5)(6)~~ If applicable, a statement that the Qualified Person~~certified laboratory~~, after
14 examination of the site history, has no reason to conclude that hazardous substances/wastes,
15 other than those listed in Section 1225(a)(1) through (a)(109), ~~were~~ are likely to be present on
16 the property;

17 (b) Review by Director. The Director shall determine whether the ~~site history~~, soil and/or
18 groundwater sampling and analyses required by this Article were conducted and whether the
19 report required by this Section is complete. If the ~~site history~~, soil and/or groundwater sampling
20 or analyses were not conducted or the report does not comply with the requirements of this
21 Section, the Director shall notify the applicant in writing within 30 days of receipt of the report,
22 indicating the reasons the report is unacceptable. A copy of the notification shall be sent to the
23 Director of Building Inspection. Until the Director certifies a report as final, the Director may
24 require additional soil and/or groundwater sampling and analysis.

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1 (c) No Hazardous Substances ~~Wastes~~ Present. If the soil and/or groundwater sampling and
2 analysis report indicates that there are no hazardous substances~~wastes~~ above documented
3 background levels present in the soil, or no hazardous substances in groundwater that exceeds the
4 Department of Toxic Substances Control or Regional Water Quality Control Board's public health risk
5 levels given the intended use, the Director shall provide the applicant and the Director of Building
6 Inspection with written notification that the applicant has complied with the requirements of
7 this Article.

8 **SEC. 1227. - KNOWN HAZARDOUS SUBSTANCE~~WASTE~~ SITE; HUNTERS POINT**
9 **SHIPYARD PARCELA.**

10 (a) *If the soil sampling and analysis report or site history indicates that the property is listed*
11 *on the National Priorities List or the list of California Hazardous Substances Account Act release sites,*
12 *the applicant shall provide to the Director certification or verification from the appropriate federal or*
13 *State agency that any site mitigation required by the federal or State agency has been completed and*
14 *complete the certification procedure set forth in Section 1229. Certification by a competent State or*
15 *federal agency that mitigation measures have been properly completed shall constitute a conclusive*
16 *determination and shall be binding upon the Director. At the request of an applicant, the Director may*
17 *determine that one or more of the requirements of this Article have been met if an applicant provides*
18 *satisfactory documentation to the Director that the applicant or other party responsible for the site*
19 *conditions, has completed a process equivalent to the process required by this Article under the*
20 *oversight of a federal or state agency with jurisdiction to oversee the investigation and remediation of*
21 *hazardous substances at the site and the process has taken into account the intended use for which the*
22 *applicant seeks a building permit.*

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

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1 **SEC. 1228. APPLICANT'S RESPONSIBILITY UPON DISCOVERY OF HAZARDOUS**
2 **SUBSTANCES WASTES.**

3 Unless Section 1227 is applicable, if ~~the~~ a soil and/or groundwater sampling and analysis
4 report indicates that hazardous ~~substances wastes~~ are present in the soil or hazardous substances
5 in groundwater exceed Department of Toxic Substances Control or Regional Water Quality Control
6 Board's public's health risk levels given the intended use, the applicant shall:

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

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

12 (1) A determination by the ~~Qualified Person~~ qualified person as to whether the hazardous
13 ~~substances wastes~~ in the soil and/or groundwater are causing or are likely to cause significant
14 ~~environmental or~~ health and safety risks given the intended use, and if so, recommend measures
15 that will assure that the intended use will not result in public health or safety hazards in excess of the
16 acceptable public health risk levels established by the Department of Toxics Substances Control or the
17 Regional Water Quality Control Board and, therefore, will mitigate the significant health and
18 safety risks caused or likely to be caused by the presence of the hazardous ~~substances waste~~ in
19 the soil and/or groundwater given the intended use. If the report recommends mitigation
20 measures it shall identify any soil and/or groundwater sampling and analysis that it
21 recommends the project applicant conduct following completion of the mitigation measures to
22 verify that mitigation is complete;

23 (2) A statement signed by the person who prepared the report certifying that the
24 person is a ~~Qualified Person~~ qualified person within the meaning of this Section and that in his or

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1 her judgment either no mitigation is required or the mitigation measures identified, if
2 completed, will mitigate the significant ~~environmental or~~ health and safety risks caused by or
3 likely to be caused by the hazardous ~~substances/wastes~~ in the soil and/or groundwater given the
4 intended use;

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

7 ~~(c)(4)~~ Complete the certification required by Section 1229, and.

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

11 **SEC. 1229. FINAL REPORT AND CERTIFICATION.**

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

13 (1) If Section 1227 is applicable, the applicant has received certification or verification
14 from the appropriate State or federal agency that mitigation is complete.

15 (2) If Section 1228 is applicable:

16 (A) A Qualified Person~~qualified person~~ has determined in the site mitigation report that
17 no hazardous ~~substance levels/wastes~~ in the soil and/or groundwater are causing or are likely to
18 cause significant environmental or public health and safety risks as set forth in Section 1226(c),
19 and the Qualified Person~~qualified person~~ recommends no mitigation measures; or

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

23 (b) Applicant Declarations. The certification shall state:
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1 "The Applicant recognizes that it has a nondelegable duty to perform site mitigation;
2 that it, and not the City, is responsible for site mitigation; that it, not the City, attests to and is
3 responsible for the accuracy of the representations made in the certification, and that it will
4 continue to remain liable and responsible, to the extent such liability or responsibility is
5 imposed by State and federal law, for its failure to perform the site mitigation."

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

8 **SEC. 1231. MAINTENANCE OF REPORT BY DIRECTOR.**

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

11 **SEC. 1232. RULES AND REGULATIONS.**

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

20 In developing such regulations, the Director shall consider, ~~inter alia~~ among other things,
21 State and federal statutes and regulations pertaining to hazardous ~~substances~~ wastes with the
22 purpose of coordinating local regulations with them.

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

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1 (1) Minimum standards for acceptable site histories. The minimum standards *as set*
2 *forth by ASTM International* shall be designed to assist interested persons including, but not
3 limited to, the Director of Building Inspection, other state and local public agencies ~~and certified~~
4 ~~testing laboratories~~, to evaluate whether analyses, other than those required by Section
5 1225(a)(1) through (a)(~~10~~9), must be conducted to detect the presence in the soil *and/or*
6 *groundwater* of hazardous ~~substances~~~~wastes~~ and to determine what analyses are appropriate.
7 *These are the minimum standards and the Director may require additional information on the site.*

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

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

17 (4) Designation of areas *and analyses*. Designation of areas in the City, in addition to
18 the areas described in ~~Section 1001 of the San Francisco Public Works~~ *San Francisco Building*
19 *Code Section 106A.3.2.4*, where the Director has reason to believe that the soils *or groundwater*
20 may contain hazardous ~~substances~~~~wastes~~ and the designation of the analyses specified in
21 Section 1225 that shall be conducted in each area.

22 (5) Designation of additional hazardous ~~substances~~~~wastes~~. ~~The designation of additional~~
23 ~~hazardous substances~~~~wastes, other than those listed in Section 1225(a)(1) through (a)(9)~~, for which
24 analyses must be conducted. The designation shall be based on a determination by the

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1 Director that there is a reasonable basis to conclude that such other hazardous
2 ~~substanceswastes~~ may be in the soil and/or groundwater. The designation may be made
3 applicable to a specified area or areas of the City or city- wide as determined by the Director.

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

8 **SEC. 1233. NOTIFICATION TO BUYER.**

9 The Director shall prepare and maintain for public distribution a summary of the
10 requirements of this Article. The seller or the seller's agent involved in the sale or exchange of
11 any real property located on any parcel of land identified in San Francisco Building Code Sec.
12 106A.3.2.4 and bayward of the high tide line as indicated on the Historic San Francisco Maps as
13 described in Article 20 of the Public Works Code and as reflected on the map prepared and maintained
14 for public distribution by the Director and in those areas designated by the Director pursuant to
15 Section 1223 shall provide a copy of the summary to the buyer or buyers and shall obtain a
16 written receipt from the buyer or buyers acknowledging receipt of the summary. Failure to give
17 notice as required by this Section shall not excuse or exempt the buyer of the property from
18 compliance with the requirements of this Article.

19 **SEC. 1234. NONASSUMPTION OF LIABILITY.**

20 In undertaking to require certain building or grading permits to include soil and/or
21 groundwater analyses for the presence of hazardous ~~substanceswastes~~, the City and County of
22 San Francisco is assuming an undertaking only to promote the general welfare. It is not
23 assuming, nor is it imposing on itself or on its officers and employees, any obligation for
24

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1 breach of which it is liable for money damages to any person who claims that such breach
2 proximately caused injury.

3 **SEC. 1235. CONSTRUCTION ON CITY PROPERTY.**

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

17 Section 3. The San Francisco Building Code is hereby amended by amending Section
18 106A.3.2.4, to read as follows:

19 **106A.3.2.4 HAZARDOUS SUBSTANCESWASTES.**

20 106A.3.2.4.1 Soil and/or groundwater sampling and analysis required. Applicants for
21 any building or grading permit which involves the disturbance of at least 50 cubic yards (38.23
22 m3) of soil shall comply with the requirements for soil and/or groundwater sampling and
23 analysis of Article 22A of the ~~Public~~Health Code, unless such property is subject to Health Code §
24 1227, when any part of the work will occur ~~either~~

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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 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 to contain hazardous substances in the soil and/or**
12 **groundwater, using the definition of hazardous substance contained in Article 22A of the Health Code.**
13 **or;**

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

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

19 106A.3.2.4.2 Permit approval. No building permit application subject to the
20 requirements of this Section shall be considered acceptable for review and approved until the
21 Department receives written notification from the Director of Public Health that the applicant
22 has complied with all applicable provisions of Article 22A of the Public Health Code that can be
23 completed without a permit, or that the requirements have been waived.

24 Exception:

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

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

7 106A.3.2.4.4 Permit Notification and Warning.

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

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

16 **WARNING**

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

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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 Inspection~~
4 ~~shall bear notice of the above requirements and of the owner's responsibility for identifying and~~
5 ~~mitigating hazardous wastes.~~

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

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

10 **~~SEC. 1000. DEFINITIONS.~~**

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

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

15 ~~"Director" means the Director of the Department of Public Works of the City and County of San~~
16 ~~Francisco.~~

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

19 **~~SEC. 1001. ANALYSIS REQUIRED.~~**

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

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

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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.*~~

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

3 **~~SEC. 1006. COMPLETED APPLICATION.~~**

4 ~~No building permit application subject to the requirements of this Article shall be complete, for~~
5 ~~the purposes of Government Code Sections 65950 et seq., until the applicant submits to the Department~~
6 ~~of Public Works written notification from the Director of Public Health that:~~

7 ~~(a) The Director of Public Health has reviewed and accepted as complete the soil analysis~~
8 ~~report required by Section 1003, and~~

9 ~~(b) One of the following conditions is satisfied:~~

10 ~~1. The report indicates that no hazardous wastes are present in the soil, or~~

11 ~~2. The report indicates that hazardous wastes are present in the soil and the applicant has~~
12 ~~submitted certification in accordance with the provisions of Section 1005 that site mitigation, if~~
13 ~~necessary, is complete.~~

14 **~~SEC. 1012. PERMIT WARNING.~~**

15 ~~All building permits issued by the Central Permit Bureau shall bear the following printed warning:~~

16 **~~WARNING~~**

17 ~~Pursuant to Article 20 of Chapter 10, Part II of the San Francisco Municipal Code (Public Works~~
18 ~~Code), certain building permits may be issued only after the permittee analyzes the soil for the presence~~
19 ~~of hazardous wastes and, where applicable, certifies that it has completed site mitigation. No officer,~~
20 ~~employee, or agency of the City conducted the soil sampling and analyses, recommended site~~
21 ~~mitigation measures, conducted the site mitigation or checked or verified the reports submitted or work~~
22 ~~performed for accuracy, reliability or adherence to protocols. In issuing this permit, neither the City~~
23 ~~nor any of its officers or employees make any representation that the soil on or about the site is free~~
24 ~~from the presence of hazardous wastes. Nor does the City's implementation of this process relieve any~~

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1 ~~person from their duties and responsibilities relating to hazardous contamination under state and~~
2 ~~federal law. Neither soil analysis pursuant to Article 20 of the Public Works Code nor the issuance of~~
3 ~~this permit is intended to alter, extinguish, or transfer these responsibilities.~~

4 **~~SEC. 1014. SEVERABILITY~~**

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

12 Section 5. Effective Date. This ordinance shall become effective 30 days from the
13 date of passage.

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

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

22
23 By: _____
24 VIRGINIA DARIO ELIZONDO
Deputy City Attorney

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