

[Hunters Point Shipyard - Health Code Amendment]

**Ordinance amending Article 31 of the Health Code to extend, to the entire Hunters Point Shipyard area, the special permit processing requirements that now apply to Hunters Point Shipyard Parcel A to address potential residual contamination, and imposing fees to administer this Article; amending Sections 804 and 1227 of the Health Code to make conforming amendments; and making environmental findings.**

Note: Additions are single-underline italics Times New Roman;  
deletions are ~~striketrough italics Times New Roman~~.  
Board amendment additions are double underlined.  
Board amendment deletions are ~~striketrough normal~~.

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

Section 1. Findings.

A. In conjunction with Ordinances [PWC] 205-10, and [DBI] 206-10 on file with the Clerk of the Board of Supervisors in File Nos. 100576 and 100577, this Ordinance amends Chapter 31 of the Health Code to extend to the entire Hunters Point Shipyard area the special permit processing requirements that now apply at Hunters Point Shipyard Parcel A to address potential contamination.

B. In accordance with the actions contemplated herein, this Board adopted Resolution No. 347-10, concerning findings pursuant to the California Environmental Quality Act (California Public Resources Code sections 21000 et seq.). Said Resolution is on file with the Clerk of the Board of Supervisors in File No. 100572 and is incorporated herein by reference.

1 Section 2. San Francisco Health Code is amended by amending Article 31 to read as  
2 follows:

3 **SEC. 3100. - HUNTERS POINT SHIPYARD.**

4 Findings. The Board of Supervisors of the City and County of San Francisco hereby  
5 finds and declares as follows:

6 A. This ordinance is designed to protect human health and safety and the environment  
7 at the former Hunters Point Shipyard during and after development and to facilitate  
8 redevelopment as envisioned in the Hunters Point Shipyard Redevelopment Plan, which the  
9 Board of Supervisors adopted in 1997 and amended in 2010, and its Environmental Impact  
10 Reports.

11 B. The United States designated Hunters Point Shipyard as a U.S. Naval Shipyard in  
12 1945. The United States Environmental Protection Agency (EPA) placed the Hunters Point  
13 Shipyard on the National Priorities List pursuant to the Comprehensive Environmental  
14 Response, Compensation and Liability Act (CERCLA) in 1989. The U.S. Navy ("Navy") has  
15 divided the site into ~~six~~ parcels ~~designated Parcels A-F~~ for purposes of remediation.

16 C. The ~~U.S.~~ Navy issued a CERCLA Record of Decision (ROD) for Parcel A which was  
17 approved by the EPA, the California Department of Toxic Substances Control (DTSC), and  
18 the San Francisco Bay Region Regional Water Quality Control Board (RWQCB) in November  
19 1995. The ROD concluded that "no action" was needed to clean up Parcel A. Effective April 5,  
20 1999, EPA removed Parcel A from the National Priorities List after EPA and the State of  
21 California found that all appropriate responses under CERCLA had been implemented, that  
22 no further cleanup is appropriate for Parcel A and that the remedial actions conducted on  
23 Parcel A remain protective of public health, welfare, and the environment.

1 D. On September 1, 2004, the Navy issued a draft final Finding of Suitability to  
2 Transfer (FOST) for Parcel A. On September 30th and October 6th and 7th 2004,  
3 respectively, the EPA, DTSC and the RWQCB concurred with the Navy's FOST. The Navy  
4 signed the FOST on October 14, 2004. The FOST for Parcel A contains requirements for  
5 certain notices, restrictions and covenants to be included in the deed for Parcel A. These  
6 notices, restrictions and covenants are also referred to as "institutional controls" and are  
7 binding on all successive owners of any portion of Parcel A.

8 E. On December 3, 2004, the Navy transferred portions of Parcel A to the San  
9 Francisco Redevelopment Agency.

10 F. The Navy issued a CERCLA ROD Amendment for Parcel B in January 2009, a ROD for  
11 Parcel D-1 in September 2009, a ROD for Parcel G in February 2009, a ROD for Parcel UC-1 in  
12 August 2009 and a ROD for Parcel UC-2 in December 2009. The EPA, DTSC and the RWQCB  
13 approved these RODs. The RODs concluded that additional action was needed for the parcels to be  
14 protective of public health, welfare, and the environment in light of the redevelopment plans for the  
15 site. The Navy is preparing a ROD for Parcel C and issued a Draft Proposed Plan in January 2009.  
16 The Navy issued a Draft Final No Further Action ROD for Parcel D-2 in January 2009. The Navy  
17 completed a Draft Final Remedial Investigation Report for Parcel E in February 2008 and a Draft  
18 Feasibility Study in July 2009. The Navy issued a Draft Final Remedial Investigation Feasibility Study  
19 (RI/FS) for Parcel E-2 in February 2009 and a Draft Final Radiological Addendum to the RI/FS in  
20 March 2010. The Navy issued the Final Feasibility Study for Parcel F in April 2008.

21 G. In addition to Parcel A, which the Navy already transferred to the San Francisco  
22 Redevelopment Agency ("Agency"), it is anticipated that the Navy will offer the remaining parcels for  
23 transfer to the Agency in accordance with a Conveyance Agreement between the Agency and the Navy.  
24 Prior to transfer of any parcel, the Navy will issue a draft final FOST or a draft final Finding of

1 Suitability for Early Transfer (FOSET) for the parcel. If the Navy issues a FOST, the Conveyance  
2 Agreement requires the Navy to obtain the concurrence of the EPA, DTSC, and RWQCB in the final  
3 FOST before it offers the parcel to the Agency. If the Navy issues a FOSET, CERCLA requires the  
4 Navy to obtain the approval of EPA and the concurrence of the Governor of California which will be  
5 based on input from DTSC and the RWQCB. A FOST or FOSET may require the deeds for the property  
6 to include certain environmental notices, restrictions or covenants, also referred to as "institutional  
7 controls" that will be binding on all successive owners of the transferred property to which such  
8 notices, restrictions or covenants apply. The Navy also is expected to enter into a Covenant to Restrict  
9 Use of Property (CRUP) with DTSC, which will be binding on subsequent owners and will provide for  
10 DTSC enforcement of the covenants, restrictions or conditions to which the property is subject. A Land  
11 Use Control Remedial Design (LUC RD) for each parcel will lay out the inspection and reporting  
12 requirements for the institutional controls and activity and land use restrictions. For property that  
13 transfers via a FOSET, the EPA and the Agency and possibly subsequent private developers, will be  
14 required to enter into an Administrative Order on Consent (AOC), also approved by state  
15 environmental regulatory agencies, which will detail the required corrective or cleanup actions and  
16 restricted activities associated with the property covered by the AOC and provide for EPA enforcement  
17 of its terms. Additionally, for property that transfers via a FOSET, the Navy and the Agency will enter  
18 into an Early Transfer Cooperative Agreement (ETCA), which will provide for the Agency to cause to  
19 be performed certain environmental remediation activities to facilitate redevelopment in exchange for  
20 funding of such activities by the Navy.

21 H. The Board of Supervisors by Resolution 347-10, adopted CEQA  
22 findings, including a mitigation monitoring and reporting program ("MMRP") for the Candlestick  
23 Point-Hunters Point Shipyard Phase II Development Plan Project ("Project"), for which the Agency  
24 and Planning Commissions certified a Final Environmental Impact Report ("FEIR") in

1        June 3, 2010. The Project contains all of the property in the Hunters Point Shipyard  
2        except the property designated as Parcel A by the Navy. The MMRP contains mitigation measures  
3        that address potential hazardous materials impacts associated with the Project. It is the intent of the  
4        Board to create a process for the Department of Public Health to enforce in the Hunters Point Shipyard  
5        portion of the Project certain hazardous materials mitigation measures identified in the FEIR through  
6        this Article 31.

7        **SEC. 3101. - DEFINITIONS.**

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

10        (a) "Applicant" means a person applying for any of the following authorizations for  
11        subsurface activities on portions of the Hunters Point Shipyard subject to this Ordinance:

12        (1) For property determined by the applicable ROD to be suitable for unrestricted residential  
13        use (i) any building or grading permit that involves the disturbance of at least 50 cubic yards  
14        (38.23m3) of soil; (ii) any permit pursuant to the Public Works Code that involves the  
15        disturbance of at least 50 cubic yards (38.23m3) of soil; (iii) any improvement plan pursuant to  
16        Division 3 of the Subdivision Code that involves the disturbance of at least 50 cubic yards  
17        (38.23m3) of soil; (iv) any permit to operate or approval to close an underground tank,  
18        pursuant to Sections 1120 and 1120.1 of the Health Code that involves the disturbance of at  
19        least 50 cubic yards (38.23m3) of soil; (v) any well construction, modification, operation or  
20        maintenance permit pursuant to Article 12B of the Health Code; or (vi) any permit that involves  
21        demolition of structures with lead-based paint.

22        (2) For property which is subject to a deed restriction or covenant containing an environmental  
23        restriction requiring a durable cover or engineered cap (i) any building or grading permit that involves  
24        the disturbance of soil; (ii) any permit pursuant to the Public Works Code that involves the disturbance

1 of soil; (iii) any improvement plan pursuant to Division 3 of the Subdivision Code that involves the  
2 disturbance of soil; (iv) any permit to operate or approval to close an underground tank, pursuant to  
3 Sections 1120 and 1120.1 of the Health Code that involves the disturbance of soil; or (v) any well  
4 construction or destruction permit pursuant to Article 12B of the Health Code.

5 (3) Notwithstanding the preceding subdivisions, A Applicant does not include a person  
6 applying for a permit for the sole purpose of conducting environmental characterization.

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

9 (c) "GIS" is a geographic information system, ~~for the Hunters Point Shipyard. The GIS is a~~  
10 computer-based system containing site-specific environmental information.

11 (d) "Hunters Point Shipyard parcels" or "HPS parcels" mean that area of the City and County  
12 of San Francisco shown on Figure Article 31 Map - Figure 1, which is maintained for public  
13 distribution by the Director. A copy of said figure is on file with the Clerk of the Board of Supervisors  
14 in File No. 100575.

15 (de) "Improvement Plan" means an improvement plan as required under the  
16 Subdivision Map Act, California Government Code Sections 66410 et seq.

17 (ef) "Parcel A" means that area of the City and County of San Francisco shown on Figure  
18 Article 31 Map – Figure 1, which is maintained for public distribution by the Director. A copy of said  
19 figure is on file with the Clerk of the Board of Supervisors in File No. 100575. ~~that parcel or~~  
20 ~~parcels of land of the Hunters Point Shipyard as indicated on the Map filed with the Recorder of the~~  
21 ~~City and County of San Francisco on December 3, 2004 situated in the City and Count of San~~  
22 ~~Francisco, that was transferree to the San Francisco Redevelopment Agency by the U.S. Navy.~~

1 (fg) "Prescribed Subsurface Activity Area" means the specific location and horizontal  
2 and vertical extent of the proposed disturbance, excavation, grading or other subsurface  
3 activity defined using coordinates compatible with the GIS to the extent feasible.

4 **SEC. 3102. - APPLICABILITY OF ARTICLE.**

5 (a) Applicants must comply with this Article. The Department of Public Works (for any  
6 permit or improvement plan subject to this Article), the Department of Building Inspections (for  
7 building and grading permits) and the Department of Health (for underground tank permits  
8 and approvals and water well permits) shall inform the Director whenever a permit or  
9 improvement plan application is submitted for Hunters Point Shipyard and shall refer  
10 Applicants to the Director. The Director shall determine the applicability of this Article to the  
11 permit application or improvement plan and shall implement and enforce the provisions of this  
12 Article. If the Director determines that a permit or improvement plan is subject to the  
13 provisions of this Article, the permit or improvement application shall not be deemed complete  
14 until the Applicant has complied with the requirements of this Article or shall be conditioned  
15 upon compliance with this Article as specified herein.

16 (b) Any person that obtains environmental sampling data shall submit that data to the  
17 Director in a form acceptable to the Director.

18 ~~(c) The following sections of this Article apply:~~

19 ~~All Parcels Section 3100 et seq.~~

20 ~~Parcel A Section 3120 et seq.~~

21 ~~Parcel B Section 3130 et seq.~~

22 ~~Parcel C Section 3140 et seq.~~

23 ~~Parcel D Section 3150 et seq.~~

24 ~~Parcel E Section 3160 et seq.~~

1 ~~Parcel F Section 3170 et seq.~~

2 (dc) Prior to applying for a permit or improvement plan any person that desires to  
3 comply with this ordinance may enter into a voluntary agreement with the Director. The  
4 voluntary agreement shall be signed as to form by the City Attorney and shall require the  
5 person to comply with the substantive requirements of this Article and any regulations  
6 adopted by the Director; require payment of fees; and provide for Director notification to the  
7 relevant department that the person has complied with this Article.

8 (ed) Compliance with this Article does not relieve any person of compliance with any  
9 applicable federal, state, regional or local law, and does not take the place of compliance with  
10 any requirement of any regulatory agency that has jurisdiction to enforce any legal  
11 requirement that this Article is intended to address.

12 **SEC. 3103. - REPORTS BY DIRECTOR.**

13 The Director shall monitor compliance with this Article and provide an annual summary  
14 of compliance with this Article to the Board of Supervisors.

15 **SEC. 3104. - GENERAL WELFARE; NON-ASSUMPTION OF LIABILITY.**

16 The degree of protection required by this Article is considered to be reasonable for  
17 regulatory purposes. This Article shall not create liability on the part of the City, or any of its  
18 officers or employees for any damages that result from reliance on this Article or any  
19 administrative decision lawfully made in accordance with this Article. All persons handling  
20 hazardous materials within the City should be and are advised to determine to their own  
21 satisfaction the level of protection desirable to ensure no unauthorized release of hazardous  
22 materials.

23 In undertaking to require Applicants to comply with this Article, the City and County of  
24 San Francisco is assuming an undertaking only to promote the general welfare. It is not

1 assuming, nor is it imposing on itself or on its officers and employees, any obligation for  
2 breach of which it is liable for money damages to any person who claims that such breach  
3 proximately caused injury.

4 All inspections specified or authorized in this Article shall be conducted at the discretion  
5 of the City and nothing in this Article shall be construed as requiring the City to conduct any  
6 such inspection nor shall any actual inspection made imply a duty to conduct any other  
7 inspection.

#### 8 **SEC. 3105. - CONSTRUCTION ON CITY PROPERTY.**

9 All departments, boards, commissions and agencies of the City and County of San  
10 Francisco that authorize construction or improvements on land under their jurisdiction under  
11 circumstances where no building, grading, street use or other permit or approval is required  
12 pursuant to the San Francisco Municipal Codes shall adopt rules and regulations to insure  
13 that the procedures set forth in this Article are followed. The San Francisco Redevelopment  
14 Agency and the departments of Public Health, Public Works, and Building Inspection shall  
15 assist other departments, boards, commissions and agencies to ensure that these  
16 requirements are met.

#### 17 **SEC. 3106. - FORMER LANDFILL DISPOSAL AREAS.**

18 Upon receipt of a site evaluation report from an Applicant, the Director, ~~in consultation~~  
19 ~~with the Local Enforcement Agency and the California Integrated Waste Management Board,~~ shall  
20 determine whether the Prescribed Subsurface Activity Area is subject to the provisions of the  
21 California Integrated Waste Management Act (Cal. Public Resources Code § 40000 et seq.)  
22 as amended, relating to development on or near a former landfill disposal site. *In making this*  
23 *determination, the Director may consult with the Local Enforcement Agency and the California*  
24 *Integrated Waste Management Board.*

1 (a) For any Prescribed Subsurface Activity Area or portion thereof that is subject to  
2 such provisions, the Director shall require the Local Enforcement Agency to approve  
3 proposed land uses and determine any necessary protective measures or requirements to the  
4 extent necessary to comply with California Code of Regulations, Title 27, Chapter 3,  
5 Subchapter 4, Article 6 (Section 20917 et seq.) and Subchapter 5 (Section 20950 et seq.), as  
6 amended.

7 (b) For any Prescribed Subsurface Activity Area or portion thereof that is located within  
8 1,000 feet of a former landfill disposal site, but which is not subject to the above- referenced  
9 provisions of the California Integrated Waste Management Act, the Director shall review any  
10 proposed structures to ensure that the construction or use of the structure will not pose a  
11 threat to public health and safety or the environment. In making this determination, the  
12 Director shall consider the potential for adverse impacts on public health and safety and the  
13 environment, taking into account the following: the amount, nature and age of solid waste in  
14 the landfill disposal area; current and projected gas generation; effectiveness of existing  
15 controls; proximity of the proposed land uses to landfill disposal area; and other relevant  
16 geographic or geologic features. Based on these factors, the Director shall determine whether  
17 the structure must be designed and constructed in accordance with the following measures or  
18 requirements (or other design providing an equivalent degree of protection against gas  
19 migration into the structure): installation of a geomembrane or equivalent system with low  
20 permeability to landfill gas between the concrete floor slab of the structure and subgrade;  
21 installation of a permeable layer of open graded material of clean aggregate with a minimum  
22 thickness of 12 inches between the geomembrane and the subgrade or slab; installation of a  
23 geotextile filter to prevent the introduction of fines into the permeable layer; installation of  
24 perforated venting pipes, designed to operate without clogging, within the permeable layer;

1 construction of a venting pipe with the ability to be connected to an induced draft exhaust  
2 system; installation of automatic methane gas sensors within the permeable gas layer, and  
3 inside the structure to trigger an audible alarm when methane gas concentrations are  
4 detected; and/or appropriate periodic methane gas monitoring, including monitoring inside  
5 structures, with reporting requirements and a contingency and mitigation plan.

6 For purposes of this section, "structures" shall include: buildings, subsurface vaults,  
7 utilities or any other buildings or areas where potential gas buildup would be of concern.

8 (c) If the Director determines under subsections (a) or (b) of this Section that protective  
9 measures or requirements are necessary, the Director shall inform the relevant department in  
10 writing that such measures or requirements must become conditions of the permit or  
11 improvement plan.

#### 12 **SEC. 3107. - RULES AND REGULATIONS.**

13 (a) Pursuant to the procedures specified in Section 1170 of the Health Code, the  
14 Director may adopt rules, regulations and guidelines, including maps, necessary or  
15 appropriate to implement this Article.

16 ~~(b) Pursuant to Section 3107(a), the Director may subject additional geographic areas to the~~  
17 ~~requirements of this ordinance where those additional areas exhibit the same underlying conditions~~  
18 ~~and will be subject to the same restrictions as areas already subject to this ordinance.~~

19 (eb) Regulations promulgated by the Health Commission shall be maintained in the  
20 Office of the Clerk of the Board of Supervisors.

21 (dc) The Director shall maintain and update ~~the GIS~~ project files as site data is received  
22 pursuant to this Article and provide public access to the GIS files and site data.

23 (ed) The Director shall maintain for public distribution a map that reflects the  
24 boundaries of each Parcel of the Hunters Point Naval Shipyard. The map shall include former

1 landfill disposal sites and a line representing the 1,000 foot perimeter from those sites. For  
2 Parcel A, the Director shall adopt a map showing historic fill areas and utility lines existing  
3 prior to the date of transfer of Parcel A from Navy ownership.

#### 4 **SEC. 3108. - FEES.**

5 The Director is authorized to charge the following fees to defray the costs of document  
6 processing and review, consultation with Applicants, and administration of this Article: ~~for~~  
7 ~~fiscal year 2004-2005: (1) an initial fee of \$511.00 upon submission of the site evaluation report; and~~  
8 ~~(2) an additional fee of \$137.00 per hour for document processing and review and applicant~~  
9 ~~consultation exceeding three hours or portion thereof payable on an ongoing basis; for fiscal year~~  
10 ~~2005-2006: (1) an initial fee of \$514.00; and (2) an additional fee of \$145.00 per hour exceeding three~~  
11 ~~hours or portion thereof; for fiscal year 2006-2007: (1) an initial fee of \$539.00; and (2) an additional~~  
12 ~~fee of \$153.00 per hour exceeding three hours or portion thereof. Beginning with fiscal year 2007-~~  
13 ~~2008, for Fiscal Year 2010-2011, the fees are as follows: Application Fee = \$592 for up to three hours~~  
14 ~~of document review/consultation and \$197 for each additional hour, including site visits. No no~~ later  
15 than April 15 of each year, the Controller shall adjust the allowable fees ~~provided in this Article~~  
16 to reflect changes in the relevant Consumer Price Index, without further action by the Board of  
17 Supervisors. In adjusting the fees, the Controller may round these fees up or down to the  
18 nearest dollar, half-dollar or quarter-dollar. The Director shall perform an annual review of the  
19 fees scheduled to be assessed for the following fiscal year and shall file a report with the  
20 Controller no later than May 1st of each year, proposing, if necessary, an adjustment to the  
21 fees to ensure that costs are fully recovered and that fees do not produce significantly more  
22 revenue than required to cover the costs of operating the program. The Controller shall adjust  
23 fees when necessary in either case.

#### 24 **SEC. 3109. - VIOLATIONS.**

1 In addition to any other provisions of this Article, fraud, willful misrepresentation, or any  
2 willfully inaccurate or false statement in any report required by this Article shall constitute a  
3 violation of this Article.

4 **SEC. 3110. - ENFORCEMENT ACTIONS.**

5 The Director shall have authority to administer and enforce all provisions of this Article  
6 and may enforce the provisions of this Article by any lawful means available for such purpose,  
7 including taking any action authorized pursuant to Article 21, Sections 1133(a)-(d), (f), and (h)-  
8 (i) of the Health Code.

9 **SEC. 3111. - RESERVED.**

10 **SEC. 3112. - REMEDIES NOT EXCLUSIVE.**

11 Remedies under this Article are in addition to and do not supersede or limit any and all  
12 other remedies, civil or criminal.

13 **SEC. ~~3120~~3113. - ~~PARCEL A~~ INSTITUTIONAL CONTROLS.**

14 An Applicant must comply with institutional controls included in ~~the~~ any deed conveying  
15 ownership ~~of Parcel A~~ from the United States Navy to the San Francisco Redevelopment  
16 Agency pursuant to a final FOST or FOSET or included in any recorded covenant to restrict use of  
17 property containing environmental restrictions for Parcel A to the extent such institutional controls  
18 apply to activities authorized by a permit or improvement plan subject to this Article. The  
19 Director will advise the relevant department of the specific requirement pursuant to the deed;  
20 require compliance with the institutional controls as a condition of the permit or improvement  
21 plan; and coordinate with the relevant department to monitor and enforce compliance with  
22 such institutional controls.

23 **SEC. ~~3121~~3114. - ~~PARCEL A~~ SITE EVALUATION AND SITE MITIGATION FOR**  
24 **UNRESTRICTED RESIDENTIAL PROPERTY.**

This section applies to property determined by the applicable ROD to be suitable for unrestricted residential use that is transferred without a requirement for a durable cover or engineered cap.

(a) An Applicant must submit the following, satisfactory to the Director, as further specified in regulations adopted by the Director: (i) ~~s~~Site ~~e~~Evaluation ~~r~~Report; (ii) ~~d~~Dust ~~e~~Control ~~p~~Plan; (iii) Unknown Contaminant Contingency Plan; (~~iii~~iv) ~~d~~Disposal ~~p~~Plan (if applicable); (~~iv~~v) Site Specific hHealth and sSafety pPlan; (~~v~~) ~~stormwater and erosion control plan~~; (vi) Soil Importation Plan (if applicable), (vii) Foundation Support Piles Installation Plan (if applicable), (~~v~~ix) a determination of whether additional information is necessary to adequately characterize the Prescribed Subsurface Activity Area, and (ix) for areas that undergo demolition of structures with lead based paint, a scope of work to collect additional information as described in the regulations. The plans required by (ii)—(~~v~~ix) must be specific to the activities to be conducted under a permit or improvement plan.

The Director shall review the site evaluation report and advise the Applicant on whether additional information is necessary ~~to adequately characterize the Prescribed Subsurface Activity Area~~ as follows:

(1) In unrestricted residential parcels, if the Prescribed Subsurface Activity Area has already been evaluated in a Site Evaluation Report in the past and a Closure Report for the Prescribed Subsurface Activity Area was approved by the Director and the Closure Report included verification of: (i) the placement of at least one foot of clean imported fill or equivalent on areas with fill containing naturally occurring asbestos; or (ii) that the Area was cut into native bedrock and properly covered, if necessary, to address any concerns about naturally occurring asbestos; or (iii) that the Area has no naturally occurring asbestos concerns; then no site history, data evaluation, sampling or additional characterization will be necessary with respect to such Prescribed Subsurface Activity Area.

1           (2) Unrestricted residential property that does not meet the criteria provided in subdivision (1)  
2 will be evaluated as follows:

3           (1A) Tier I Areas. If a portion of a Prescribed Subsurface Activity Area has been used  
4 continuously only for residential purposes, or is not located on historic fill (as defined in a map  
5 maintained by the Director pursuant to Section 3107(e)), or is not or has not been underlain  
6 by Navy utility lines (as defined on a map maintained by the Director pursuant to Section  
7 3107(e)), and, in any case, there is no evidence that hazardous substances are present, no  
8 additional information or sampling will be necessary with respect to such portions of the  
9 Prescribed Subsurface Activity Area. The Director shall provide the Applicant and the relevant  
10 department with written notification that the Applicant has complied with the requirements of  
11 this Article as to such portions, and must comply with the plans listed in subsection (a)(ii)—  
12 (vix), as determined by the Director to be applicable, and all laws applicable to soil removal and  
13 off-site disposal.

14           (2B) Tier II Areas. In portions of Prescribed Subsurface Activity Area other than those  
15 described as Tier I, if the Director determines that such portions are adequately characterized,  
16 the Director shall provide the Applicant and the relevant department with written notification  
17 that the Applicant has complied with the requirements of this Article as to such portions, and  
18 must comply with the plans listed in subsection (a)(ii)—(vix), as determined by the Director to be  
19 applicable, and all laws applicable to soil removal and off-site disposal. If the Director  
20 determines that additional information is necessary to adequately characterize portions of the  
21 Prescribed Subsurface Activity Area, the Applicant must submit a proposed scope of work for  
22 a supplemental site evaluation in accordance with regulations adopted by the Director. Upon  
23 approval of the scope of work by the Director, the Applicant shall implement the scope of work  
24 and prepare a supplemental site evaluation report summarizing the new information.

1 (Aa) If the supplemental site evaluation report shows that there is no existing  
2 contamination that exceeds the screening criteria established by the Director by regulation,  
3 the Director shall provide the Applicant and the relevant department with written notification  
4 that the Applicant has complied with the requirements of this Article, and must comply with the  
5 plans listed in subsection (a)(ii)—(~~vix~~), as determined by the Director to be applicable, and all laws  
6 applicable to soil removal and off-site disposal.

7 (Bb) If the supplemental site evaluation report shows that there is existing  
8 contamination that exceeds the screening criteria established by the Director and the  
9 Applicant wishes to retain that soil in the Prescribed Subsurface Activity Area or elsewhere  
10 within ~~Parcel A~~ unrestricted residential property, the Applicant must prepare and submit to the  
11 Director a risk evaluation report and a site mitigation plan demonstrating the property can still  
12 be used for unrestricted residential purposes consistent with the FOST. The site mitigation  
13 plan must include the plans listed in subsection (a)(ii)—(~~vix~~), as determined by the Director to be  
14 applicable, and may include a deed notice, provided that any notice is consistent with use for  
15 unrestricted residential purposes. The Director must review and approve the risk evaluation  
16 report and the site mitigation plan. Upon approval of these documents, the Director shall  
17 provide the Applicant and the relevant department with written notification that the Applicant  
18 has complied with the requirements of this Article, and must comply with the site mitigation  
19 plan and all laws applicable to soil removal and off-site disposal.

20 (b) If the Director finds that the Applicant intends to remove soil from the Prescribed  
21 Subsurface Activity Area and dispose of that soil off-site, then the Director shall find that, as to  
22 that soil, no additional information is necessary and shall provide the Applicant and the  
23 relevant department with written notification that the Applicant has complied with the  
24 requirements of this Article, and must comply with the plans listed in subsection (a)(ii)—(~~vix~~).

1 as determined by the Director to be applicable, and all laws applicable to soil removal and off-site  
2 disposal.

3 (c) Upon completion of the activity authorized by the permit or improvement plan, the  
4 Applicant shall submit a ~~e~~Closure ~~r~~Report to the Director including: additional information or  
5 data obtained, including information on unanticipated conditions; correcting any information  
6 previously submitted; and certifying implementation of the plans listed in subsection (a)(ii)—  
7 (~~vix~~), as determined by the Director to be applicable, any applicable risk management or site  
8 mitigation plan and all laws applicable to soil removal.

9 ~~SEC. 3130. PARCEL B [RESERVED].~~

10 ~~SEC. 3140. PARCEL C [RESERVED].~~

11 ~~SEC. 3150. PARCEL D [RESERVED].~~

12 ~~SEC. 3160. PARCEL E [RESERVED].~~

13 ~~SEC. 3170. PARCEL F [RESERVED].~~

14 **SEC. 3115. HPS PROPERTY WITH A DURABLE COVER REQUIREMENT.**

15 (a) For property which is subject to a deed restriction or covenant to restrict use of  
16 property containing an environmental restriction requiring a durable cover or engineered cap the  
17 Applicant shall submit to the Director (i) Site Evaluation Report; (ii) Dust Control Plan; (iii) Unknown  
18 Contaminant Contingency Plan; (iv) Disposal Plan (if applicable); (v) Site Specific Health and Safety  
19 Plan; (vi) Soil Importation Plan (if applicable); (vii) Foundation Support Piles Installation Plan.

20 The Applicant will also submit verification to the Director of the following:

21 (b) for property that is currently subject to an Administrative Order on Consent (AOC) and  
22 is therefore subject to the regulatory oversight of the EPA, the Applicant must submit proof that it is  
23 complying with all environmental documents and restrictions, including without limitation as  
24 applicable, the AOC, ETCA, CRUP, LUC RD, pre-Remedial Action Closeout Report (pre-RACR) Risk

1 Management Plan (RMP), post-RACR RMP and Operation and Maintenance Plan (OMP). Proof of  
2 compliance can be: (i) a letter from EPA detailing the compliance; (ii) a report or checklist, as  
3 required by the document; or (iii) any other form acceptable to the Director demonstrating compliance.

4 (c) for property that is no longer subject to an Administrative Order on Consent (AOC) or  
5 that was never subject to an AOC, the Applicant must submit proof that it is complying with all  
6 environmental documents and restrictions that are applicable to the property, including without  
7 limitation as applicable, an ETCA, CRUP, pre-RACR RMP, post-RACR RMP, and OMP. Proof of  
8 compliance can be: (i) a report or checklist, as required by the document; or (ii) any other form  
9 acceptable to the Director demonstrating compliance.

10 (d) Whether or not an AOC is in effect for the property:

11 (i) if an RMP for the property includes a requirement for a Dust Control Plan and if EPA  
12 already has approved the RMP and Dust Control Plan, then the Applicant is required only to submit a  
13 copy of the approved Dust Control Plan and approval letter from EPA as proof of compliance with the  
14 Dust Control Plan requirement. However, if the EPA approved Dust Control Plan does not include  
15 specification of particulate monitoring equipment, site specific monitoring location requirements, or  
16 action levels then the Director may require submittal of this information.

17 (ii) if an RMP for the property includes a requirement for a Site Specific Health and Safety Plan  
18 and if EPA has already approved the RMP and the Site Specific Health and Safety Plan, then the  
19 Applicant is required only to submit a copy of the approved Site Specific Health and Safety Plan and  
20 approval letter from EPA as proof of compliance with the Site Specific Health and Safety Plan  
21 requirement.

22 (iii) if an RMP for the property includes a requirement for a Soil Importation Plan and if EPA  
23 has already approved the RMP and the Soil Importation Plan, then the Applicant is required only to  
24

1 submit a copy of the approved Soil Importation Plan and approval letter from EPA as proof of  
2 compliance with the Soil Importation Plan requirement.

3 (e) Upon completion of the activity authorized by the permit or improvement plan, the Applicant  
4 shall submit a Closure Report to the Director including: additional information or data obtained,  
5 including information on unanticipated conditions; corrections as to any information previously  
6 submitted; and certifications of implementation of the plans listed in Section 3115 (a)(ii)-(vii), and all  
7 laws applicable to soil removal.

8 **SEC. ~~3180~~3116. - SEVERABILITY.**

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

17 Section 3. The San Francisco Health Code is amended by amending Section 804, to  
18 read as follows:

19 **SEC. 804. - APPLICATION.**

20 Any person proposing to construct, modify, operate and/or maintain a well or soil boring  
21 shall file with the Department a completed written application on forms approved by the  
22 Department and submit the appropriate application fees thirty (30) days prior to the proposed  
23 commencement of such activities. For well permits in Hunters Point Shipyard ~~Parcel A~~, such  
24 permit application shall not be deemed complete until the department receives written

1 notification from the Director that the applicant has complied with all provisions of Article 31  
2 that are required to be met prior to permit issuance. The completed application shall include,  
3 without limitation, all of the following, when applicable:

4 (a) The name and address of the owner of the property on which the well or soil boring  
5 is located.

6 (b) The name and address of the operator of the well or soil boring, if different from the  
7 owner.

8 (c) The name and state license number of the general contractor, if applicable, and the  
9 C-57 license number of the person responsible for the construction or modification of the well  
10 or soil boring.

11 (d) The address at which notices issued in accordance to this Article are to be served,  
12 if different from those specified in Subsections (a) and (b).

13 (e) A plot plan showing the proposed or actual location of the well or the soil boring that  
14 is being constructed, modified, operated or maintained with respect to the following items  
15 within a radius of five hundred feet (500') from the well or soil boring:

16 (1) Property lines, including ownership;

17 (2) Sewage or waste disposal system, including reserved waste disposal expansion  
18 areas, or works for conveying sewage waste;

19 (3) The approximate drainage pattern of the property;

20 (4) Other wells, including abandoned wells;

21 (5) Access road to the well site;

22 (6) Any structures; and

23 (7) Any aboveground or below ground utilities.

1 (f) Location of the property with a vicinity map including the legal description of the  
2 property and the assessor's parcel, block and lot numbers.

3 (g) The proposed use and the operating parameters of the well or soil boring, if  
4 applicable.

5 (h) The expected operational lifetime of the well or soil boring, if applicable.

6 (i) Location and classification by visual inspection of any solid, liquid, or hazardous  
7 waste disposal sites within five hundred feet (500') of the proposed well or soil boring.

8 (j) Method of and a proposed schedule for the construction or modification of the well or  
9 soil boring.

10 (k) The construction parameters of the well or soil boring including, without limitations,  
11 the following information, if applicable:

12 (1) Total depth of the proposed well or soil boring;

13 (2) Depth and the type of casing to be used for the proposed well;

14 (3) Depth and the type of perforation; and

15 (4) Proposed depth and the type of annular seal.

16 (l) A plan for the safe and appropriate handling and disposal of drilling fluids and other  
17 drilling materials resulting from the proposed work.

18 (m) An approval from the San Francisco Public Utilities Commission if drilling fluids or  
19 water extracted from the well or soil boring will be discharged into the sanitary sewer.

20 (n) Submission of completion bonds, contractor's bonds, cash deposits, or other  
21 adequate security of at least \$10,000 to insure that all projects are performed completely and  
22 properly in a manner which protects the public health and safety and the integrity of the  
23 groundwater resources. The Director may, in his or her discretion, increase the amount of the  
24

1 bond, cash deposit or security deemed necessary to protect the public health and safety and  
2 the integrity of the groundwater resources.

3 (o) Submission of the appropriate filing fees as provided for in this Article.

4 (p) Any other information deemed necessary by the Department to ensure adequate  
5 protection of groundwater resources.

6 Section 4. The San Francisco Health Code is amended by amending Section 1227 to  
7 read as follows:

8 **SEC. 1227. - KNOWN HAZARDOUS WASTE SITE; HUNTERS POINT SHIPYARD.**

9 **PARCEL A.**

10 (a) If the soil sampling and analysis report or site history indicates that the property is  
11 listed on the National Priorities List or the list of California Hazardous Substances Account Act  
12 release sites, the applicant shall provide to the Director certification or verification from the  
13 appropriate federal or State agency that any site mitigation required by the federal or State  
14 agency has been completed and complete the certification procedure set forth in Section  
15 1229. Certification by a competent State or federal agency that mitigation measures have  
16 been properly completed shall constitute a conclusive determination and shall be binding  
17 upon the Director.

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25 Mayor Newsom  
**BOARD OF SUPERVISORS**

1 (b) Applicant's activities on ~~Parcel A~~ of the Hunters Point Shipyard, as defined in Article 31,  
2 are governed by Article 31 of the Health Code and not by this Article.  
3

4  
5 APPROVED AS TO FORM:  
6 DENNIS J. HERRERA, City Attorney

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8 By:

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10 ANDREA RUIZ ESQUIDE  
11 Deputy City Attorney  
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City and County of San Francisco  
**Tails  
Ordinance**

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

**File Number:** 100575

**Date Passed:** August 03, 2010

Ordinance amending Article 31 of the Health Code to extend, to the entire Hunters Point Shipyard area, the special permit processing requirements that now apply to Hunters Point Shipyard Parcel A to address potential residual contamination, and imposing fees to administer this Article; amending Sections 804 and 1227 of the Health Code to make conforming amendments; and making environmental findings.

July 27, 2010 Board of Supervisors - PASSED ON FIRST READING

Ayes: 10 - Alioto-Pier, Avalos, Campos, Chiu, Chu, Duffy, Elsbernd, Mar, Maxwell  
and Mirkarimi  
Noes: 1 - Daly

August 03, 2010 Board of Supervisors - FINALLY PASSED

Ayes: 10 - Alioto-Pier, Avalos, Campos, Chiu, Chu, Duffy, Elsbernd, Mar, Maxwell  
and Mirkarimi  
Noes: 1 - Daly

File No. 100575

I hereby certify that the foregoing  
Ordinance was **FINALLY PASSED** on  
8/3/2010 by the Board of Supervisors of the  
City and County of San Francisco.

Angela Calvillo  
Clerk of the Board

  
Mayor Gavin Newsom

Date Approved