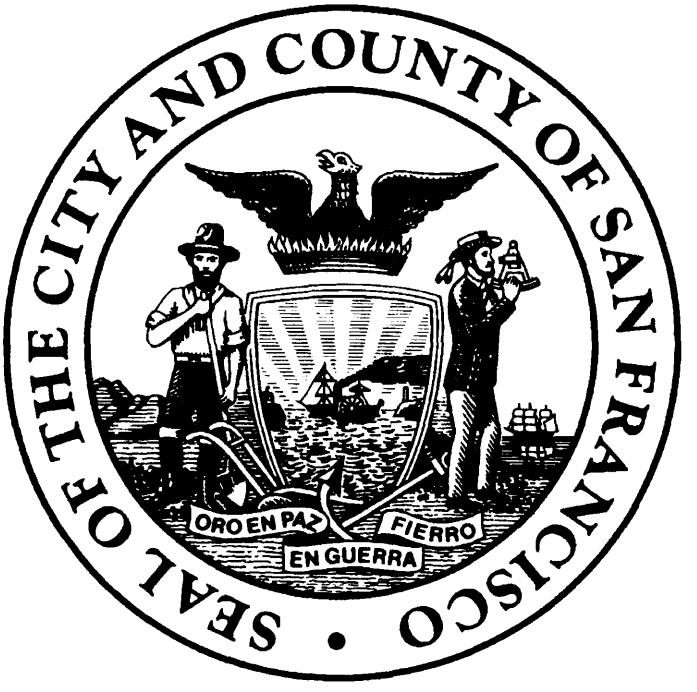
CITY AND COUNTY OF SAN FRANCISCO MUNICIPAL CODE

HEALTH CODE



MUNICIPAL CODE CORPORATION

Tallahassee, Florida 2006

CITY AND COUNTY OF SAN FRANCISCO

MUNICIPAL CODE

Charter
Administrative Code
Building and Related Technical Codes
Business and Tax Regulations Code
Campaign and Governmental Conduct Code
Environment Code
Fire Code
Health Code
Municipal Elections Code
Park Code
Planning Code
Police Code
Port Code
Public Works Code
Subdivision Code
Traffic Code
Zoning Maps

[INTENTIONALLY LEFT BLANK]

PREFACE TO THE

HEALTH CODE

The San Francisco Municipal Code contains ordinances enacted through Ordinance 52-08, File Number 071672, Approved March 31, 2008. A legislative history, containing ordinance number and approval date, is located at the conclusion of most sections. The legislative history of ordinances approved after March 1999 also contain Board of Supervisors file numbers.

[INTENTIONALLY LEFT BLANK]

HEALTH CODE

ARTICLE 1: ANIMALS

SEC. 1. REPORT OF DISEASES OF ANIMALS REQUIRED.

Every veterinary physician or surgeon, and every person practicing as such, and every person owning or having animals in his care within the City and County of San Francisco, shall present to the Department of Public Health of said City and County a written notice of the existence of any and every case of glanders or farcy or other contagious or infectious diseases in animals, which may have come under his observation or to his knowledge, which notice shall be given within two days thereafter, and shall contain the name and residence of the possessor of the animal so diseased so far as the same can be ascertained, a description of the animal, and where last seen by the person giving the notice and be signed by him.

SEC. 2. PENALTY.

Any person violating any of the provisions of Section 1 of this Article shall be deemed guilty of a misdemeanor, and, on conviction, shall be punished by a fine of not less than $20 nor more than $500, or by imprisonment in the County Jail not less than 20 days nor more than six months.

SEC. 7. CONTAGIOUS DISEASES OF ANIMALS.

No animal affected with any infectious or contagious disease shall be brought or kept within the limits of the City and County of San Francisco, except by permission of the Department of Public Health of said City and County.

It is hereby made the duty of all persons having any knowledge thereof to report promptly to said Department of Public Health all cases of animals affected with any infectious or contagious disease, and all cases which may be regarded as suspicious or which exhibit symptoms of any contagious or infectious disease.

The Department of Public Health shall, upon locating any animal sick as aforesaid, at once order a quarantine against the premises in which said animal is kept, said quarantine to operate only against the exposure of animals to contagion or infection, and shall not be a bar to any person from entering or leaving said premises, unless the disease with which the animal is affected is dangerous to mankind.

The owner or custodian of any sick animal as aforesaid must, upon demand by the Department of Public Health, show to the satisfaction of said Department that he or she is competent to properly care for said animal, or that the animal is under the care of a veterinary surgeon.

If any developed case of sickness shall be pronounced incurable by the said Department, or by its designated veterinary surgeon, said Department is hereby authorized, empowered and directed to kill the animal so infected with incurable sickness, and to make such disposition of the carcass thereof as it may deem best; provided, however, that if the owner or manager of said animal at the time of such decree has employed a recognized veterinary surgeon to treat the animal and said veterinarian does not agree with the Department of Public Health as to the impossibility of effecting a cure, then and in that event the owner or manager of such animal shall be given the benefit of the doubt, and a reasonable time, not to exceed 30 days, shall be allowed such owner or manager in which to demonstrate to the Department of Public Health that the animal can be cured; and, provided further, that no carcass of any animal dead of an infectious or contagious disease, or killed on account thereof, shall be buried within 500 feet of any residence.

SEC. 12. KEEPING OF COWS.

It shall be unlawful for any person, firm or corporation to keep or cause to be kept any cows within the limits of the City and County of San Francisco, except as herein provided.

Any person, firm or corporation may keep one cow upon any lot within the City and County, subject to provisions of Section 27 of this Article and all other laws and ordinances regulating the erection and maintenance of stables.

Any person, firm or corporation may keep two or more cows if the person, firm or corporation so keeping the same shall set apart for the use of each two cows so kept at least one acre of land, and such cows shall have full access thereto.

The provisions of this Section shall not apply to cattle temporarily confined for slaughtering purposes, nor to cattle in transit.

SEC. 17. DOG HOSPITALS, KENNELS, ETC.

It shall be unlawful for any person, firm or corporation, or association, to erect, establish or maintain any dog hospital, dog kennel, or hospital for sick animals within the City and County of San Francisco, without permission first obtained from the Department of Public Health.

SEC. 27. STABLE PERMITS.

It shall be unlawful to construct and maintain a stable, or to maintain an existing stable for one or more horses, donkeys, mules, cows, goats or livestock without a permit therefor from the Department of Public Health. The provisions of this Section and the provisions of Part II, Chapter I, of the Municipal Code shall not apply in cases where not more than two female goats are kept for the exclusive use of the owner's family.

No permit shall be granted for a stable hereafter to be constructed and maintained, or for the future maintenance as a stable of a building not used as such, except on the report of the Department of Public Health, or other such satisfactory evidence, that the proposed place of construction or maintenance of such stable is unobjectionable from the point of view of sanitation and of the health and physical welfare of the inhabitants of the immediate neighborhood of its location.

The provisions of this Section and the provisions Part II Chapter I of the Municipal Code shall not apply to an activity where, for less than 12 hours per day, horses are being hitched or unhitched, or standing or being fed waiting to be

hitched or unhitched, provided such activity does not require or involve the construction or maintenance of a building.

The Department of Public Health shall not refuse a permit for the maintenance of a stable in a building now constructed and maintained as a stable except upon satisfactory evidence that such stable is conducted in an insanitary manner and the failure to remove the objection to the manner of its maintenance within a time to be prescribed by said Department.

A permit granted hereunder is subject to revocation by the Department of Public Health.

No permit shall be refused or revoked by the Department of Public Health except after a full hearing, and then only in the exercise of a sound and reasonable discretion by said Department. (Amended by Ord. 75-87, App. 3/20/87)

SEC. 32. KEEPING OF BEEF CATTLE.

It shall be unlawful for any person, firm or corporation to keep or cause to be kept, any beef cattle within the boundaries of the City and County of San Francisco, excepting as hereinafter provided:

For the sole purpose of loading, unloading and confining in corrals of beef cattle enroute to the slaughtering houses, the provisions of this Section shall not apply to that part of the City and County bounded and described as follows:

Commencing at the intersection of the southerly line of Islais Creek with the southwesterly line of Authur Avenue and running thence southeasterly along the southwesterly line of Arthur Avenue to the northeasterly line of Ingalls Street; thence southwesterly along the northeasterly line of Ingalls Street to the southwesterly line of Galvez Avenue; thence northwesterly along the southwesterly line of Galvez Avenue to the southeasterly line of Third Street; thence southwesterly along the southeasterly line of Third Street to the northeasterly line of Jerrold Avenue; thence northwesterly along the northeasterly line of Jerrold Avenue to the northwesterly line of Phelps Street; thence along Phelps Street in a southerly direction to Newcomb Avenue; thence along Newcomb Avenue to Quint Street; thence along Quint Street in a southerly direction to Scotia Avenue; thence along Scotia Avenue to Silver Avenue; thence along Silver Avenue to Augusta Street; thence along Augusta Street to Elmira Street; thence along Elmira Street to Islais Creek Channel; thence westerly to the tracks of the Ocean Shore Railway; thence northerly along the tracks of the Ocean Shore Railway to Napoleon Street; thence along Napoleon Street to Islais Creek; thence along Islais Creek to Third Street; thence along Third Street to the point of commencement.

SEC. 37. KEEPING AND FEEDING OF SMALL ANIMALS, POULTRY AND GAME BIRDS.

(a) **Number of animals.** It shall be unlawful for any person, firm or corporation to keep or feed, or cause to be kept or fed, or permit to be kept or fed, on any premises over which any such person, firm or corporation may have control within residential districts, (1) more than three dogs of age six months or older without obtaining a proper permit and license to operate a dog kennel as defined in Section 220 of the San Francisco Business and Tax Regulations Code, and (2) more than a total of four of the following in any combination: dogs of age six months or older unless part of a dog kennel, hares, rabbits, guinea pigs, rats, mice, gerbils, chickens, turkeys, geese, ducks, doves, pigeons, game birds of any species, or cats. Nothing in this section, however, shall prohibit the feeding of any wild bird not specifically prohibited by this section unless such feeding creates a public health nuisance.

(b) **Enclosures.** Any person, firm or corporation, keeping, feeding, or causing to be kept or fed, or permitting to be kept or fed, on premises over which such person, firm or corporation may have control, four or less hares, rabbits, guinea pigs, rats, mice, gerbils, chickens, turkeys, geese, ducks, doves, pigeons, parrots of any species, game birds of any species or wild animals of any species except those animals prohibited by Section 50 of this Code, shall keep same in coops or enclosures that are approved by the Director of Public Health. Where the coops or enclosures are

located on the outside of or on top of any buildings, premises or structures, the coops or enclosures shall be not less than 20 feet from any door or window of any building used for human habitation.

(c) **Prohibition.** It shall be unlawful for any person, firm or corporation to engage in the business of keeping, feeding, or breeding any hares, rabbits, guinea pigs, rats, mice, gerbils, chickens, turkeys, geese, ducks, doves, pigeons, parrots of any species, game birds of any species, dogs, cats, for commercial purposes, within the residential districts.

(d) **Commercial Purposes.** It is hereby declared to be unlawful to conduct for commercial purposes any establishment in which dogs, cats, hares, rabbits, guinea pigs, rats, mice, gerbils, chickens, turkeys, geese, ducks, doves, pigeons, parrots of any species, game birds of any species, are kept and maintained in the commercial or industrial districts without first obtaining from the Department of Public Health a permit so to do.

No permit shall be issued by the Department to any person, firm or corporation, to keep or maintain for commercial purposes any of the above named fowl, animals or birds within the commercial or industrial districts, unless said person, firm or corporation has complied in full with the following requirements:

(1) It shall be unlawful to establish hereafter any place of business for the sale of the fowl, animals or birds specified above within 25 feet of any door, window or other opening of any dwelling, apartment house or hotel if live fowl, animals or birds intended for sale are kept therein; provided, however, that this restriction shall not apply if a wall, ceiling, floor or other impermeable barrier between the place of business and such habitation will prevent odors and noise from disturbing the occupants of the habitation. It shall be unlawful to keep said live fowl, animals or birds in any basement, sub-basement or cellar in any place of business unless such basement, sub-basement or cellar is adequately ventilated, as approved by the Director of Public Health and is also adequately lighted, completely rodent-proofed and complies fully with the sanitary requirements set forth in Section 440 of this Code.

(2) The floors of all such premises must be of waterproof material, smooth and of durable construction properly drained to the sewer. These floor surfaces shall be coved at the juncture of the floor and wall with a 3/8-inch minimum radius coving and shall extend up the wall at least four inches.

(3) The premises shall be rodent-proof, all openings properly fly-screened, and adequate provision must be made for the elimination of all odors.

(4) The walls and ceilings of all such premises must be of durable, smooth, nonabsorbent, washable surface, and be light-colored.

(5) In all premises where slaughtering of fowl, birds or animals is carried on in connection with the keeping of said fowl, birds or animals, the killing room must be entirely separate from that part of the premises occupied by the live fowl, animals or birds.

Refrigerating equipment must be installed for the reception of the dressed fowl, birds or animals, properly connected to the sewer. Toilet and lavatory facilities for the use of the employees engaged in the handling and slaughtering of such birds, animals or fowl must be installed in conformity with the provisions of the San Francisco Plumbing Code.

(e) **Exceptions.** The terms and provisions of this Section shall not apply to the keeping, liberation for exercise, or racing of homing or carrier pigeons which are not raised or kept for the market or for commercial purposes, and the lofts or pigeons houses wherein said homing or carrier pigeons are kept are elevated at least three feet above the ground or other foundation upon post-legs or pillars completely surrounded or covered by smooth, jointless galvanized sheet metal and within not less than 20 feet from the door or window of any building used for human habitation, and the entire floor and sides for at least two feet extending upwards from the bottom of the floor of said lofts or pigeons houses, are covered or protected by galvanized iron or its

equivalent, concrete or 18 gauge wire mesh of not more than 1/2-inch and the interior of said lofts or pigeons houses, wherein such carrier or homing pigeons are kept, are registered by the owners thereof with the Department of Public Health and the said lofts or pigeon houses shall be inspected by the Department at least once a year.

(f) **Definition.** For the purposes of this Section, the terms "residential district," "commercial district," and "industrial district" shall have the same meanings as those found in the San Francisco Planning Code. (Amended by Ord. 256- 90, App. 6/29/90; Ord. 185-00, File No. 000335, App. 8/11/2000; Ord. 125-01, File No. 010269, App. 6/15/2001)

SEC. 38. PENALTY.

Any person, firm or corporation violating any of the provisions of Section 37 of this Article shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than $100, or by imprisonment in the County Jail for not more than 30 days, or by both such fine and imprisonment.

SEC. 39. REPORTING OF DOG BITES.

(a) Any person who owns and/or is in control of a dog that bites a human or other domestic animal shall provide his or her name and address and present his or her driver's license or other form of identification and information regarding the rabies vaccination of the biting dog to the person bitten or the person responsible for the animal bitten. The owner or the person in control of the biting dog shall provide his or her current residence address. If the person bitten is a minor, the owner or person in control of the biting dog shall provide the required information to the parent or guardian of the minor.

(b) In addition to the above requirements, it shall be the duty of any person having knowledge of any animal which has bitten a human being or other animal within the City and County to immediately, and in no case later than the end of the next business day, report the fact to the Department of Animal Care and Control and to furnish as much information as possible, including date, time and location of bite, description of animal or person bitten, name and license number of the biting animal, and rabies vaccination history of the biting animal. (Added by Ord. 14-05, File No. 041555, App. 1/21/2005)

SEC. 40. DOG TO BE CONTROLLED SO AS NOT TO COMMIT NUISANCES.

(a) It shall be unlawful for any person owning or having control or custody of any dog to permit the animal to defecate upon the public property of this City or upon the private property of another unless the person immediately remove the feces and properly dispose of it; provided, however, that nothing herein contained authorizes such person to enter upon the private property of another without permission.

(b) It shall be unlawful for any person to walk a dog on public property of this City or upon the private property of another without carrying at all times a suitable container or other suitable instrument for the removal and disposal of dog feces.

(c) Visually handicapped persons who use Seeing Eye Guide Dogs are exempt from this law. (Amended by Ord. 420-78, App. 9/8/78)

SEC. 40.5. PROTECTION FOR DOGS IN MOTOR VEHICLES.

It shall be unlawful to transport a dog in a motor vehicle upon any street within the City and County of San Francisco unless the dog is fully enclosed within the motor vehicle or is protected by a belt, tether, cage, container or other device that will prevent the dog from falling, jumping or being thrown from the motor vehicle. (Added by 491-84, App. 12/13/84)

SEC. 40.6. ENCLOSURE OF ANIMALS IN MOTOR VEHICLES.

No dog or other animal shall be left completely enclosed in a parked vehicle without adequate ventilation, or in such a way as to subject the animal to extreme temperatures which may adversely affect the animal's health and welfare. (Added by Ord. 166-85, App. 3/28/85)

SEC. 41. DEFINITIONS.

As used in Sections 41.1 through 41.25, inclusive, of this Article, the following terms shall have the following meanings:

(a) "At large" shall mean any dog off the premises of its owners or guardians and not under restraint by a leash, rope or chain of not more than eight (8) feet in length, and any other animal not under physical restraint.

(b) "Animal" shall mean and include any bird, mammal, reptile, or other creature; except fish.

(c) "City and County" shall mean the City and County of San Francisco.

(d) "Dog" shall include female as well as male dogs.

(e) "Health Officer" shall mean the Director of the Department of Public Health of the City and County, or any employee of said Department or other person authorized by said officer to act on his or her behalf.

(f) "Hoofed Animal" shall mean and include horse, mare, gelding, mule, burro, sheep, cow, goat or any other animal with a hoofed foot.

(g) "Owner" shall mean any person who possesses, has title to or an interest in, harbors or has control, custody or possession of an animal, and the verb forms of "to own" shall include all those shades of meaning.

(h) "Person" shall mean and include corporations, estates, associations, partnerships and trusts, as well as one or more individual human beings.

(i) "Barking Dog" is defined as a dog that barks, bays, cries, howls or makes any other noise continuously and incessantly for a period of 10 minutes to the disturbance of any other person.

(j) "Animal Care and Control Department" shall mean the department under the City Administrator authorized to perform the functions described in Sections 41.4 and 41.5 of this Article and any other ordinance or law that delegates such authority to the Animal Care and Control Department or its Director.

(k) "Animal Control Officer" or "Animal Care and Control Officer" shall mean the Director of the Animal Care and Control Department.

(l) "Authorized Licensing Entity" shall mean an individual or entity that has entered into an agreement with the Director of Animal Care and Control to accept applications and payments for dog licenses, and issue such licenses to dog owners or guardians in accordance with the requirements of Sections 41.15 through 41.20. Such individuals or entities may include, but are not limited to, other departments of the City and County, licensed veterinarians practicing in the City and County, retailers of pet supplies and providers of animal care services engaged in business in the City and County, and nonprofit organizations engaged in promoting animal welfare.

(m) "Guardian" shall have the same rights and responsibilities of an owner, and both terms shall be used interchangeably. (Added by Ord. 226-73, File No. 136-73-1, App. 6/22/73; amended by Ord. 386-75, File No. 312-75-1, App. 9/2/75; Ord. 182-89, File No. 97-89-14, App. 6/5/89; Ord. 2-02, File No. 010491, App. 1/18/02; Ord. 5-03, File No. 021645, App. 1/24/2003)

SEC. 41.1. COMMISSION OF ANIMAL CONTROL AND WELFARE; MEMBERSHIP; APPOINTMENT; TERM.

There is hereby established a Commission to be known as the Commission of Animal Control and Welfare of the City and County of San Francisco (hereafter called "Commission"), consisting of 11 members.

The Commission of Animal Control and Welfare shall consist of the Director of the Animal Care and Control Department or his or her designated representative, seven members to be appointed by the Board of Supervisors and one City Department representative member appointed by each of the following: the Director of the Department of Public Health or his or her designated representative, the Chief of Police or his or her designated representative, and the General Manager of the Recreation and Park Department or his or her designated representa-

tive. The members appointed by the Board of Supervisors shall be six members representing the general public having interest and experience in animal matters and one licensed veterinarian practicing in San Francisco. Each member of the Commission of Animal Control and Welfare of the City and County of San Francisco shall be a resident of the City and County of San Francisco, except for the licensed veterinarian, who must practice in San Francisco, but who need not be a resident of San Francisco.

Voting members of the Commission shall consist only of the seven members appointed by the Board of Supervisors. The Director of the Animal Care and Control Department, the Director of the Department of Public Health, the Chief of Police, and the General Manager of the Recreation and Park Department, or their designated representatives, shall report to the Commission regarding their respective Department's activities, and participate in general discussions before the Commission as non-voting members.

Three of the members who are first appointed by the Board of Supervisors shall be designated to serve for terms of one year and three for two years from the date of their appointment. Thereafter, members shall be appointed as aforesaid for a term of two years, except that all of the vacancies occurring during a term shall be filled for the unexpired term. A member shall hold office until his or her successor has been appointed and has qualified. The Commission shall elect a chairman from among its appointed members.

Any member who misses three regularly scheduled meetings of the Commission during each two-year term without the express approval of the Commission given at a regularly scheduled meeting will be deemed to have resigned from the Commission.

The term of office as chairman of the Commission shall be for the calendar year or for the portion thereof remaining after each such chairman is elected. No member of the Commission shall receive compensation for serving thereon.

No two individuals on the Commission shall be representatives, employees or officers of the same group, association, corporation, organization, or City Department. (Added by Ord. 226-73, File No. 136-73-1, App. 6/22/73; amended by Ord. 59-82, File No. 66-80-3, App. 2/19/82; Ord. 182-89, File No. 97-89-14, App. 06/05/89; Ord. 394-89, File No. 118-89-4, App. 11/6/89; Ord. 107-99, File No. 990211, App. 5/7/99)

SEC. 41.2. POWERS AND DUTIES.

In addition to any other powers and duties set forth in this Article, the Commission shall have the power and duty to:

(a) Hold hearings and submit recommendations regarding animal control and welfare to the Board of Supervisors and the City Administrator.

(b) Study and recommend requirements for the maintenance of animals in public, private, and commercial care.

(c) Work with the Tax Collector, the Director of the Animal Care and Control Department, and authorized licensing entities to develop and maintain dog licensing procedures and make recommendations on fees. (Added by Ord. 226-73, File No. 136-73-1, App. 6/22/73; amended by Ord. 59-82, File No. 66-80-3, App. 2/19/82; Ord. 182-89, File No. 97-89-14, App. 06/05/89; Ord. 182-89, File No. 97-89-14, App. 06/05/89; Ord. 2-02, File No. 010491, App. 1/18/02)

SEC. 41.3. REPORTS.

The Commission shall render a written report of its activities to the Board of Supervisors quarterly. Such report shall include:

(a) Recommendations to the Board of Supervisors, the Mayor, and the Chief Administrative Officer for the development of policies and procedures which will further the objectives of animal welfare and control.

(b) Recommendations to the Board of Supervisors, the Mayor, and the Chief Administrative Officer of additional legislation deemed by the Commission to be necessary for animal welfare and control.

(c) Recommendations of actions to be taken by any agency, board, officer of this City and County for the purposes of furthering the objectives of animal welfare and control. (Added by Ord. 226-73, File No. 136-73-1, App. 6/22/73; amended by Ord. 182-89, File No. 97-89-14, App. 06/05/89)

SEC. 41.4. ANIMAL CARE AND CONTROL DEPARTMENT; ESTABLISHMENT; APPOINTMENT OF ANIMAL CONTROL OFFICER; POWERS AND DUTIES OF ANIMAL CARE AND CONTROL DEPARTMENT.

(a) Effective July 1, 1989, there is hereby established an Animal Care and Control Department under the jurisdiction of the City Administrator. The Department shall consist of a Director and such employees and assistants as may be necessary to carry out the work and functions of the Department. The City Administrator shall appoint an Animal Control Officer who shall serve at the pleasure of the City Administrator as the Director of the Animal Care and Control Department.

(b) The Animal Care and Control Department shall have the following functions:

(1) To operate an animal shelter;

(2) To provide nourishment and medical care for animals in its care; basic health screening for all animals and a disease control program for the facility; vaccination of animals; euthanasia of animals by barbiturate injection or other humane methods; sale of dog licenses; volunteer programs; information on animal control laws, pet owner or guardian responsibilities and pet care; and maintenance of records of all animal control activities;

(3) To enforce the provisions of this Article and any other ordinances and laws that pertain to the care and control of animals;

(4) To charge and collect the fees, fines and deposits as required by this Article and any other ordinances and laws that pertain to the care and control of animals; and

(5) To carry out the duties and functions of the Animal Control Officer as defined in Article I of this Code, Section 985 of this Code, Sections 220 through 221.3 of the San Francisco Business and Tax Regulations Code, and any other ordinances and laws pertaining to the care and control of animals. (Added by Ord. 226-73, File No. 136-73-1, App. 6/22/73; amended by Ord. 182-89, File No. 97-89-14, App. 06/05/89; Ord. 2-02, File No. 010491, App. 1/18/02; Ord. 5-03, File No. 021645, App. 1/24/2003)

SEC. 41.5. ANIMAL CONTROL OFFICER; POWERS AND DUTIES; BADGES.

(a) The Animal Control Officer shall have the following powers and duties:

1. To enforce the provisions of Sections 41.1 through 41.25, inclusive of this Article, and to impound any animal at large in violation thereof.

2. To cooperate with the Health Officer in the enforcement of animal quarantine directives.

3. To keep a record of the number, description, and disposition of all animals impounded or otherwise taken into custody, showing in detail in the case of each animal the date of receipt, the date and manner of disposal, the name of the person reclaiming, redeeming, or purchasing said animal; the fees, charges and proceeds of sales received, and such additional records as the Controller of the City and County may prescribe. Such records shall not be removed except upon written order of a court of competent jurisdiction or other duly constituted authority.

4. To appoint Deputy Animal Control Officers whose authority shall be the same as that of the Animal Control Officer as herein set forth.

5. To enter into agreements with individuals and entities, including but not limited to, other departments of the City and County, licensed veterinarians practicing in the City and County, retailers of pet supplies and providers of animal care services engaged in business in the City and County, and nonprofit organizations engaged in promoting animal welfare, to authorize these entities to receive applications and payment for dog licenses, and to issue such

licenses in accordance with the requirements of Sections 41.15 through 41.20 and 41.23 of this Article.

It shall be unlawful for any person to oppose, resist, or otherwise interfere with the Animal Control Officer or his or her duly authorized deputies or agents in the performance of the duties herein set forth.

(b) The Animal Control Officer and his or her deputies, while engaged in the execution of duties that involve field patrols, emergency response activities, impoundment of animals, issuance of citations, enforcement of animal quarantine directives, and any other activities related to the enforcement of animal care and control laws shall wear in plain view a badge, having in the case of the Animal Control Officer the words "Animal Care and Control Officer" and in the case of any Deputy Animal Control Officer the words "Deputy Animal Care and Control Officer" engraved thereon. (Added by Ord. 226-73, File No. 136-73-1, App. 6/22/73; amended by Ord. 182-89, File No. 97-89-14, App. 06/05/89; Ord. 2-02, File No. 010491, App. 1/18/02)

SEC. 41.5.1. BITING DOGS.

For purposes of this Section a biting dog shall be defined as follows: Any dog that bites any person or other animal in the City and County of San Francisco, provided, however, that the person or animal bitten was not at the time either provoking or teasing the dog without cause. For the purposes of this Section, the records of dog bites kept by the Department of Public Health shall be deemed official records and shall establish a rebuttal presumption of the number of bites recorded.

(a) (i) If a dog is reported and recorded by the Department of Public Health to have bitten any person or animal, the owner or guardian of said dog shall be deemed guilty of an infraction which shall be punishable by a fine of $25. The Director of Public Health shall inform the Police Department of the bite of said dog and the Police Department shall issue a citation to the owner or guardian of said dog.

(ii) In the event that a biting dog causes severe injuries to a person or other animal, the Director of Public Health may recommend that such dog be declared a menace to the public health and safety and he shall so inform the District Attorney by a written Complaint. The District Attorney shall then bring said written complaint to the Municipal Court for a finding that the dog is a menace to the public health and safety. If the Court finds the dog to be a menace to the public health and safety, the owner or guardian thereof shall be subject to the provisions of paragraph (c) of this Section, and upon order of the Court, the Animal Control Officer or a Police Officer shall impound, hold and humanely destroy the dog in accordance with the procedures of paragraph (c) of this Section.

(b) If a dog is reported and recorded by the Department of Public Health to have bitten any person or animal a second time within 12 consecutive months from the first bite, the owner or guardian of said dog shall be deemed guilty of a misdemeanor and shall be punishable by a fine of not less than $25 nor more than $250 or by imprisonment in the County Jail for a period of not more than six months, or by both such fine and imprisonment. The Director of Public Health shall inform the Police Department of the second bite of said dog and the Police Department shall issue a citation to the owner or guardian of said dog.

(c) If a dog is reported and recorded by the Department of Public Health to have bitten any person or animal within 12 consecutive months from said dog's second bite, the Director of Public Health shall recommend said dog be declared to be a menace to the public health and safety and shall so inform the District Attorney by a written complaint. The District Attorney shall then bring said written complaint to the Municipal Court for a finding that the dog is a menace to the public health and safety. If the Court finds the dog to be a menace to the public health and safety, the owner or guardian thereof shall be guilty of a misdemeanor and shall be punishable by a fine of not less than $50 nor more than $500 or by imprisonment in the County Jail for a period of not more than six months, or by both such fine and imprisonment. Upon order of the Court, the Animal Control Officer or a Police Officer shall immediately impound the dog, and

after a period of 10 days from the time of impoundment, the dog shall be humanely destroyed unless the owner or guardian shows the Court good cause why said dog should not be destroyed. (Added by Ord. 77-75, File No. 136-74-1, App. 3/12/75; amended by Ord. 232-78, File No. 59-78-2, App. 5/19/78; Ord. 5-03, File No. 021645; App. 1/24/2003)

SEC. 41.6. IMPOUNDMENT.

Any animal engaging in an activity or existing in a condition which is prohibited by the provisions of Section 41.1 through 41.13, inclusive, of this Article, shall be taken up and impounded by the Animal Control Officer or taken to a veterinarian, as provided by State law.

It shall be the duty of every police officer, while on duty, to notify the Animal Control Officer of any animal which he or she knows to be injured or required to be impounded.

Any person may take up and deliver to the Animal Control Officer any animal at large in the City and County on public property or upon said person's private property or any animal owned by such person. Upon releasing ownership or guardianship of an animal to the Animal Control Officer, the owner or guardian shall sign and be offered a receipt by the Animal Control Officer.

Every person taking up any animal under the provisions of this Section shall immediately thereafter give notice thereof to the Animal Control Officer, and every such person or any person in whose custody such animal may, in the meantime, be placed, shall deliver such animal to the Animal Control Officer without fee or charge, and the Animal Control Officer shall thereupon hold and dispose of said animal in the same manner as though said animal had been found at large and impounded. (Added by Ord. 226-73, File No. 136-73-1, App. 6/22/73; amended by Ord. 77-75, App. 3/12/75; Ord. 280-91, File No. 118-90-7, App. 07/03/91; Ord. 5-03, File No. 021645, App. 1/24/2003)

SEC. 41.7. PERIODS OF IMPOUNDMENT.

All periods of impoundment herein referred to shall be deemed to commence at 12:01 a.m. of the day following the day of impoundment.

(a) All dogs, whether or not licensed or bearing identification and all other animals bearing identification shall be kept by the Animal Control Officer for a period of not less than 96 hours, unless redeemed within such period. The Animal Control Officer shall, within 24 hours of impoundment, telephone the owner or guardian of record of any animal wearing a license tag or identification, and failing to reach said owner or guardian by telephone within said 24 hour period, he shall immediately send notice of impoundment to said owner or guardian by mail. The owner or guardian of record shall be charged for the cost of all such notice of impoundment.

(b) Any impounded animal which is of a type referred to in Section 17003 of the Agricultural Code of the State of California shall be kept by the Animal Control Officer for at least five days unless it is redeemed within such period. If not so redeemed, said animal shall be turned over to the Bureau of Livestock Identification for disposition by that office.

(c) Any other animal, the impoundment of which is not otherwise specifically covered by law, shall be kept for at least 48 hours unless redeemed within such period. A wild animal which has been taken up by the Animal Control Officer shall be deemed not to be impounded unless there is reason to believe it has an owner or guardian. Such an animal need not be retained for any minimum period of time, but shall be returned to a park or wild area where lawful, unless said animal is dangerous or suffering excessively, in which case it may be forthwith humanely destroyed.

(d) Any animal which is voluntarily surrendered to the Animal Control Officer by the owner or guardian shall be deemed not to be impounded and need not be kept by the Animal Control Officer for any minimum period of time.

(e) Any animal which is placed in the custody of the Animal Control Officer by a public officer, on behalf of a person who is at the time unable to care for such animal, shall be deemed not to have been impounded and may be reclaimed by its owner or guardian upon payment to the Animal Control Officer of the charges for feeding and caring for said animal as set forth in Section 41.10 hereof. Any animal held in custody as provided herein which is not reclaimed by its owner or guardian within 14 days after notice to reclaim has been given to said owner or guardian shall be deemed to be abandoned and may be sold, destroyed or otherwise disposed of by the Animal Control Officer, provided, however, that if said animal is dangerous to retain or is suffering excessively, it may forthwith be humanely destroyed by the Animal Control Officer. (Added by Ord. 226-73, File No. 136-73-1, App. 6/22/73; amended by Ord. 5-03, File No. 021645, App. 1/24/2003)

SEC. 41.8. REDEMPTION.

The owner or guardian of any animal impounded or taken into custody may, at any time before the disposition thereof, redeem the same by paying all proper fees and charges accrued as provided for in Section 41.10 hereof, provided, however, that if the animal is subject to the licensing provisions of this Code, said licensing requirements shall also be satisfied before the animal shall be released. (Added by Ord. 226-73, File No. 136-73-1, App. 6/22/73; amended by Ord. 5-03, File No. 021645, App. 1/24/2003)

SEC. 41.9. DISPOSITION OF ANIMALS.

(a) In the discretion of the Animal Control Officer, except as otherwise provided in Sections 41.1 through 41.13, inclusive, of this Article, any animal which has been impounded or taken into custody by the Animal Control Officer, which is not redeemed within the applicable holding period specified in Section 41.7 hereof, may be sold at private sale or public auction, destroyed or otherwise disposed of by the Animal Control Officer. Any animal sold by the Animal Control Officer shall be sold upon the collection of no less than the following fees for each animal:

(1) For each dog, the sum of $10, plus, if applicable, the dog license fee provided for in Section 41.15 of Article 1 of the San Francisco Health Code.

(2) For each cat, the sum of $10.

(3) For each hoofed animal, the sum of $25.

(4) For each rabbit, bird or similar small animal, the sum of $10.

(5) If the purchaser of a dog or cat is 65 years of age or older, the fee to be paid for each dog or cat shall be 50 percent of the applicable sums set forth in the Subparagraphs (a)(1) and (a)(2) above.

(b) It shall be unlawful for the Animal Control Officer or anyone in such Officer's employ to knowingly sell or give any animal impounded or otherwise taken into custody to any person, medical college or university for purposes of animal experimentation; or for any of the above to induce by or through fraud, misrepresentation, coercion or threats any violations of this Section.

(c) If an animal is sold pursuant to the provisions of this Section, the receipt signed by the Animal Control Officer or such Officer's agent shall be valid title to the purchaser.

(d) Any animal impounded or otherwise taken into custody by the Animal Control Officer, which, as determined by a licensed veterinarian, is suffering excessively, or is dangerous to keep impounded, shall be forthwith destroyed by the Animal Control Officer. (Added by Ord. 226-73, File No. 136-73-1, App. 6/22/73; amended by Ord. 79-75; File No. 122-75; App. 3/12/75; Ord. 498-77, File No. 316-77, App. 11/4/77; Ord. 192-82, File No. 533-81-4, App. 4/16/82; Ord. 94-85; File No. 348-84-5, App. 2/28/85; Ord. 182-89, File No. 97-89-14, App. 06/05/89; Ord. 411-94, File No. 118-94-4, App. 12/16/94; Ord. 153-02, File No. 021077, App. 7/12/02)

SEC. 41.10. CHARGES AND FEES.

The Animal Control Officer shall charge and collect the following fees from the owner or guardian of any animal impounded or otherwise taken into custody:

(a) Redemption fees:

For each dog, the sum of..... $25.00
For each cat, the sum of..... $25.00
For each hoofed animal, the sum of. $25.00
For each rabbit, bird or other animal, the sum of..... $25.00

(b) Voluntary lifetime cat registration fee:

For each cat, the sum of..... $10.00

(c) Spay/neuter deposit fee:

For each dog, the sum of..... $50.00
For each cat, the sum of..... $50.00

(d) For feeding and providing ordinary care for animals, the following sums, per day:

For each dog, the sum of..... $10.00
For each cat, the sum of..... $10.00
For each hoofed animal, the sum of. $10.00
For each rabbit, bird or other animal, the sum of..... $10.00

(e) In the event that the Animal Control Officer shall determine that payment of any fees by the owner or guardian of an animal which is impounded or otherwise taken into custody would cause extreme financial difficulty to said owner or guardian, the Animal Control Officer may, at his or her discretion, waive all or part of the fees for the animal.

(f) In the event that any animal is impounded or otherwise taken into custody by the Animal Control Officer more than one time, the Animal Control Officer shall collect a penalty redemption fee, which shall be:

(1) For a second impoundment, two times the fee set forth in Subsection (a) above;

(2) For any third or additional impoundment, three times the fee set forth in Subsection (a) above.

(g) In the event that an animal which is impounded or otherwise taken into custody must be spayed or neutered while in the custody of the Animal Control Officer, the Animal Control Officer shall charge an additional fee consisting of the actual expense incurred.

(h) For extraordinary care or expense provided for an animal, an additional fee consisting of the actual expense incurred shall also be charged. (Added by Ord. 226-73, File No. 136-73-1, App. 6/22/73; amended by Ord. 311-76, File No. 311-76, App, 7/30/76; Ord. 360-77, App. 11/10/77; Ord. 238-87, File No. 118-87-2, App. 3/20/87; Ord. 182-89, File No. 97-89-14, App. 06/05/89; Ord. 411-94, File No. 118-94-4, App. 12/16/94; Ord. 153-02, File No. 021077, App. 7/12/02; Ord. 5-03, File No. 021645 , App. 1/24/2003)

SEC. 41.11. QUARANTINE; DELIVERY OF CARCASS.

(a) Any animal falling into one or more of the following categories shall be isolated or quarantined at the place and under the conditions prescribed by the Health Officer and pertinent State laws and regulations:

(1) Known rabid animals;

(2) Suspected rabid animals;

(3) Animals (mammals) which have bitten or otherwise exposed a human being to rabies or suspected rabies;

(4) Animals (mammals) which have been bitten by a known or suspected rabid animal or have been in intimate contact with the same.

(b) It shall be unlawful for the owner, guardian or keeper of an animal to violate any of the conditions of isolation or quarantine prescribed by the Health Officer or pertinent State laws or regulations.

(c) Upon the death of any animal enumerated in Subsection (a) hereof in the custody of the Animal Control Officer, said Animal Control Officer shall arrange for delivery of the carcass of said animal or an adequate specimen thereof to the Health Officer. (Added by Ord. 226-73, File No. 136-73-1, App. 6/22/73; amended by Ord. 5-03, File No. 021645, App. 1/24/2003; Ord. 1405, File No. 041555, App. 1/2/2005)

SEC. 41.12. DUTIES OF OWNERS OR GUARDIANS.

(a) It shall be unlawful for the owner or guardian of any animal, other than a domestic cat, to permit said animal to run at large within the City and County; provided, however, that the provisions of this subsection shall not be applicable to any area under the jurisdiction of the Recreation and Park Commission of the City and County, and which has been designated by said Commission as an animal exercise area.

1. It shall be unlawful for the owner or guardian of any animal to permit said animal to be within an area designated as an animal exercise area unless said owner or guardian is physically present at all times during which the animal is within said area.

(b) It shall be unlawful for the owner or guardian of any animal to permit said animal to breed on public property; provided, however, that the provisions of this subsection shall not be applicable to departments of the City and County, recognized educational institutions, licensed clinical laboratories, or medical research facilities which are in conformity with Federal or State laws.

(c) The owner or guardian of any animal shall provide proper and adequate food, water, shelter, care, exercise and attention for such animals.

1. **SHELTER REQUIREMENTS**

No person, except those persons who, due to financial hardship, are unable to provide shelter for themselves, shall keep, use, or maintain a dog on any premises unless the dog is provided full access to an enclosed building, dog house, or similar shelter at all times. The dog must have equal space outside its shelter to move around and relieve itself away from its confinement. Said shelter shall:

A. Have five sides, including a top, a bottom and three sides.

B. Have a floor raised off the ground, free of cracks, depressions and rough areas where insects, rodents or eggs from internal parasites may lodge. An effective program for the control of insects, ectoparasites, and other pests shall be established and maintained.

C. Be cleaned and maintained in a manner designed to insure the best possible sanitary conditions. Excreta shall be removed from the shelter as often as necessary. Rugs, blankets or other bedding material shall be kept clean and dry.

D. Be of adequate size to allow the dog to stand up and turn about freely, stand easily, sit and lie in a comfortable normal position.

E. Have a floor constructed so as to protect the dog's feet and legs from injury.

F. Allow dogs kept outdoors to remain dry during rain.

G. Have sufficient clean bedding material or other means of protection from the weather elements provided when the ambient temperature falls below that temperature to which the dog is acclimated.

H. Provide sufficient shade to allow the dogs kept outdoors to protect themselves from the direct rays of the sun, when sunlight is likely to cause overheating or discomfort.

I. Be structurally sound and maintained in good repair to protect the dog from injury.

J. Be constructed and maintained so that the dog contained therein has convenient access to clean food and water.

2. **WATER REQUIREMENTS**

No person shall keep, use or maintain any dog on any premises unless the dog has access to clean and fresh water at all times. Clean potable water shall be available to the dog unless restricted for veterinary care, and;

A. If the water is kept in a container, this container shall be designed sufficiently to prevent tipping and spilling of the water contained therein. If necessary to accomplish this, the container shall be secured to a solid structure or secured in the ground. Watering containers shall be kept clean, kept out of sun, and must be emptied and refilled with fresh water at least once a day; or

B. If the water is provided by an automatic or demand device, the water supply connected to the device must function 24 hours a day.

3. **FEEDING REQUIREMENTS**

No person shall keep, use or maintain any dog on any premises unless the dog is provided sufficient food daily to maintain proper body weight and good health.

A. The dog shall be provided food, which shall be free from contamination, wholesome, palatable, and sufficient quantity and nutritive value to meet the normal daily requirements for the condition and size of the animal.

B. Food receptacles shall be accessible to the dog and shall be located so as to minimize contamination by excreta and/or insects. Feeding pans shall be durable and kept clean. Disposable food receptacles may be used but must be discarded after each feeding. Self-feeders may be used for the feeding of dry food, and they shall be sanitized regularly to prevent molding, deterioration or caking of feed. Spoiled or contaminated food shall be disposed of in a sanitary manner.

4. **CONFINEMENT REQUIREMENTS**

Though highly discouraged, tethering is only acceptable if:

A. The tether is attached to a stake in the ground with a pulley like system.

B. The tether is attached to the dog by a non-choke type collar or body harness at least 10 feet in length which would allow the dog access to food, water and shelter, but free of obstructions.

5. **ADEQUATE EXERCISE**

All dogs must be provided with adequate exercise. "Adequate exercise" means the opportunity for the animal to move sufficiently to maintain normal muscle tone and mass for the age, size and condition of the animal.

6. **PENALTIES**

Any person violating the provisions of Section 41.12(c) of this Article shall: (1) upon the first offense in any 12-month period, be deemed guilty of an infraction and upon conviction thereof shall be punished by a fine not to exceed $50.00; (2) upon the second offense in any 12-month period, be deemed to be guilty of an infraction and upon conviction thereof shall be punished by a fine not to exceed $100.00; (3) upon the third and any additional offense in any 12-month period, be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than $1,000.00 or by imprisonment in the County Jail for a period of no more than 1 year, or by both such fine and imprisonment.

(d) Any person who shall keep or permit to remain on any premises within the City and County of San Francisco any "Barking Dog" as defined in Section 41(i) of this Code, is guilty of a violation of this ordinance, provided that, during the time the dog is barking, no person is trespassing or threatening to trespass or no person is teasing or provoking the dog.

(e) Any two unrelated persons, living in different households within 300 feet of the location of the disturbance who are disturbed by a "Barking Dog" as defined in Section 41(i) of this Code may, after signing an affidavit setting forth the information in this subsection, request a police officer to issue a citation to the owner or guardian of the dog causing the disturbance for violation of Subsection (e) of this Section. (Added by Ord. 226-73, File No. 136-73-1, App. 6/22/73; amended by Ord. 386-75, File No. 213-75-1, App. 9/15/75; Ord. 287-76, File No. 129-75-02, App. 7/16/76; Ord. 5-03, File No. 021645, App. 1/24/2003; Ord. 13-05, File No. 041494, App. 1/21/2005)

SEC. 41.13. PENALTIES.

Any person violating any of the provisions of Sections 41.1 through 41.12, inclusive, of this Article, except the provisions of Sections 41.5.1, 41.11(c), 41.12(a), 41.12(c) and 41.12(d), shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than $500 or by imprisonment in the County Jail for a period of not more than six months, or by both such fine and imprisonment.

Any person violating the provisions of Sections 40, 41.11(c) and 41.12(a) of this Article shall be deemed to be guilty of an infraction and upon conviction thereof shall be punished for the first offense by a fine not to exceed $10; for the second offense by a fine not to exceed $25; for a third and each additional offense by a fine not to exceed $50.

Any person violating the provision of Section 41.12(c) of this Article shall be subject to the penalties provided in said section.

Any person violating the provisions of Section 41.12(d) of this Article shall: (1) upon the first offense in any 12-month period, be deemed to be guilty of an infraction and upon conviction thereof shall be punished by a fine not to exceed $10; (2) upon the second offense in any 12-month period, be deemed to be guilty of an infraction and upon conviction thereof shall be punished by a fine not to exceed $50; (3) upon the third and each additional offense in any 12-month period, be deemed to be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than $500 or by imprisonment in the County Jail for a period of not more than six months, or by both such fine and imprisonment.

Any person violating the provisions of Section 41.5.1 of this Article shall be subject to the penalties provided in said section.

In the alternative to any other penalty imposed under this Section for a violation of this Section 40, a person violating Section 40 may be assessed an administrative penalty not to exceed $300 for each violation. Such penalty shall be assessed, enforced and collected in accordance with Section 39-1 of the Police Code. (Added by Ord. 226-73, File No. 136-73-1, App. 6/22/73; amended by Ord. 77-75, File No. 136-74-1, App. 3/12/75; Ord. 386-75, File No. 213-75-1, App. 9/15/75; Ord. 371-77, File No. 213-75-2, App. 8/26/77; Ord. 201-78, File No. 427-77, App. 4/21/78; Ord. 87-03, File No. 03482, App. 5/9/2003; Ord. 13-05, File No. 041494, App. 1/21/2005)

SEC. 41.14. ENFORCEMENT AGAINST VIOLATIONS ON PROPERTY UNDER JURISDICTION OF RECREATION AND PARK COMMISSION; DESIGNATED OFFICERS AND EMPLOYEES.

(a) Pursuant to California Penal Code, Title 3, Section 836.5, the classes of officers or employees of the City and County of San Francisco, Recreation and Park Department, listed below are empowered to enforce provisions of Section 41.12, pursuant to Section 41.13 of this Code, against violations committed on property under the jurisdiction of the Recreation and Park Commission as an infraction, by exercising arrest and citation authority.

Classification No.	Class Title
8208	Park Patrol Officer
8210	Supervisor Park Patrol

(b) Enforcement Procedure. In the enforcement of said provisions the classes of officers and employees set forth in this section shall utilize, where appropriate, the procedure as prescribed by Section 836.5 and Chapter 5C (commencing with Section 853.5) of Title 3, Part 2, of the Penal Code of the State of California. (Added by Ord. 435-89, App. 12/6/89)

SEC. 41.15. DOGS: DOG LICENSE FEE LICENSING REQUIREMENT; FEES; TERM OF LICENSE.

It shall be unlawful for any person to own, keep or have control of any dog without having obtained a current San Francisco license for such dog, which license shall be renewed no later than 30 days after the date of expiration, as herein provided.

(a) Every person owning, keeping or having control of any dog over the age of four months within the City and County of San Francisco shall within 30 days after the dog attains the age of four months or within 30 days of obtaining the dog, obtain a current license for each dog so owned, kept or controlled.

(b) New residents shall have 30 days in which to acquire a current San Francisco license for each dog owned, kept or controlled within the City and County.

(c) Such dog license shall be issued upon payment, in advance, of a license fee and upon satisfactory proof of antirabies vaccination and shall be valid for a specified term from the date of issuance, all as provided in Section 41.18. The Department of Animal Care and Control, the Tax Collector and any other authorized licensing entity issuing said certificate, is hereby authorized to charge, and any person requesting said license shall pay, a fee for each such license, according to the following scale and subject to the exceptions set forth in this Article:

(1) $24 for a one-year license;

(2) $45 for a two-year license;

(3) $66 for a three-year license, issued only upon proof that such dog is 12 months of age or older.

Notwithstanding San Francisco Administrative Code section 10.117-87(c), said license fee shall be used to defray the costs associated with issuance of said license, including personnel costs. Any change recommended by the Director of the Department of Animal Care and Control as to the amount of the fees charged for each license shall be submitted to the Board of Supervisors for approval prior to the imposition of said fee. Fees for partial-term licenses for less than a 12-month period will be prorated on a monthly basis. A schedule of said license fees shall be posted conspicuously on the premises of the Department of Animal Care and Control, in the office of the Tax Collector, and at any other authorized licensing entity charged with the collection of said fees. (Added by Ord. 280-92, App. 8/31/92; amended by Ord. 472-96, App. 12/13/96; Ord. 2-02, File No. 010491, App. 1/18/2002; Ord. 153-02, File No. 021077, App. 7/12/2002)

SEC. 41.16. REDUCTION IN FEE-SPECIAL CIRCUMSTANCES.

The following reductions in the fees provided for in Section 41.15(c) shall be available under the following circumstances:

(1) For each dog neutered or spayed in accordance with this Article, the license shall be prorated, as follows:

(A) $12 for a one-year license;

(B) $21 for a two-year license;

(C) $30 for a three-year license.

(2) If the owner or guardian of a dog is 65 years of age or older, the license fee shall not exceed 50 percent of the applicable fee set forth in Section 41.15(c) or 50 percent of the applicable fee set forth above. (Added by Ord. 280-92, App. 8/31/92; amended by Ord. 472-96, App. 12/13/96; Ord. 153-02, File No. 021077, App. 7/12/2002; Ord. 5-03, File No. 021645, App. 1/24/2003)

SEC. 41.17. FEES—LATE PAYMENT PENALTY.

(a) A late charge of $10 shall be assessed for failure to obtain a current San Francisco dog license or to renew any expired license within any of the time limitations set forth in Section 41.15 of this Article. Any such late charge shall be in addition to the applicable license fee and shall be payable at the time of issuance. (Added by Ord. 280-92, App. 8/31/92; amended by Ord. 153-02, File No. 021077, App. 7/12/2002)

SEC. 41.18. VACCINATION REQUIRED FOR LICENSE.

(a) So long as the State of California has declared the City and County of San Francisco to be a rabies-endemic county, it shall be a requirement that every person owning, keeping or controlling a dog over the age of four months within the City and County of San Francisco shall at all times have procured current vaccination of the dog by a licensed veterinarian with an approved canine antirabies vaccine.

(b) Upon proof of a current antirabies vaccination, a license may be issued pursuant to this Article for any period not to exceed 36 months, or three years. However, the license period shall in no event exceed the remaining period of validity of the animal's current antirabies vaccination.

(c) Every veterinarian who vaccinates or causes or directs to be vaccinated in the City any dog with anti-rabies vaccine shall:

(1) Use a form approved by the licensing authority to certify that such animal has been vaccinated; and

(2) Notify the licensing authority when such animal is vaccinated within 30 days. (Added by Ord. 280-92, App. 8/31/92; amended by Ord. 321-98, App. 10/23/98)

SEC. 41.19. YOUNG DOG CERTIFICATE.

(a) Every resident of the City and County who procures a young dog over the age of two months from any animal shelter shall register such dog with the Department of Animal Care and Control, Tax Collector or other agency authorized to issue said certificate. Upon payment of a deposit equivalent to the amount of a license fee set pursuant to Section 41.15 of this Article, the owner or guardian of the young dog shall be issued a temporary identification tag and young dog certificate. The certificate shall be valid until the dog attains the age of four months, or has received an antirabies vaccination, whichever occurs first. Upon expiration of the certificate, the Tax Collector, the Department of Animal Care and Control, or other authorized licensing entity will notify the owner or guardian that the certificate has expired and upon satisfactory proof that the dog has been vaccinated in compliance with Section 41.18 of this Article, the owner or guardian shall be provided with a valid license for said dog as provided in this Article.

(b) If an owner or guardian fails to procure a license within one month after the expiration of the young dog certificate, the deposited license fee shall be forfeited and the owner or guardian shall be deemed to be in violation of Section 41.15 of this Article. (Added by Ord. 280-92, App. 8/31/92; amended by Ord. 2-02, File No. 010491, App. 1/18/2002; Ord. 5-03, File No. 021645, App. 1/24/2003)

SEC. 41.20. CERTIFICATE TO OWNER OR GUARDIAN.

(a) Upon the payment of a dog license or cat registration fee, the owner or guardian of the animal shall obtain from the Tax Collector, the Department of Animal Care and Control or other authorized licensing entity a certificate stating (1) the period for which such license or registration fee has been paid, (2) the date of payment, (3) the name, residence address, and telephone number of the person to whom such license is issued, (4) the name, breed and sex of the dog or cat licensed or registered, (5) the number of the license or registration tag issued as provided for in this Article, and (6) a statement whether the animal has been spayed or neutered. Such certificate shall be delivered to the person paying such license or registration fee and duplicates or records thereof shall be kept in the office of the Department of Animal Care and Control until the registration or certificate expires. The Tax Collector shall periodically provide the Department of Animal Care and Control with updated information regarding current registrations.

(b) The certificates and tags described in this Section shall not be transferable from dog to dog, cat to cat, or from owner/guardian to owner/guardian.

(c) At the same time that the Tax Collector, the Department of Animal Care and Control, or other authorized licensing entity issues the certificate pursuant to this Section, he or she shall also issue and deliver to the person paying such license or registration fee a license tag of such form and design as the Department of Animal Care and Control shall designate, with the words "San Francisco Dog License" or "San Francisco Cat Tag" and a serial number.

(d) The owner, guardian or person having control or possession of the dog or cat for which said license or registration fee has been paid, and such tag issued, shall attach such license tag or registration tag securely to a collar around the neck of the cat or dog, or otherwise adequately secure such tag. License tags shall be securely displayed upon dogs at all times, except when the dog is confined to the owner's premises or displayed in any show or exhibition. (Added by Ord. 280-92, App. 8/31/92; amended by Ord. 2-02, File No. 010491, App. 1/18/2002; Ord. 5-03, File No. 021645, App. 1/24/2003)

SEC. 41.21. REMOVAL OF TAG PROHIBITED.

It shall be unlawful for any person to remove a license tag from any dog or cat not owned by him or her or not lawfully in his or her posses-

sion or under that person's control, or to place on any dog or cat any such license or registration tag not issued as above provided for the particular dog or cat, or to make or to have in possession or to place on a dog or cat any counterfeit or imitation of any license or registration tag provided for in Section 41.20 of this Article. (Added by Ord. 280-92, App. 8/31/92)

SEC. 41.22. DUPLICATE LICENSE OR REGISTRATION TAG ISSUED.

(a) If any license or registration tag shall be lost or stolen, damaged or illegible, the person owning, possessing, or having control of the dog or cat for which the same was issued shall be entitled to receive a duplicate of such tag by presenting to the Tax Collector or the Department of Animal Care and Control the damaged tag, or the original certificate showing ownership of said tag or subscribing to an affidavit sufficiently showing that such tag was lost or stolen. Upon payment by the owner of a replacement fee of $5, the Tax Collector or the Department of Animal Care and Control shall issue a properly numbered duplicate tag, and shall keep on file in his office the original affidavit upon which the duplicate tag was issued.

(b) If any license or registration tag is not received due to the United States Mail within 30 days after payment of fees, the person owning, possessing, or having control of the dog or cat for which the said tag was issued shall be entitled to receive a duplicate of said tag by presenting to the Tax Collector or the Department of Animal Care and Control the damaged tag, or the original certificate showing ownership of said tag or subscribing to an affidavit sufficiently showing that said tag was not received due to the United States Mail within 30 days. The Tax Collector or the Department of Animal Care and Control, without additional fee, shall issue a properly numbered tag, and shall keep on file in his office all original affidavits upon which duplicate tags were issued. (Added by Ord. 280-92, App. 8/31/92; amended by Ord. 2-02, File No. 010491, App. 1/18/2002; Ord. 153-02, File No. 021077, App. 7/12/2002)

SEC. 41.23. EXCEPTIONS.

(a) The provisions of Sections 41.15 to 41.22, inclusive, of this Article shall not apply to any of the following:

(1) Dogs or cats owned or in the custody of or under the control of persons who are nonresidents of the City and County, or temporarily sojourning therein for a period not exceeding 30 days;

(2) Dogs or cats brought to said City and County exclusively for the purpose of entering the same in any dog or cat show or exhibition, and which are actually entered in and kept at such show or exhibition;

(3) Dogs or cats owned by nonprofit zoological gardens open to the public;

(4) Dogs or cats owned by duly incorporated and qualified organizations and societies for the humane treatment and prevention of cruelty to animals;

(5) Dogs or cats owned by pet shops, circuses, animal exhibits, and other enterprises maintaining animals which have been granted business licenses and kennel licenses by the City and County;

(6) Dogs or cats used for teaching or diagnostic purposes or research in conformity with State or Federal laws.

(b) No license fee shall be levied for any dog license issued for any of the following:

(1) A professionally trained and certified guide dog owned by or in the custody of a blind or partially blind person;

(2) A signal dog owned by or in the custody of a deaf person or person whose hearing is impaired. A "signal dog" shall mean any dog trained to alert a deaf person, or a person whose hearing is impaired, to intruders or sounds, as defined in Section 54.1 of the California Civil Code;

(3) A service dog owned by or in the custody of a physically handicapped person. A "service dog" shall mean any dog individually trained to the physically disabled participant's requirements including, but not limited to, minimal protection work, rescue work, pulling a wheel-

chair, or fetching dropped items, as defined in Section 54.1 of the California Civil Code. (Added by Ord. 280-92, App. 8/31/92)

SEC. 41.24. ENFORCEMENT.

It shall be the duty of the Animal Control Officer and every police officer while on duty to enforce the provisions of Sections 41.15 to 41.22, inclusive, of this Article requiring owners or guardians of dogs to obtain a license for same. (Added by Ord. 280-92, App. 8/31/92; amended by Ord. 5-03, File No. 021645, App. 1/24/2003)

SEC. 41.25. PENALTIES.

(a) A violation of the provisions of Section 41.21 of this Article shall be a misdemeanor, and punishable by a fine of not more than $500.

(b) A violation of the provisions of Section 41.15 or 41.19 of this Article shall be an infraction and punishable by a fine of $100. (Added by Ord. 280-92, App. 8/31/92; amended by Ord. 320-98, App. 10/23/98; Ord. 266-05, File No. 051605, App. 11/22/2005)

SEC. 41.26. ANNUAL ADJUSTMENT OF FEES.

Beginning with fiscal year 2003-2004, fees set in Sections 41.9, 41.10, 41.15, 41.16, 41.17, and 41.22 may be adjusted each year, without further action by the Board of Supervisors, to reflect changes in the relevant Consumer Price Index, as determined by the Controller.

No later than April 15th of each year, the Department of Animal Care and Control shall submit its current fee schedule to the Controller, who shall apply the price index adjustment to produce a new fee schedule for the following year.

No later than May 15th of each year, the Controller shall file a report with the Board of Supervisors reporting the new fee schedule and certifying that: (a) the fees produce sufficient revenue to support the costs of providing the services for which each fee is assessed, and (b) the fees do not produce revenue which is significantly more than the costs of providing the services for which each fee is assessed. (Added by Ord. 153-02, File No. 021077, App. 7/12/2002)

SEC. 42. DEFINITIONS.

As used in Sections 42 through 42.5, inclusive, the following words and terms shall have the following meanings, unless the context shall indicate another or different meaning or intent:

(a) "Vicious and dangerous dog" means:

(1) Any dog that when unprovoked inflicts bites or attacks a human being or domestic animal either on public or private property, or in a vicious or terrorizing manner, approaches any person in apparent attitude of attack upon the streets, sidewalks, or any public grounds or places; or

(2) Any dog with a known propensity, tendency or disposition to attack unprovoked, to cause injury or to otherwise endanger the safety of human beings or domestic animals; or

(3) Any dog which engages in, or is found to have been trained to engage in, exhibitions of dog fighting; or

(4) Any dog at large found to attack, menace, chase, display threatening or aggressive behavior or otherwise threaten or endanger the safety of any domestic animal or person.

(b) "Vicious and dangerous dog" does not mean:

(1) Any dog that attacks or inflicts bites upon a trespasser of a fully enclosed building; or

(2) Any dog used in the military or police if the bites or attack occurred while the dog was performing in that capacity.

(c) "Enclosure" means a fence or structure of at least six feet in height, forming or causing an enclosure suitable to prevent the entry of young children, and suitable to humanely confine a dog with adequate exercise area, and posted with an appropriate warning sign, in conjunction with other measures which may be taken by the owner or keeper.

(d) "Animal Control" means any person designated under the Administrative Code as the City Pound Keeper or Animal Control Officer.

(e) "Impounded" means taken into the custody of the City pound.

(f) "Person" means a natural person or any legal entity, including but not limited to, a corporation, firm, partnership or trust.

(g) "Hearing officer" means any designated representative of the Department of Public Health or the Police Department who conducts a hearing pursuant to Section 42.4. (Added by Ord. 408-87, App. 10/9/87)

SEC. 42.1. FIGHT TRAINING PROHIBITED.

It shall be unlawful to fight-train, keep, harbor, transport through the limits of the City and County of San Francisco, own, or in any way possess a dog for the purpose of dog-fight exhibitions. Scars and wounds are rebuttable evidence of participation in dog-fight exhibitions or training. "Fight training" is defined to include but not be limited to:

(a) The use or possession of treadmills unless under the direction of a veterinarian;

(b) Actions designed to torment, badger or bait any dog for purpose of encouraging said dog for fight exhibitions;

(c) The use of weights on the dog unless under the direction of a veterinarian;

(d) The use of other animals for blood sport training;

(e) Any other activity the primary purpose of which is the training of dogs for aggressive or vicious behavior or dog-fight exhibitions. (Added by Ord. 408-87, App. 10/9/87)

SEC. 42.2. REGISTRATION.

Any dog found to be vicious and dangerous either as a result of (1) the actions of the dog constituting vicious and dangerous behavior occurring in the presence of an animal control officer, or representative of the Department of Public Health or Police Department; and upon finding after hearing under Section 42.3; (2) a signed complaint or a verbal complaint with corroborating evidence by an animal control officer or representative of the Department of Public Health or Police Department; and (3) upon a finding after hearing under Section 42.3, shall be registered with the Department of Animal Care and Control.

All such dogs shall be registered within 10 days of the effective date of the finding. The Department of Animal Care and Control shall establish a registration fee of $250.

Furthermore, the keeping of a registered dog shall be subject to the following conditions:

(a) **Permanently Affixed Identification Number.** The owner, guardian, or keeper shall have the licensing number assigned to such dog, or such other identification number as the City shall determine, permanently affixed to the dog by a licensed veterinarian or other Department authorized agency/individual on the dog's upper inner lip, inner thigh or elsewhere as directed by the Department of Animal Care and Control. For the purposes of this section "permanently affixed" shall be defined as any permanent numbering of a dog by means of indelible or permanent ink or by microchip with the number designated by the Department of Animal Care and Control, or any other permanent method of affixing the identification number acceptable to the Department of Animal Care and Control.

(b) **Display of Sign.** The owner, guardian or keeper shall display a sign on his or her premises warning that there is a vicious and dangerous dog on the premises. Said sign shall be visible and capable of being read from the fronting street or public highway.

(c) **Confinement Indoors.** No registered dog may be kept on a porch, patio or in any part of a house or structure that would allow the dog to exit such building on its own volition except to a secured enclosure. In addition, no such dog may be kept in a house or structure when the windows are open or when screen windows or screen doors are the only obstacle preventing the dog from exiting the structure.

(d) **Confinement Outdoors.** When outside, all registered dogs shall be confined in a secure enclosure, except when necessary to obtain veterinary care or to comply with commands

or directions of a City official. All such enclosures must be adequately lighted and ventilated and kept in clean, sanitary, and humane conditions.

Whenever necessity requires a registered dog to be outside of the enclosure, the dog shall be securely muzzled and restrained with a chain having a minimum tensile strength of 300 pounds and not exceeding three feet in length, with handgrip, and shall be under the direct control and supervision of the owner, guardian or keeper of the dog.

(e) **Reserved.**

(f) **Identification Photographs.** All owners, guardians, keepers or harborers of a registered dog must, within 10 days of the effective date of this ordinance, provide to the Director of the Department of Animal Care and Control or his/her designee, two color photographs of the registered animal clearly showing the color and approximate size of the animal.

(g) **Reporting Requirements.** All owners, guardians, keepers or harborers of a registered dog must, within 10 days of the incident, report the following information in writing to the Director of the Department of Animal Care and Control or his/her designee:

(1) The removal from the City or death of a registered dog;

(2) The new address of a registered dog owner or guardian should the owner or guardian move within City limits.

(h) **Sale or Transfer of Ownership Prohibited.** No person shall sell, barter or in any other way dispose of a dog registered with the City to any person within the City; provided that the owner or guardian of a registered dog may sell or otherwise dispose of a registered dog or the offspring of such dog to persons who neither reside within the City nor intend to train, keep, harbor, own, or in any way possess such animal in the City providing written approval of such sale or transfer by an authorized officer or employee of the city or county where the dog is intended to be kept.

(i) **Violation of Registration Requirements.** It shall be unlawful for the owner, guardian, keeper or harborer of a dog registered with the City to fail to comply with the requirements and conditions set forth in this ordinance regarding registration. Any dog found to be the subject of a violation of these registration requirements shall be subject to seizure and impoundment. In addition, failure to comply will be cause for the revocation of the license of such animal resulting in the immediate removal of the animal from the City. (Added by Ord. 408-87, App. 10/9/87; amended by Ord. 5-03, File No. 021645, App. 1/24/2003; Ord. 267-05, File No. 051606, App. 11/22/2005)

SEC. 42.3. SEIZURE OF DOG: HEARINGS.

(a) **Subject to Seizure.** Upon the receipt of a signed complaint, or upon the personal observation of an Animal Control Officer, or a representative of the Department of Public Health or Police Department, that a dog is vicious and dangerous, and said dog is on its owner, guardian, keeper or harborer's property, the Animal Control Officer, or the Department of Public Health or Police Department representative, may find the dog presents a danger and is subject to seizure and impoundment. Upon a finding that the dog is subject to seizure, written notice of such finding shall be made to the owner, guardian, keeper or any adult in apparent control or possession of the dog. Prior to the seizure of the dog, the owner, guardian, or keeper of the dog shall be entitled to a hearing as described in paragraph (c) of this section.

(b) **Immediate Seizure.**

(i) Should any Animal Control Officer, representative of the Department of Public Health or the Police Department determine that probable cause exists to believe that a dog is vicious and dangerous and cannot be properly controlled, such dog is subject to immediate seizure. The owner, guardian, or keeper of the dog shall be entitled to a hearing upon seizure as described in paragraph (c) of this section, and upon the hearing the owner or guardian of any dog found to be vicious or dangerous shall be assessed the costs of sheltering the dog and of administering the ordinance.

(ii) Upon the receipt of a signed complaint, or upon the personal observation of an Animal Control Officer, or a representative of the Department of Public Health or Police Department, that a dog has killed or wounded, or assisted in killing or wounding any domestic animal, or has attacked, assaulted, bit or otherwise injured any person or assisted in attacking, assaulting, biting or otherwise injuring any person, such dog shall be subject to immediate seizure and impoundment. The owner, guardian, or keeper of the dog shall be entitled to a hearing upon seizure as described in paragraph (c) of this section.

(c) (i) Prior to the seizure of any dog authorized by paragraph (a) and within three days of the seizure of any dog pursuant to paragraph (b) a hearing officer shall inform, in writing, the owner, guardian, or keeper of the dog that the person's dog is alleged to be vicious and dangerous and be subject to penalties under this ordinance. Unless the hearing is waived by the owner, guardian, or keeper of the dog, or the hearing is scheduled on an agreed-upon date, the hearing officer shall fix a time not less than 15 nor more than 90 days from date that the enforcement agency locates the dog and/or the owner, guardian or keeper, and fix a place for said hearing and cause all parties to be notified, not less than 10 days before the date of such hearing. The hearing may be informal and the rules of evidence not strictly observed. It shall not be necessary, for the City, to prove that the owner, guardian, or keeper of the dog knew that the dog was vicious and dangerous. Within 15 days following the hearing, the hearing officer shall issue his or her decision to all parties.

(ii) Should the hearing officer find the dog to be vicious and dangerous, the hearing officer shall order the dog be registered pursuant to Section 42.2, and that the dog be spayed or neutered. The hearing officer may, in addition, order other remedies as may be appropriate for the safety of the public, including, but not limited to, an order that the dog and the owner, guardian, keeper and any person in control of the dog attend and complete a basic obedience course under an approved and recognized obedience trainer or dog-training organization. If the hearing officer finds that the owner, guardian, keeper, or other person in control of the dog has not or cannot adequately control his or her dogs, the hearing officer may also prohibit that person or persons from owning or possessing dogs for a period of three years from the date of the order.

(iii) In the event the hearing officer concludes that the dog is vicious and dangerous and that the health, safety and welfare of the community is not adequately addressed by the requirements provided in Section 42.3(c)(ii), the hearing officer may order the dog destroyed.

(iv) The decision of the hearing officer is final. (Added by Ord. 408-87, App. 10/9/87; amended by Ord. 5-03, File No. 021645, App. 1/24/2003; Ord. 12-05, File No. 041544, App. 1/21/2005; Ord. 267-05, File No. 051606, App. 11/22/2005)

SEC. 42.4. PENALTY; MISDEMEANOR OR INFRACTION.

Any person who violates any provision of Sections 42 through 42.3 shall be deemed guilty of a misdemeanor or infraction.

(a) If charged as an infraction, the penalty upon conviction of such person shall be a fine not exceeding $500. A second or subsequent violation within any 12-month period from the initial incident will be punishable as a misdemeanor.

(b) If charged as a misdemeanor, the penalty upon conviction of such person, shall be imprisonment in the County Jail for a period not to exceed one year or by a fine not exceeding $1,000, or by both such fine and imprisonment. Upon conviction of a misdemeanor the court may prohibit the person from owning, keeping or otherwise being in control of a dog within the City and County for a period of one year. Violation of that prohibition shall constitute a misdemeanor.

(c) The complaint charging such violation shall specify whether the violation charged is a misdemeanor or an infraction.

(d) **Allocation of fees and fines collected.** All fees and the City's share of all fines collected under this section shall be used only by

the Animal Care and Control Department to fund the enforcement of the vicious and dangerous dog program as set forth in this Section. (Added by Ord. 408-87, App. 10/9/87; amended by Ord. 267-05, File No. 051606, App. 11/22/2005)

SEC. 42.5. ENFORCEMENT.

Any provision of Sections 42 through 42.3, may be enforced by the Department of Public Health, the Police Department, or the City Animal Control Officer, or any authorized designee. Complaints of any violations of Sections 42 through 42.3 subject to penalties under Section 42.4 shall be presented to the District Attorney for prosecution. (Added by Ord. 408-87, App. 10/9/87)

SEC. 42.6. REWARDS.

Subject to the budgetary and fiscal provisions of the Charter, the City is authorized to offer rewards not exceeding $250 to any person providing information leading to the arrest of any person for violations of prohibitions against the training of a dog for dog-fight exhibitions. The Board of Supervisors may authorize said rewards by resolution upon request of the Department of Public Health, Animal Control Officer or the Mayor. (Added by Ord. 408-87, App. 10/9/87)

SEC. 42.7. SEVERABILITY.

If any part or provision of Sections 42 through 42.6, or application thereof, to any person or circumstance is held invalid, the remainder of the section, including the application of such part or provision to other persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, the provisions of the sections are severable. (Added by Ord. 408-87, App. 10/9/87)

SEC. 43. DEFINITION OF PIT BULL.

(a) **Definition.** For the purposes of this Article, the word "pit bull" includes any dog that is an American Pit Bull Terrier, American Staffordshire Terrier, Staffordshire Bull Terrier, or any dog displaying the physical traits of any one or more of the above breeds, or any dog exhibiting those distinguishing characteristics that conform to the standards established by the American Kennel Club ("AKC") or United Kennel Club ("UKC") for any of the above breeds. The AKC and UKC standards for the above breeds are listed on their websites as well as online through the Animal Care and Control Department's ("Department") website.

(b) **Determination of Breed.** If an owner, guardian or keeper is unsure as to whether or not his/her unspayed and unneutered dog is a pit bull, s/he may make an appointment with the Department at which a Department staff member shall make a determination as to whether or not the dog is a pit bull. If the dog owner, guardian or keeper wishes to appeal the determination that the dog is a pit bull, within five business days of the staff member's determination s/he may request a hearing before the Department's Director or his/her designee. The hearing shall be held no more than 30 days after the Director receives the request. The hearing may be informal and rules of evidence not strictly observed. The decision of the Director or his/her designee is final. (Added by Ord. 268-05, File No. 051607, App. 11/22/2005)

SEC. 43.1. MANDATORY SPAYING AND NEUTERING OF PIT BULLS; EXCEPTIONS.

No person may own, keep, or harbor any dog within the City and County of San Francisco that the person in possession knew, or should have known, was a pit bull that has not been spayed or neutered unless:

(a) The pit bull is under eight weeks of age;

(b) The pit bull cannot be spayed or neutered without a high likelihood of suffering serious bodily harm or death due to a physical abnormality. A veterinarian must certify such a condition, determine the time frame after which the pit bull can be spayed/neutered. Within 30 days of the operative date of this ordinance, or within 30 days of, taking possession or ownership of an unspayed or unneutered pit bull, the owner, guardian or keeper must submit such documentation to be verified by the Department;

(c) The pit bull has been present in the City and County of San Francisco for less than thirty days;

(d) The owner, guardian or keeper has obtained, or has submitted an application for a breeding permit in accordance with Section 44 et seq. of the San Francisco Health Code;

(e) Determination of breed is under appeal pursuant to Section 43(b) above; or

(f) The pit bull is a show dog. Within 30 days of the operative date of this ordinance, or within 30 days of taking possession or ownership of an unspayed or unneutered pit bull, the owner, guardian or keeper must submit a copy of the organization papers (AKC or UKC) to the Department of Animal Care and Control demonstrating the pedigree information and show dog registration and that the dog conforms with the same breeding permit guidelines set forth in Sections 44.1(a)(3)(A), 44.1(a)(3)(B), 44.1(a)(3)(C) and 44.1(a)(3)(D). (Added by Ord. 268-05, File No. 051607, App. 11/22/2005)

SEC. 43.2. PENALTIES FOR FAILURE TO SPAY OR NEUTER PIT BULL.

Violation of Section 43.1 may result in the following penalties:

(a) A first violation may result in the Department impounding the pit bull and disposing of the pit bull in accordance with Sections 41.7(a) and 41.9 of the San Francisco Health Code. A first violation shall be an infraction punishable by a fine not to exceed $500. In order for the owner, guardian or keeper to reclaim the pit bull from the Department, in addition to paying the other charges and fees set out in Section 41.10, one of the following must occur:

(1) The Department shall have a veterinarian spay or neuter the dog. The dog owner, guardian or keeper shall pay a deposit of $100 prior to the procedure and will be charged the fee for such services consisting of the actual expense incurred as established by the Department. There may be additional fees for any extraordinary care provided.

(2) In the alternative, the owner, guardian or keeper shall arrange for another veterinarian within the City and County of San Francisco to spay or neuter and shall pay the Department a fee of $60, which shall cover the Department's costs of delivering the dog to a vet of the owner, guardian or keeper's choosing. The Department shall deliver the dog to the vet, and the vet shall release the dog to the owner, guardian or keeper only after the spaying or neutering is complete.

(3) At the discretion of the Director, or his/her designee, the Director may release the dog to the owner, guardian or keeper provided that the owner, guardian or keeper signs an affidavit that s/he will have the dog spayed or neutered within two weeks and will provide documentation verifying that the spaying or neutering occurred upon completion. If the owner, guardian or keeper fails to have his/her pit bull spayed or neutered as agreed in the affidavit, the Department shall have the authority to impound the dog, and the owner, guardian or keeper may be charged with a second violation under 43.2(b), below.

(4) In the event that the Director or his/her designee determines that payment of any fees by the owner, guardian or keeper of a pit bull which is impounded or otherwise taken into custody would cause extreme financial difficulty to the owner, guardian or keeper, the Director or his/her designee may, at his/her discretion, waive all or part of the fees necessary for compliance with this section.

(b) A second violation of this section by the owner, guardian or keeper, shall be a misdemeanor punishable by imprisonment in the County Jail for a period not to exceed six months or by a fine not to exceed $1,000, or by both such fine and imprisonment. In addition, a second violation may result in the Department impounding the pit bull and disposing of the pit bull in accordance with Sections 41.7(a) and 41.9 of the San Francisco Health Code. Further, the provisions of Section 43.2(a)(1) above may apply. (Added by Ord. 268-05, File No. 051607, App. 11/22/2005)

SEC. 43.3. ALLOCATION OF FEES AND FINES COLLECTED.

All fees and the City's share of all fines collected under Section 43.2 shall be used only by

the Animal Care and Control Department to fund the implementation and enforcement of the pit bull spaying/neutering program. (Added by Ord. 268-05, File No. 051607, App. 11/22/2005)

SEC. 43.4. OPERATIVE DATE.

Notwithstanding the provisions of Section 43.1. the provisions of this Section mandating the spaying and neutering of pit bulls shall not be operative until the first date that California Health and Safety Code Section 122331 is in full force and effect or upon the effective date of this ordinance, whichever is later. (Added by Ord. 268-05, File No. 051607, App. 11/22/2005)

SEC. 44. REQUIRING A PERMIT FOR THE BREEDING AND TRANSFERRING OF PIT BULL PUPPIES.

(a) No person shall cause or allow any pit bull, as defined in Section 43(a) of the San Francisco Health Code, that is owned, harbored or kept within the City and County of San Francisco to breed or give birth without first obtaining a permit as described in this Article.

(b) Keeping an unaltered male adult dog together with a female dog in heat in the same dog run, pen, room, or any other space where the two dogs are allowed contact with one another that would allow the dogs to breed is considered prima facie evidence of an owner, guardian or keeper's intent to allow the clogs to breed. (Added by Ord. 268-05, File No. 051607, App. 11/22/2005)

SEC. 44.1. GRANTING OR DENYING A PERMIT.

(a) **Requirements of permit.** An owner or keeper of a pit bull may obtain a nontransferable permit that lasts for one year. If more than one owner, guardian, or keeper is involved in the breeding process, each party must apply for and be granted a breeding permit. The permit may be obtained from the San Francisco Department of Animal Care and Control ("Department") if all of the following conditions are met:

(1) The applicant has submitted the appropriate forms and fees required by the Department in order to seek consideration for a breeding permit.

(2) The applicant has a space in which to breed pit bulls and raise the puppies that the Department is satisfied will contain the animals as well as provide them with safe, sanitary, and humane conditions, appropriate for breeding pit bulls, which satisfies all applicable provisions of Article 1 of the San Francisco Health Code and all applicable State animal welfare laws.

(3) The Department has evaluated and reached a positive conclusion regarding the suitability of the particular pit bulls to be bred, including consideration of their lineage, age and health condition. The Department shall utilize the following guidelines in making a determination:

(A) Owners, guardians or keepers shall provide verification that any pit bull to be bred is registered as an American Pit Bull Terrier, an American Staffordshire Terrier, or a Staffordshire Bull Terrier, with the appropriate registry for its breed (American Kennel Club, United Kennel Club, American Dog Breeders Association ("ADBA")) or any other valid registry as determined by the Department.

(B) Any pit bull to be bred must meet the pit bull breed standard, as defined by the appropriate registration agency (AK, UKC, or ADBA), for physical conformation as well as temperament.

(C) The registered pit bull has participated in at least one approved dog show during the previous 365 day period or the owner, guardian or keeper has given written notice to one of the dog registries listed above stating his/her intention that the dog will participate in an approved dog show. A dog show is defined as an event that is sanctioned in writing by one or more of the dog registries listed above.

(D) Any pit bull to be bred shall have the appropriate health screenings for its breed. For pit bulls this is, at a minimum, the following health tests: Orthopedic Foundation for Animals ("OFA") or University of Pennsylvania Hip Improvement Program ("PennHIP") certification on hips, OFA on heart by a certified cardiologist and must have passed the American Temperament Testing Society temperament test.

(4) Breeders shall not allow female pit bulls to have more than 1 litter per year.

(5) Upon approval of his/her application, the applicant must pay the $100 permit fee.

(b) **Permit denial.** The Department shall automatically deny the permit if one or more of the following occurs, and that decision shall be final:

(1) The applicant fails to pay the permit fee within two weeks of notification that the application has been approved. Applicant may reapply for a permit after ten months.

(2) The applicant has a history of allowing dogs to run loose or escape, or has otherwise been found to be neglectful; has had his/her dog identified as a nuisance; or has previously been determined to have violated Section 41.12 of the San Francisco Health Code.

(3) The applicant has violated any provisions of Health Code Sections 42 through 44.5.

(4) The applicant has applied for a permit within the last ten months.

(c) **Inspections of the premises.** The Department may on one or more occasions, up to a year after issuing the permit, perform an inspection of the dog's living quarters to ensure that the standards required to receive a permit are met. The Department will give the owner, guardian or keeper a twenty-four hour notice and will conduct such inspection at a reasonable time when the owner, guardian or keeper, or his/her representative, is present. The owner, guardian or keeper shall allow the Department access to conduct the inspection.

If the property does not meet the required standards, or the owner, guardian or keeper cannot be contacted for an inspection within two weeks of the Department's initial attempt, or the owner, guardian or keeper fails or refuses to allow an inspection, the Department shall not issue a permit. (Added by Ord. 268-05, File No. 051607, App. 11/22/2005)

SEC. 44.2. RELOCATION OF PERMIT.

(a) The Department may, after conducting a hearing, revoke a breeding permit for violations of the provisions of Sections 42 through 44.5 of the San Francisco Health Code. Within five days of the Department's knowledge of any such violations, a hearing officer, who is any designated representative of the Department of Animal Care and Control or the San Francisco Police Department, shall notice the owner, guardian or keeper of the pit bull in writing that s/he is in violation and subject to penalties under this ordinance, including revocation of his/her breeding permit. Unless the hearing is waived by the owner, guardian, or keeper of the dog, or the hearing is scheduled on an agreed-upon date, the hearing officer shall fix a time not less than ten or more than 30 days from the date of the violation notice. The hearing officer shall fix a place for said hearing and cause all parties to be notified, not less than five days before the date of such hearing. The hearing may be informal and the rules of evidence not strictly observed. Within fifteen days following the hearing, the hearing officer shall issue his/her decision to all parties. The decision of the hearing officer is final. Upon a finding of a violation, the hearing officer may impose appropriate remedies on the owner, guardian, or keeper. Any violation(s) may also be considered in future permitting decisions.

(b) After the Department has issued a permit, it may revoke the permit pursuant to procedures set forth in Section 44.2(a) if a subsequent inspection of the premises under Section 44.1(c) reveals the area to be below the standards required for the permit, or if the owner, guardian or keeper cannot be contacted for an inspection within two weeks of the Department's initial attempt, or if the owner, guardian or keeper refuses the Department access for an inspection. If the dog is already pregnant or the puppies are born, the Department may, pending a hearing, impound the pit bull and/or its puppies in accordance with Section 41.7(a) of the San Francisco Health Code. After a hearing, the Department may fine the owner, guardian or keeper an amount not to exceed $500, permanently confiscate the puppies and dispose of them in accordance with Section 41.9 of the San Francisco Health Code, and consider the violation in future permitting decisions. (Added by Ord. 268-05, File No. 051607, App. 11/22/2005)

SEC. 44.3. TRANSFERENCE AND SALE OF PIT BULL PUPPIES.

(a) Any owner, guardian or keeper residing in or conducting a transaction within the City and County of San Francisco who offers any pit bull puppies under six months old for sale, trade, or adoption, must prominently post his/her valid breeding permit number with any offer of sale, trade, or adoption. The permit number must also be supplied in writing to the individual, firm, corporation, or other entity that acquires a puppy.

(b) The breeder shall not remove puppies from the litter until the puppies are at least 8 weeks of age, are fully weaned, have their first set of vaccinations, have been be de-wormed and are in good general health.

(c) Breeders and any party that acquires a pit bull puppy through purchase, trade or adoption shall enter into a written agreement for the transaction and must include language that the acquiring party shall, at any time during the dog's life, return the puppy to the breeder if the acquiring party cannot keep it, and that the breeder shall accept any such returned dog.

(d) Pit bull puppies that do not have show dog papers as defined in Section 43.1(f) must be spayed or neutered by the breeder prior to transfer.

(e) Within three weeks of the time that the litter is whelped, the breeder shall send to the Department a head count of how many puppies were live born. Within three weeks after the breeder transfers physical possession of each puppy, the breeder shall notify the Department of the name, address, and telephone number of the new owner, guardian or keeper of each puppy. (Added by Ord. 268-05, File No. 051607, App. 11/22/2005)

SEC. 44.4. FINES FOR FAILURE TO COMPLY WITH PERMIT REQUIREMENTS.

(a) A violation of the breeding permit provisions at Section 44 shall be an infraction punishable by a fine not to exceed $500. Such violations must be corrected within 30 days.

(b) After 30 days of a first citation, if the owner, guardian or keeper fails to correct a violation of Section 44, it shall be an additional violation and shall be punishable as a misdemeanor. Subsequent violations will be considered part of a continuous sequence of offenses and each violation after 30 days of a prior conviction will be punishable as a misdemeanor. The punishment shall be imprisonment in the County Jail for a period not to exceed six months or by a fine not exceeding $1,000, or by both such fine and imprisonment.

(c) Failure to include a prominently posted permit number when transferring pit bull puppies under Section 44.3(a) shall be an infraction punishable by a $100 fine for the first violation, a $200 fine upon a second violation within a year of the first offense, and a $500 fine upon the third and subsequent violations within a year of the second offense.

(d) Failure to provide the Department with the number of puppies born and information about a new owner, guardian or keeper of each puppy in accordance with Section 44.3(e) shall be an infraction punishable by a $100 fine for the first violation, a $200 fine upon a second violation within one year of the first offense, and fine of $500 for the third and subsequent violations within one year of the second offense. Failure to provide the Department with the new owner, guardian or keeper's information for each puppy, will be considered a separate and individual violation. (Added by Ord. 268-05, File No. 051607, App. 11/22/2005)

SEC. 44.5. ALLOCATION OF FEES AND FINES COLLECTED.

All fees and the City's share of all fines collected under Section 44.4 shall be used only by the Animal Care and Control Department to fund the implementation and enforcement of the pit bull breeding permit program. (Added by Ord. 268-05, File No. 051607, App. 11/22/2005)

SEC. 44.6. EXCEPTIONS TO PERMIT POSTING REQUIREMENTS.

The Department of Animal Care and Control or a valid 501(0)(3) animal welfare and rescue

organization that seeks adoptive homes for pit bulls may transfer ownership and place ads without displaying or supplying a permit number as described in Section 44.3(a). (Added by Ord. 268-05, File No. 051607, App. 11/22/2005)

SEC. 44.7. OPERATIVE DATE.

Notwithstanding the provisions of Sections 44 through 44.3, the provisions of this Section requiring a permit for the breeding and transfer of pit bull puppies shall not be operative until January the first date that California Health and Safety Code Section 122331 is in full force and effect or upon the effective date of this ordinance, whichever is later. (Added by Ord. 268-05, File No. 051607, App. 11/22/2005)

SEC. 48. UNLAWFUL TO SELL FOWL OR RABBITS AS PETS OR NOVELTIES.

(a) It shall be unlawful for any person, firm or corporation to display, sell, offer for sale, barter or give away any baby chicks, rabbits, ducklings or other fowl as pets or novelties, whether or not dyed, colored, or otherwise artificially treated.

(b) This Section shall not be construed to prohibit the display or sale of natural chicks, rabbits, ducklings or other fowl in proper facilities by dealers, hatcheries or stores engaged in the business of selling the same to be raised for food purposes.

(c) Any person, firm or corporation violating the provisions of this Section shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than $5 nor more than $50 for each and every offense. (Added by Ord. 81-78, App. 2/10/78)

SEC. 49. SALE OF CERTAIN ANIMALS PROHIBITED.

Those species of animals as the Board of Supervisors may designate by ordinance may not be sold within the territorial limits of the City and County of San Francisco; provided, however, that the following animals shall not be prohibited: psittacine birds, canaries, finches, fish, turtles, hamsters, domestic dogs, domestic cats, domestic rats, domestic mice, and guinea pigs.

Nothing in this Section shall prohibit City Departments, recognized educational institutions, licensed clinical laboratories, or medical research facilities which are in conformity with State or Federal laws from taking title to or possessing animals the sale of which may be prohibited by ordinance as specified above. (Added by Ord. 314-71; App. 12/23/71)

SEC. 50. PROHIBITION.

No person shall have, keep, maintain or have in his possession or under his control any wild and potentially dangerous animal as defined in Section 51, unless excepted therefrom pursuant to Sections 50 through 66 of this Chapter. (Added by Ord. 81-78, App. 2/10/78)

SEC. 50.1. SALE OF WILD AND POTENTIALLY DANGEROUS ANIMALS PROHIBITED.

It shall be unlawful for any person, firm or corporation to sell or offer for sale any wild and potentially dangerous animal as defined in Section 51 within the limits of the City and County of San Francisco. (Added by Ord. 81-78, App. 2/10/78)

SEC. 51. DEFINITION OF "WILD AND POTENTIALLY DANGEROUS ANIMAL".

For purposes of Sections 50 through 66, a wild and potentially dangerous animal is defined as an animal which is wild by nature and not customarily domesticated in the City and County of San Francisco and which, because of its size, disposition, or other characteristics could constitute a danger to human life or property. Such wild and potentially dangerous animals shall be deemed to include:

I. Class Mammilia

A) Order Carnivora

1. Family Candidae (dog), excepting Canis Familiaris (domestic dog), and including but not limited to such members as the wolf, the coyote and the jackal.

2. Family Felidae (cat), including but not limited to such members as the tiger, the jaguar, the leopard, the lion and the cougar, excepting Felix Catus.

3. Family Hyenidae (hyena).

4. Family Ursidae (bear).

B) Order Probscidea (elephant).

C) Order Primata (primates), including but not limited to the chimpanzee, the baboon, the orangutan, the gibbon, and the gorilla, excepting the Family Hominidae (man).

D) Order Artiodactyla, even-toed hoofed mammals, excluding the domesticated species of the Family Suidae (domestic pig) and Family Bovidae (cattle, sheep, goats).

E) Order Perissodactyla, odd-toed hoofed mammals, excluding the domesticated species of the Family Equidae (horses, donkeys, etc.)

II. Class Reptillia

A) Order Squamata

1. Sub-Order Serpentes, all front and rear fanged venomous snakes and all species of the Families Boidae and Pythonidae.

2. Sub-Order Lacertilia, both venomous species of the Family Helodermatidae (Gila monster and Mexican beaded lizard).

B) Order Crocodilia (crocodile and alligator).

III. Any other species of the animal kingdom (as opposed to vegetable or mineral) which is venomous to human beings whether its venom is transmitted by bite, sting, touch or other means, except the honey-producing bee. (Added by Ord. 81-78, App. 2/10/78)

SEC. 52. ANIMALS ELIGIBLE FOR PERMITS.

Thirty days after the effective date of this ordinance, no person shall have, keep, maintain or have in his or her possession or under his or her control any wild animal of the kinds included in this Section, unless said animal is the subject of a valid permit granted to such a person. Animals eligible for said permits shall be limited to the following: Species known as Saimiri sciurea (squirrel monkey), Mustela putorius (ferret) for whom a state permit has been received and family Callithricidae (marmosets). (Amended by Ord. 542-82, App. 11/26/82)

SEC. 53. APPLICATION AND FEE FOR PERMIT.

An application for any permit allowed pursuant to Section 52 of this Chapter shall be made by any person who has in his possession or under this control, a wild and potentially dangerous animal, to the Director Health Care Services, hereinafter referred to as the Director, in writing and upon a form furnished by the Director or his designated representative. Said application shall be verified by the person who desires to have, keep, maintain, or have in his possession, or under his control, in the City and County, the animal for which a permit is allowed, and shall set forth the following:

(a) Name, address, and telephone number of the applicant;

(b) The applicant's interest in such wild and potentially dangerous animal;

(c) The proposed location, and the name, address, and telephone number of the owner of such location, and of the lessee, if any;

(d) The general description as well as the date of birth and/or age of the wild and potentially dangerous animal for which the permit is sought;

(e) Any information known to the applicant concerning vicious or dangerous propensities of such wild and potentially dangerous animal;

(f) The housing arrangements for such wild and potentially dangerous animal with particular details as to safety of structure, locks, fencing, and other satisfactory devices which shows a compliance with Section 54;

(g) Noises or odors anticipated in keeping of such wild and potentially dangerous animals;

(h) Prior history of incidents affecting the public health or safety involving said wild and potentially dangerous animal;

(i) Any additional information required by the Director at the time of filing such application or thereafter; and

(j) Upon issuance of the permit for which application has been made, the applicant shall pay a fee of $75 to the Tax Collector. (Added by Ord. 81-78, App. 2/10/78)

SEC. 54. CONFINEMENT REGULATIONS.

The Director, in consultation with the Animal Control Officer, the Zoo Director, the City Planning Department and the Police Department, may set regulations in connection with the issuance of permits regarding the size and type of cage or other means of confinement, the distance from the place of confinement to adjoining property, and any other regulations deemed reasonably necessary by the Director to ensure the maintenance of humane and sanitary conditions for the animal and the safety of persons and property. A copy of the rules and regulations shall be furnished by the Director of the Bureau of Environmental Health Services upon request. In applying the regulations to a given situation, the Director shall take into consideration the type, nature, disposition and training of the specific wild and potentially dangerous animal involved. (Added by Ord. 81-78, App. 2/10/78)

SEC. 55. OTHER LAWS.

In applying for a permit under Section 52 of this Chapter, the applicant must provide assurance that he is in compliance with all applicable local, state, and federal laws and regulations regarding such wild and potentially dangerous animals. (Added by Ord. 81-78, App. 2/10/78)

SEC. 56. REVIEW OF APPLICATION FOR PERMIT.

Copies of any application for permit under Section 52 of this Chapter shall be sent by the Director to the Police Department, the Animal Control Officer, the City Planning Department and the Zoo Director for their approval, and no permit shall be granted without the receipt of these approvals. The filing of an application constitutes agreement by the applicant to allow inspection of the premises where the animal is kept or will be kept for the purpose of determining approval or disapproval of the permit application as well as the continued compliance with the provisions of this ordinance by all participating agencies. (Added by Ord. 81-78, App. 2/10/78)

SEC. 57. PERMIT RESTRICTIONS.

No permit shall be granted except with such conditions attached as shall, in the opinion of the Director, reasonably insure the health, safety, and general welfare of the public and said animal referred to in the permit application. The applicant must show knowledge and ability to properly care for said animal, and no permit shall be issued to any person who has been found guilty of cruelty to animals. The permit shall be nontransferable; it shall apply only to the animal described therein which is confined at the location stated therein and shall be valid only to the person named as owner of said animal therein. (Added by Ord. 81-78, App. 2/10/78)

SEC. 58. TERM AND RENEWAL OF PERMITS.

No permit required by Section 52 of this Chapter shall be granted for a period in excess of one year. An application for a new permit shall be made not less than 45 days prior to the expiration of the prior permit. (Added by Ord. 81-78, App. 2/10/78)

SEC. 59. REVOCATION OF PERMITS.

The Director may, for good cause, revoke any permit or provisions thereof. In the event it is reasonably necessary to protect against an immediate threat or danger to the public health or safety, the Director may suspend any permit or portion thereof without hearing, for a period not to exceed 30 days, and in such case the animal referred to in said permit will be taken into protective custody by the Animal Control Officer. (Added by Ord. 81-78, App. 2/10/78)

SEC. 60. EXCEPTIONS.

The provisions of Sections 50 through 66 of the Chapter shall not prohibit the selling, having, keeping, maintaining, possessing, or controlling of any wild and potentially dangerous animals within the City and County of San Francisco by any of the following: zoos, circuses, museums,

educational institutions, veterinary hospitals, the public pound, or film and video productions, provided that said animals are had, kept, maintained, possessed or controlled in compliance with other local, state and federal regulations and said animals are confined in a manner deemed by the Director to protect the public from harm, and a California Board-certified veterinarian is present to insure the wellbeing of said animals. (Added by Ord. 81-78, App. 2/10/78; amended by Ord. 331-93, App. 10/22/93)

SEC. 61. EXCEPTION—FOR TRANSPORTATION OF ANIMALS THROUGH CITY AND COUNTY.

The provisions of Sections 50 through 66 of this Chapter shall not apply to any wild and potentially dangerous animal, when such person, with the permission of the Department of Public Health, is transporting such animal through the City and County, has taken adequate safeguards to protect the public and has notified the Department of Public Health, the Police Department and the Animal Control Officer of the proposed route of transportation and time thereof. (Added by Ord. 81-78, App. 2/10/78)

SEC. 62. NOTICE OF ESCAPE.

Any person who has, keeps, or maintains a wild and potentially dangerous animal as permitted in Section 52 of this Chapter that escapes from its confinement shall immediately notify the Department of Public Health, the Police Department and the Animal Control Officer of such escape. (Added by Ord. 81-78, App. 2/10/78)

SEC. 63. IMPOUNDMENT.

Any wild and potentially dangerous animal as defined in Section 51 of this Chapter which is found running loose in the City and County of San Francisco shall be impounded by the Animal Control Officer. (Added by Ord. 81-78, App. 2/10/78)

SEC. 64. NOTICE OF REMOVAL.

Whenever an Animal Control Officer causes the removal of such wild and potentially dangerous animal as herein authorized, and the Officer knows, or is able to ascertain, the name and address of the owner thereof, such Officer shall immediately give or cause to be given notice in writing to such owner of the fact of such removal, the grounds thereof, the place to which such animal has been removed, and of the procedures for recovery of impounded animals. (Added by Ord. 81-78, App. 2/10/78)

SEC. 65. DISPOSITION OF WILD AND POTENTIALLY DANGEROUS ANIMALS.

Reclamation by an owner who holds a currently valid permit of any impounded wild and potentially dangerous animal will be permitted upon the showing of said permit for said animal, upon receipt of permission for said reclamation from the Director, and upon the payment to the Animal Control Officer of the actual costs for the capture, impoundment and care of such animal. Any person owning a wild and potentially dangerous animal but not possessing a currently valid permit, may reclaim such animal only when said owner can assure the Director that the animal will be forthwith removed from the City and County of San Francisco, and after payment of the fees stated above to the Animal Control Officer. Any animal which has been impounded or taken into custody which is not reclaimed by the owner pursuant to this Section within fourteen (14) days after notice to reclaim has been given shall be deemed to be abandoned, and may be sold, destroyed or otherwise disposed of by the Animal Control Officer, provided, however, that if said animal is dangerous to retain or is suffering excessively, it may forthwith be humanely destroyed by the Animal Control Officer. (Added by Ord. 81-78, App. 2/10/78)

SEC. 66. PENALTY.

Any person who has, keeps, maintains or has in his possession or under his control a wild and potentially dangerous animal in violation of any of the provisions of Sections 50 through 66 of this Chapter shall be guilty of a misdemeanor and shall be subject to imprisonment in the County Jail for not more than six (6) months or a fine not to exceed five hundred dollars ($500) or both. (Added by Ord. 81-78, App. 2/10/78)

[The next page is 55]

ARTICLE 1A: ANIMAL SACRIFICE

SEC. 1A.1. FINDINGS.

The Board of Supervisors hereby finds and declares that:

(1) Animals, including but not limited to chickens, pigeons, doves, ducks, guinea fowl, goats, sheep, dogs, cats and turtles are being sacrificed by groups and individuals in this City, using methods known to be unreliable and not humane and causing great fear, pain and needless injury and death to the animals being sacrificed;

(2) Sacrificial animals are often subjected to inhumane treatment prior to being killed, in that they are kept in overcrowded and filthy conditions, are kept in close confinement and with animals not of their own species while awaiting sacrifice and are often deprived of food and water for days before being killed, possibly so that the animal does not defecate or urinate out of fear in the course of the sacrifice;

(3) Stress and fear experienced by chickens, a commonly sacrificed animal, affects the chicken's immune system and increases growth of bacteria, especially salmonella, in the chicken's system, creating a human health hazard;

(4) There is no reasonable means to guarantee that animals used in sacrifice are disease-free;

(5) Following the practice of animal sacrifice, animal remains are often left in public places;

(6) Improperly disposed-of animal remains present a serious public health hazard, in that areas where dead animals are left attract and become a harborage for flies, rats and fleas, thus increasing the likelihood of the spread of disease to other animals and to humans;

(7) Flies attracted to animal remains are themselves known to transmit numerous human and animal diseases, including dysentery, typhoid, cholera, salmonella, salmonosis, infectious hepatitis and parasitic worms;

(8) Rats are commonly associated with the spread of disease, including plague, Leptus Pyrosis and typhus;

(9) The sanitary disposal of the remains of sacrificial animals by the diverse individuals and groups practicing such rites cannot reasonably be monitored or controlled;

(10) There is no guarantee that children are not exposed to animal sacrifice which may adversely affect the mental health and behavior of the child, to the detriment of both the child and the community;

(11) This ban on animal sacrifice is imperative (1) to prevent cruelty to animals, (2) to safeguard the health, safety and welfare of the community, and (3) to prevent the adverse psychological impact on children exposed to animal sacrifices;

(12) This Article shall apply to any person, group, firm or corporation that kills, maims or sacrifices any animal in any type of ritual, or provides animals for that purpose. (Added by Ord. 283-92, App. 9/4/92)

SEC. 1A.2. DEFINITIONS.

As used in this Chapter, the following words and phrases shall have the meanings indicated herein:

"Animal" shall mean any member of any species of the animal kingdom.

"Animal sacrifice" shall mean the intentional killing or maiming of any animal in a ritual, which killing or maiming is committed not in accordance with State and federal humane slaughter laws and which is not primarily for consumption as food.

"Ritual slaughter" shall mean the preparation and killing of any animal for consumption as food in compliance with the State Kosher Food Law (Penal Code Section 383b), or any other applicable kosher slaughter statute.

"Slaughter" shall mean the killing of any animal by any person, group, firm or corporation for consumption as food in accordance with State and federal humane slaughter laws. (Added by Ord. 283-92, App. 9/4/92)

SEC. 1A.3. ANIMAL SACRIFICE PROHIBITED.

It shall be unlawful for any person, group, firm or corporation to engage in animal sacrifice. (Added by Ord. 283-92, App. 9/4/92)

SEC. 1A.4. SALE OF ANIMAL FOR SACRIFICE PROHIBITED.

It shall be unlawful for any person, group, firm or corporation to knowingly sell, give, transfer, or offer to sell, give, transfer or otherwise provide any animal to another person for sacrifice. (Added by Ord. 283-92, App. 9/4/92)

SEC. 1A.5. PENALTIES.

Any person who violates any provision of Sections 1A.3 through 1A.4 shall be deemed guilty of a misdemeanor or infraction.

(a) If charged as an infraction, the penalty upon conviction of such person shall be a fine not exceeding $500.

(b) If charged as a misdemeanor, the penalty upon conviction of such person shall be imprisonment in the County Jail for a period not to exceed one year or by a fine not exceeding $1,000 or by both fine and imprisonment.

(c) The complaint charging such violation shall specify whether the violation charged is a misdemeanor or an infraction.

(d) **Prima Facie Violation.** The discovery of the presence of any animal carcass, animal parts or animal blood in proximity to the presence of any ritual paraphernalia shall constitute prima facie evidence of a violation of this Article. (Added by Ord. 283-92, App. 9/4/92)

SEC. 1A.6. EXCEPTIONS.

Nothing in this Article shall be construed to prohibit any person, firm or corporation from lawfully operating under the laws of this State and engaging in the slaughter or ritual slaughter of animals, as defined herein. (Added by Ord. 283-92, App. 9/4/92)

SEC. 1A.7. ENFORCEMENT.

(a) Any provision of Sections 1A.3 through 1A.4 may be enforced by the Department of Animal Care and Control, the Department of Public Health, or the San Francisco Police Department, or any duly authorized designee. Said departments shall have authority to investigate any suspected violation of this Article.

(b) Any department authorized to enforce this Article, which receives a complaint of or otherwise becomes aware of any violation of Sections 1A.3 through 1A.4, subject to penalties under Section 1A.5, shall present the complaint or violation to the District Attorney for prosecution. (Added by Ord. 283-92, App. 9/4/92)

SEC. 1A.8. SEVERABILITY.

If any part or provision of Sections 1A.3 through 1A.4, or the application thereof, to any person or circumstance is held invalid, the remainder of the Section, including the application of such part or provision to other persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, the provisions of the Sections are severable. (Added by Ord. 283-92, App. 9/4/92)

[The next page is 75]

ARTICLE 2: COMMUNICABLE DISEASES

SEC. 72. QUARANTINE POWERS.

The Department of Public Health of this City and County is hereby authorized and empowered to quarantine persons, houses, places and districts within this City and County, when in its judgment it is deemed necessary to prevent the spreading of contagious or infectious diseases.

SEC. 73. QUARANTINE AND/OR EXAMINATION FOR VENEREAL DISEASE.

(a) The Director of Public Health, or his duly authorized deputy, is hereby authorized and directed to quarantine and/or examine any person of either sex whom he has reasonable grounds to believe is afflicted with a venereal disease and is likely to expose others thereto.

(b) Owing to the prevalence of such diseases among sex offenders, the arrest of any person of either sex for (1) vagrancy involving a sex offense, prostitution, being a keeper, inmate, employee, or frequenter of a house of ill fame, prostitution, or assignation, being a lewd or dissolute person, or (2) adultery, lewd or lascivious conduct, or other criminal charge involving a sex offense; is to be considered and is hereby declared to furnish reasonable grounds for the examination provided for in the preceding subsection; provided, however, it shall be the duty of the Director of Public Health, or his duly authorized deputy to examine into each such arrest and the circumstances leading thereto, in order to determine whether there exists in fact reasonable grounds to believe the arrested person to be afflicted with a venereal disease. The term "prostitution" as used in this subsection shall include the giving or receiving of the body for sexual intercourse for hire and the giving or receiving of the body for indiscriminate sexual intercourse without hire.

(c) In furtherance of the purpose of the two preceding subsections, the Director of Public Health, or his duly authorized deputy, shall have the power to quarantine and/or examine, in such a manner and by such methods as modern science has found to be proper, all persons taken into custody by the Police Department of the City and County of San Francisco who are suspected by the Director of Public Health, or his duly authorized deputy of being afflicted with any venereal disease.

(d) No person convicted of any of the charges mentioned in Subsection (b) of this Section shall be released until examined for such venereal diseases by the Director of Public Health, his deputy or assistants.

(e) When any minor has acquired a venereal disease, his or her parents or guardians shall be legally responsible for the compliance of such minors with the requirements of the rules and regulations pertaining to venereal diseases.

(f) In addition to the powers and duties herein mentioned and the other powers and duties imposed upon him, the said Director of Public Health shall have the power to and shall make and promulgate such rules and regulations as are reasonably necessary for the prevention and control of venereal disease in this City and County and to effectuate the provisions of this Section.

(g) Nothing in this Section shall be construed to require that any person who adheres to the faith or teachings of any well recognized religious sect, denomination or organization, and in accordance with its creed, tenets, or principles depends for healing upon prayer in the practice of religion, shall submit to or receive any medical or physical treatment; but such person, if found to be afflicted with any venereal disease, shall be subject to isolation or quarantine in accordance with this Section and the law of the State of California.

(h) If any Subsection, Subdivision, paragraph, sentence, clause or phrase of this Section is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this Section. The Board of Supervisors hereby declares that it would have passed this Section and each Subsection, Subdivision, paragraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more other Subsections, Subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional.

SEC. 77. PREVENTION OF SPREAD OF DISEASE.

The term "contagious disease" shall include every disease of an infectious, contagious or pestilential nature, particularly cholera, yellow fever, smallpox, varicella, pulmonary tuberculosis, diphtheria, membraneous croup, scarlet fever, typhus fever, measles, pneumonia and every other disease publicly declared by the Department of Public Health to be dangerous to the public health.

(a) **Reports of Physicians and Others.** Every physician must report in writing to the Department of Public Health within 24 hours after he has been called to attend any person affected with any infectious, contagious or pestilential disease, the name and place of residence of such person and the name and state of the disease. In the event of the death of any person afflicted with any such disease, the attending physician must report in writing to the Department of Public Health within 24 hours thereafter, the name and place of residence of the deceased and the specific name and type of such disease.

Every physician, and every person having the control or management of any public or private institution or dispensary, shall report in writing to the Department of Public Health the name, age, sex, occupation and place of residence of every person afflicted with pulmonary tuberculosis who shall have come under his care, within one week thereafter.

(b) **Observation of Rules, Etc.** Every person afflicted with pulmonary tuberculosis, and every person in attendance upon any person so afflicted, and every person in charge of any private or public hospital or dispensary, shall observe and enforce all sanitary rules and regulations adopted by the Department of Public Health to prevent the spread of pulmonary tuberculosis.

(c) **Interference With Officers, Etc.** It shall be unlawful for any person to interfere with or obstruct the officers or inspectors of the Department of Public Health, in the examination of any building or premises wherein a person is reported to be afflicted with any infectious, contagious or pestilential disease.

(d) **Posting of Notices.** The Department of Public Health is hereby authorized and empowered to post in a conspicuous place upon any building or premises wherein any person is afflicted with any infectious, contagious or pestilential disease, a notice specifying the name of such disease. It shall be unlawful for any person to interfere with the posting of such notice or to tear down or mutilate any notice so posted by the Department of Public Health in or upon any building or premises.

(e) **Reports of Masters, Etc.** The master or chief officer of every vessel within ¼ of a mile of any wharf, dock, pier or any building in this City and County, and not in quarantine or within the quarantine limits, shall report daily, in writing, to the Department of Public Health the name of any person on such vessel afflicted with

any infectious, contagious, or pestilential disease, and particulars of such disease and the condition of the person afflicted therewith.

The master or chief officer of any vessel which shall arrive in this port, and every physician who practiced on such vessel, shall, immediately upon arrival, report in writing to the Department of Public Health all facts concerning any person who may have been afflicted with any infectious, contagious or pestilential disease during the voyage to this port, and also all the facts concerning any person or thing carried on such vessel during such voyage which, in his opinion, may endanger the public health of this City and County.

(f) **Quarantine of Premises.** Whenever the Department of Public Health shall have reason to suspect the presence of an infectious, contagious or pestilential disease within any building or premises, and the physician in attendance or the head of the family refuses to permit the representative of the Department of Public Health to examine the person suspected of being afflicted with such infectious disease, the Department of Public Health shall quarantine the premises and prevent egress and ingress from and to the same until such examination is permitted or until said Department has practiced disinfection and detention to its satisfaction.

(g) **Notice to Department.** Whenever any person residing in a hotel, boarding house, lodging house or tenement house is afflicted with any infectious, contagious or pestilential disease, owner, lessee, keeper or manager of such place must immediately give notice thereof to the Department of Public Health. Immediately upon the receipt of such notice the Department of Public Health must cause an examination of the person so afflicted, and, if in its judgment it be necessary, he shall cause such hotel, boarding house, lodging house or tenement house, or any part thereof, to be immediately cleansed and disinfected in an effective manner; and the Department of Public Health may cause the walls thereof to be whitewashed, or any wall paper thereon to be removed or replaced; and he may cause the bedding and bed clothes used by the person so afflicted to be thoroughly cleansed, scoured and fumigated, or, if necessary, to be destroyed.

(h) **Duties of Undertakers and Others in Cases of Death.** Every undertaker employed to manage the interment of any person who has died of any infectious, contagious or pestilential disease must give immediate notice thereof to the Department of Public Health. It shall be unlawful for an undertaker to retain, or expose or assist in the detention or exposure of the dead body of any such person unless the same be in a coffin or casket, properly sealed, or to allow any such body to be placed in a coffin or casket unless such body has been thoroughly disinfected and wrapped in a sheet saturated with a one five-hundredth solution of bichloride of mercury, and unless the coffin or casket is of metallic substance and hermetically sealed immediately after the body has been placed therein.

It shall be unlawful for any person to remove the body of any person who has died from an infectious, contagious or pestilential disease from the room in which the death occurred, except for burial or cremation; and the body of the person so dying must be interred or cremated within 24 hours after the time of death; provided, however, that the Department of Public Health may by special permit, good cause appearing therefor, extend such time; but in no case shall such extension be for more than 36 hours from the time of death.

It shall be unlawful for any person having the possession or charge of the remains of any person who shall have died of any infectious, contagious or pestilential disease to permit such remains to be viewed by any person except the attending physician, the representatives of the Department of Public Health, the undertaker and his assistants, and the immediate members of the family of the decedent, or to permit formal services to be held over such remains within the premises where the death of such person occurred, or to remove or cause to be removed the body of such deceased person from said premises to any place other than a cemetery or crematory.

It shall be unlawful for any undertaker to assist in a public or church funeral of the body of any person who has died of an infectious, contagious or pestilential disease.

(i) **Removal of Afflicted Persons Without Permit.** It shall be unlawful for any person, without a written permit from the Department of Public Health to remove, or cause to be removed, any person afflicted with any infectious, contagious or pestilential disease, from any building to any other building, or from any vessel to any other vessel, or to the shore, or to any public vehicle.

It shall be unlawful for any person to remove, or cause to be removed, any person afflicted with any infectious, contagious or pestilential disease from any building to any other building, or hospital, unless said patient is wrapped in a sterile sheet. All clothing, including bed clothes and mattresses, used by the patient shall be thoroughly fumigated after patient has been removed. The interior of all ambulances or other vehicles used for the purpose of removing such patients shall be thoroughly washed with a disinfecting solution immediately following such use.

(j) **Negligence of Persons Exposed to Disease.** It shall be unlawful for any person having charge or control of any person afflicted with an infectious, contagious or pestilential disease, or having control of the dead body of any person who has died of any such disease, to cause or contribute to the spread of any such disease by any negligent act in the care of such sick person or such dead body, or by the needless exposure of himself in the community.

(k) **Duties Regarding Children of School Age.** It shall be unlawful for any principal or superintendent of any public or private school, or any parent, guardian or custodian of any minor child afflicted with an infectious, contagious or pestilential disease, or in whose household any person is so afflicted, to permit such minor to attend any public or private school until the Department of Public Health shall have given its written permission therefor.

SEC. 82. PREVENTION OF SPREAD OF COMMUNICABLE DISEASES.

The Department of Public Health shall, at its discretion, send to the superintendents, principals and teachers of all public, parochial and private schools, circulars at least once in each school year, prepared under the direction of the Director of Public Health, giving a description of the symptoms of the communicable diseases of children and of the parasitic disease of the skin, including pediculosis, scabies and favus.

The Department of Public Health shall, upon obtaining information as to the existence of a case of tuberculosis or pneumonia, send to the physician, surgeon, nurse or other person attending the case, printed circulars, giving, in clear and simple language, information concerning the communicability, dangers and methods of prevention of tuberculosis or pneumonia as the case may be, together with a request that the circulars be given to the patient or to a responsible member of his family.

The Department of Public Health, upon request of a physician, surgeon, nurse or other person attending a case of tuberculosis, shall send a representative to the house of the patient to give information concerning the communicability, dangers and methods of prevention of tuberculosis.

The Department of Public Health shall, upon obtaining information as to the occurrence of a case of tuberculosis, in any tenement house, hotel, lodging house, boarding house, hospital, prison or asylum, send a representative to leave circulars and to give information as provided in this Section.

The Department of Public Health, upon obtaining information as to the occurrence of a case of tuberculosis of any person unable to pay for medical assistance, shall send a Sanitary Inspector or City Physician to take charge of the case, and to report the same to the Department.

The Department of Public Health shall preserve all reports upon cases of tuberculosis, and the records of the same.

The Department of Public Health shall, once each year or oftener, if necessary, send to every physician, surgeon and nurse, printed circulars giving a description of the most approved methods of destruction or disinfection of the discharges of persons having actinomycosis, bronchitis, cholera, cholera infantum, diphtheria, dysentery, influenza, measles, pneumonia, rubella, scarlet fever, laryngeal and pulmonary tuberculosis and typhoid fever and all contagious diseases.

It shall be unlawful for any person or persons, firm or corporation, to obstruct or interfere with the said Department of Public Health, or any officer, agent or employee of said Department, in the performance of any of the duties required by this Section and any person, persons, firm or corporation so obstructing or interfering with the said Department of Public Health or any officer, agent or employee of said Department shall be guilty of a misdemeanor.

SEC. 87. REMOVAL OF PERSONS AFFLICTED WITH CONTAGIOUS DISEASES.

The Department of Public Health of the City and County of San Francisco is hereby authorized and empowered, whenever in its judgment it may be necessary for the protection of the public health and public safety, and for the prevention of the spread of smallpox, cholera, yellow fever, bubonic plague, typhus fever, poliomyelitis, diphteria and scarlet fever, to remove or cause to be removed, any person or persons afflicted with any of said diseases who may be found residing in any hotel, lodging house, boarding house, tenement house, or any other place or places, or districts within the City and County of San Francisco, to such hospitals with the City and County of San Francisco as said Director of Public Health may designate.

SEC. 92. RODENT CONTROL.

This Section is designed to be and is enacted as a police and sanitary regulation for the protection of the public health, and particularly to prevent the propagation and spread of bubonic plague and other established and emerging rodent borne infectious diseases. The term "rodent" as used in this Section shall mean any animal belonging to the Order of *Rodentia,* such as rats and mice, but shall not include animal(s) kept in compliance with Section 37 of this Code.

(a) **Authority of Director.** The Director of Public Health, or any agent or inspector appointed by the Director for the purpose, shall have authority, after announcing the purpose of his visit, and shall be permitted to enter any building or premises, or any part thereof, in the City and County during reasonable hours of any day, for the purpose of inspecting the same, and to ascertain whether the provisions of this Section have been complied with by the owner and occupant thereof.

(b) **All Buildings to be Free of Rodents.** All buildings, places and premises whatsoever in the City and County shall immediately and continuously be kept in a clean and sanitary condition, and free from rodents by the owner and/or the occupant thereof.

(c) **Exclusion of Rodents in Buildings.** All building and basement walls of all storerooms, warehouses, residences or other buildings within the City and County; all chicken yards or pens, chicken coops or houses, and all barns and stables, shall be so constructed or repaired as to prevent rodents from being harbored underneath the same or within the walls thereof, and all food products or other products, goods, wares and merchandise liable to attract or to become infested or infected with rats, rodents, whether kept for sale or for any other purpose, shall be so protected by the owner or occupant as to prevent rodents from gaining access thereto or coming in contact therewith.

(d) **Docks, Etc., Exclusion of Rodents.** All public and private docks and wharves in the City and County, wherever located, shall be so protected as to prevent rodents from gaining entrance to such docks or wharves, at either high or low tide, from vessels anchored or moored alongside of such docks or wharves, or from other sources, and all food products stored in docks or

wharves shall be so kept and stored as to prevent rodents from gaining access thereto or coming in contact therewith.

(e) **Marine Vessels; Rodent Shield; Duty of Vessel Owners.**

(1) It shall be unlawful to permit any vessel, steamboat, or other watercraft, except vessels engaged in domestic commerce, to lie alongside of any wharf or dock in the City and County of San Francisco unless the chain, hawser, rope or line of any kind extending from any such vessel to the dock or wharf is equipped with and has properly and securely attached thereto a rodent shield or guard of such design as shall be approved by the Director or a person designated by her or him.

(2) Whenever plague, either the pneumonic or bubonic type, or any other disease transmitted or otherwise caused by rodents, exists in any domestic port, and the Director determines that vessels touching such port may pose a threat to the health and safety of the citizens of the City and County of San Francisco, all vessels engaged in domestic commerce touching at any such port shall comply with the provisions of this Subsection.

(3) It shall be the duty of the owner, agent, master or other officer in charge of any such vessel, steamboat, or other watercraft to comply with this Subsection.

(f) **Slaughterhouses, Exclusion of Rodents.** All slaughterhouses of every kind and nature and wherever located in the City and County shall be so protected as to prevent rodents from gaining access to the building or buildings thereof, and all holes and openings in the building or basement walls shall be thoroughly stopped with cement or other material approved by the Director of Public Health, and all food products stored in slaughterhouses shall be so kept as to prevent rodents from coming in contact therewith.

(g) **Dumping of Waste Matter Prohibited.**

(1) No person, firm or corporation shall cause or permit the dumping or placing upon any land, or in any water or waterway, within the City and County, any dead animal, butchers' offal, fish or parts of fish, or any waste vegetable or animal matter whatever.

(2) No person, firm or corporation, whether the owner, lessee, occupant or agent of any premises, shall keep or permit to be kept in any building, area way, or upon any premises, or in any alley, street or public place adjacent to any premises, any waste animal or vegetable matter, dead animals, butchers' offal, fish or parts of fish, swill or any refuse matter from any restaurant, eating place, residence, place of business or other building, unless the same be collected and kept in a tightly covered or closed can or vessel.

(3) No rubbish, waste or manure shall be placed, left, dumped or permitted to accumulate or remain in any building, place or premises in the City and County so that the same shall or may afford food or a harboring or breeding place for rodents. (Amended by Ord. 125-01, File No. 010269, App. 6/15/2001)

Sec. 93.
(Amended by Ord. 150-73, App. 4/12/73; repealed by Ord. 125-01, File No. 010269, App. 6/15/2001)

Sec. 94.
(Amended by Ord. 179-85, App. 4/4/85; repealed by Ord. 125-01, File No. 010269, App. 6/15/2001)

Sec. 95.
(Amended by Ord. 179-85, App. 4/4/85; repealed by Ord. 125-01, File No. 010269, App. 6/15/2001)

Sec. 95.5.
(Amended by Ord. 179-85, App. 4/4/85; Ord. 197-98, App. 6/19/98; repealed by Ord. 125-01, File No. 010269, App. 6/15/2001)

Sec. 96.
(Added by Ord. 150-73, App. 4/12/73; repealed by Ord. 125-01, File No. 010269, App. 6/15/2001)

Sec. 96.5.
(Amended by Ord. 437-84, App. 11/2/84; repealed by Ord. 125-01, File No. 010269, App. 6/15/2001)

Sec. 96.6.
(Added by Ord. 150-73, App. 4/12/73; repealed by Ord. 125-01, File No. 010269, App. 6/15/2001)

Sec. 96.7.
(Added by Ord. 150-73, App. 4/12/73; repealed by Ord. 125-01, File No. 010269, App. 6/15/2001)

Sec. 96.8.
(Added by Ord. 150-73, App. 4/12/73; Ord. 125-01, File No. 010269, App. 6/15/2001)

Sec. 97.
(Added by Ord. 150-73, App. 4/12/73; repealed by Ord. 125-01, File No. 010269, App. 6/15/2001)

Sec. 97.1.
(Added by Ord. 150-73, App. 4/12/73; repealed by Ord. 125-01, File No. 010269, App. 6/15/2001)

Sec. 97.2.
(Added by Ord. 150-73, App. 4/12/73; repealed by Ord. 125-01, File No. 010269, App. 6/15/2001)

Sec. 97.3.
(Added by Ord. 150-73, App. 4/12/73; repealed by Ord. 125-01, File No. 010269, App. 6/15/2001)

Sec. 97.4.
(Added by Ord. 150-73, App. 4/12/73; repealed by Ord. 125-01, File No. 010269, App. 6/15/2001)

Sec. 97.5.
(Added by Ord. 150-73, App. 4/12/73; repealed by Ord. 125-01, File No. 010269, App. 6/15/2001)

Sec. 97.6.
(Added by Ord. 150-73, App. 4/12/73; repealed by Ord. 125-01, File No. 010269, App. 6/15/2001)

SEC. 98. TUBERCULOSIS.

Tuberculosis is hereby declared to be a communicable disease, dangerous to the public health.

(a) **Report of Physicians and Others.** It shall be the duty of every physician practicing in the City and County of San Francisco, and of every person in charge of any hospital, dispensary or other private or public institution in said City and County, to report in writing to the Director of Public Health the name, age, sex, color, occupation, address and place where last employed, of every person having tuberculosis which comes under his care or observation. Said reports shall be made in writing on a form furnished as hereinafter provided and shall be forwarded to said Director of Public Health within 24 hours after knowledge of the case comes to said physician or person.

(b) **Sputum Examination.** It shall be the duty of the Director of Public Health when so requested by any physician or by authorities of any hospital or dispensary to make or cause to be made a microscopical examination of the sputum sent him as that of a person having symptoms of tuberculosis accompanied by a blank giving name, age, sex, color, occupation, place where last employed, if known, and address of the person whose sputum it is. It shall be the duty of the Director of Public Health to promptly make a report of the results of such examinations free of charge to the physician or person upon whose application the same is made.

(c) **Registration of Reports, Etc.** It shall be the duty of the Director of Public Health to cause all reports and all results of examinations showing the presence of the bacilli of tuberculosis made in accordance with provisions of this Section to be recorded in a register of which he shall be the custodian. Such register shall not be open to inspection by any person other than the health authorities of the state and of the said City and County, and said health authorities shall not permit any such report or record to be divulged so as to disclose the identity of the person to whom it relates, except as may be necessary to carry into effect the provisions of this Section.

(d) **Notice of Vacation of Premises by Tubercular Patient.** In case of vacation of any apartment or premises by the death or removal therefrom of a person having tuberculosis, it shall be the duty of the attending physician, or if there be no such physician, or if such physician be absent, of the owner, lessee, occupant or other person having charge of said apartment or premises, to notify the Director of Public Health of

said death or removal within 24 hours thereafter; and such apartment or premises so vacated shall not be occupied until duly disinfected, cleaned, or renovated, as hereinafter provided.

Further, it shall be unlawful for any person suffering from tuberculosis to change his or her residence or to be removed therefrom until the Director of Public Health has been notified so that the vacated apartment or premises may be disinfected, cleaned, or renovated.

(e) **Disinfection of Premises.** When notified of the vacation of any apartment or premises as provided in this Section, the Director of Public Health or one of his deputies shall thereafter visit said apartment or premises and shall order and direct that except for purposes of cleaning or disinfection no infected article shall be removed therefrom until property is suitably cleansed or disinfected, and said Director of Public Health or his deputy shall determine the manner in which said apartment or premises shall be disinfected, cleansed or renovated in order that they may be rendered safe and suitable for occupancy. After the health authorities determine that disinfection is sufficient to render them safe and suitable for occupancy, said apartment or premises, together with all infected articles therein, shall be immediately disinfected by the Director of Public Health; or if the owner prefers, by the owner at his expense to the satisfaction of the Director of Public Health. Should the Director of Public Health determine that such apartment or premises are in need of thorough cleansing of renovating, a notice to this effect shall be served upon the owner or agent of said premises, and said owner or agent shall proceed to the cleansing of renovating of said apartment or premises in accordance with the instructions of the Director of Public Health and such cleansing and renovating shall be done at the expense of said owner or agent. Such articles that cannot be disinfected or renovated to the satisfaction of the Director of Public Health shall be destroyed.

(f) **Posting of Notice.** In case the orders or directions of the Director of Public Health requiring the disinfecting, cleansing or renovating of any apartment or premises or any article therein as hereinbefore provided shall not be complied with within 48 hours after said orders or directions shall be given, the Director of Public Health may cause a placard, in words and form substantially as follows, to be placed on the door of the infected apartment or premises:

"Tuberculosis is a communicable disease. These apartments have been occupied by a consumptive person and may be infected. They must not be occupied until the order of the Director of Public Health directing the disinfection or renovation has been complied with. This notice must not be removed under the penalty of the law except by the Director of Public Health or other duly authorized official."

(g) **Safe Disposal of Sputum, Etc.** Any person having tuberculosis who shall dispose of his sputum, saliva or other bodily secretion or excretion so as to cause offense or danger to any person or persons occupying the same room or apartment, house or part of house, shall on complaint of any person subject to such offense or danger, be deemed guilty of a nuisance; and any person subject to such a nuisance may make complaint in writing to the Director of Public Health, and it shall be the duty of the Director of Public Health receiving such complaint to investigate and if it appears that the nuisance complained of is such as to cause offense or danger to any person occupying the same room, apartment, house or part of house, he shall serve a notice on the person so complained of, reciting the alleged cause of offense or danger and requiring him to dispose of his sputum, saliva or other bodily secretion or excretion in such a manner as to remove all reasonable cause of offense or danger.

It shall be the duty of a physician attending a patient for tuberculosis to take all proper precautions and to give proper instructions to provide for the safety of all individuals occupying the same house or apartment.

(h) **Removal of Patient, Etc.** Whenever a person having tuberculosis is unable for financial reasons, or from any other cause, to comply with the rules of the Director of Public Health providing for the precautions to be observed to

prevent the spread of infection, or when such person willfully refuses to comply with said rules and in all cases where children are unavoidably exposed to infection, the Director of Public Health may, on presentation to it of proof that such person is a sufferer from tuberculosis, order his immediate removal to a hospital or other institution for the care of sufferers from tuberculosis. Such person shall not be permitted to leave such hospital or other institution until the danger of infection has been removed or he is able and willing to comply with the precautions and rules herein referred to.

(i) **Procedure and Precautions to Be Taken.** It shall be the duty of the Director of Public Health to transmit to a physician reporting a case of tuberculosis as provided in this Section a printed statement and report naming such procedure and precautions as are necessary or desirable to be taken on the premises of a tubercular patient. Upon receipt of such statement or report, the physician shall carry into effect all such procedures and precautions as are therein prescribed, and shall thereupon sign and date the same, and return to the Director of Public Health without delay; or if such attending physician be unwilling or unable to carry into effect the procedure and precautions so specified, he shall so state on this report, and immediately return the same to the Director of Public Health and the duties therein prescribed shall thereupon devolve upon said Director of Public Health. Upon the receipt of this statement and report, the Director of Public Health shall examine the same and satisfy himself that the attending physician has taken all necessary and desirable precautions to insure the safety of all persons living in the apartment or premises occupied by the person having tuberculosis. If the precautions taken or instructions given by the attending physician are, in the opinion of the Director of Public Health, not such as will remove all reasonable danger or probability of danger to the persons occupying the same house or apartment or premises, the Director of Public Health shall return to the attending physician the report with a letter specifying the additional precautions or instructions which the Director of Public Health shall require him to make or give; and the said attending physician shall immediately take the additional precautions and give the additional instructions specified and shall record and return the same on the original report to the Director of Public Health. It shall be the duty of the Director of Public Health to transmit to every person reporting any case of tuberculosis, or if there be no attending physician, to the person reported as suffering from this disease, a circular of information which shall inform the consumptive of the precautions necessary to avoid transmitting the disease to others.

(j) **Violations.** It shall be unlawful for any physician or person practicing as a physician to report knowingly as affected with tuberculosis any person who is not so affected or willfully make any false statement concerning the name, sex, color, occupation, place where last employed, if known, or address of any person reported as affected with tuberculosis, or certify falsely as to any of the precautions taken to prevent the spread of infection.

(k) **Children of School Age.** No instructor, teacher, pupil or child affected with pulmonary tuberculosis shall be permitted by any superintendent, principal or teacher of any public, private or parochial school, to attend school except by written permission of the Director of Public Health.

(l) **Recovery Reports.** Upon the recovery of any person having tuberculosis, it shall be the duty of the attending physician to make a report of this fact to the Director of Public Health, who shall record the same in the records of his office and shall relieve said person of further liability to any requirements imposed by this Section.

SEC. 103. PROHIBITING IMPORTATION AND SALE OF GROUND SQUIRRELS.

No person or persons, firm, company or corporation shall import into the City and County of San Francisco, or shall sell, expose for sale or exchange or deliver or distribute or have in their possession any ground squirrel or squirrels within the limits of the said City and County.

SEC. 104. PENALTY.

Any person who shall violate any of the provisions of Section 103 of this Article shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than $25, and not more than $500, or by imprisonment in the County Jail for not less than 10 days and not more than 100 days, or by both such fine and imprisonment.

[The next page is 105]

ARTICLE 3: HOSPITALS

SEC. 111. INSTITUTIONS.

The Department of Public Health is hereby authorized and directed to maintain the institutions to be known as Hassler Hospital, formerly known as Hassler Health Home, Laguna Honda Hospital (for Rehabilitation and Chronic Care), formerly known as Laguna Honda Home, and San Francisco General Hospital, formerly known as San Francisco Hospital. (Added by Ord. 75-66, App. 4/11/66)

SEC. 112. EMERGENCY MEDICAL SERVICES.

The Fire Department is hereby authorized to provide emergency medical services with the approval of the Health Commission and subject to such conditions and requirements as the Health Commission may establish pursuant to Charter Section 4.110. The Department of Public Health shall determine which Fire Department personnel may provide emergency medical services and shall determine the standards, policies and medical protocols that shall govern the Fire Depart-

ment in its operations with respect to these services. Nothing herein is intended to affect the authority granted to the San Francisco Emergency Medical Services Agency, which serves as the local emergency medical services agency under State law. (Added by Ord. 171-97, App. 5/2/97)

SEC. 113. FUNCTIONS.

The functions of the institutions may include, but are not limited to, the following: (1) care of the sick and injured as in-patients, or out-patients, (2) prevention of disease and disability, (3) care of certain persons for public health necessity, (4) promotion of health, (5) education of medical personnel, nurses, and paramedical personnel, (6) advancement of research and scientific medicine. (Added by Ord. 75-66, App. 4/11/66)

SEC. 114. MENTAL HEALTH SERVICE.

A Community Mental Health Service in the City and County shall be administered by the Director of Public Health for the City and County, pursuant to the provisions of Division 8 of the Welfare and Institutions Code of the State (the Short-Doyle Act) and Chapter 15 of the San Francisco Administrative Code. The Department of Public Health is hereby authorized and directed to establish and maintain psychiatric services wherever necessary and feasible, in accordance with this Section. Such services may be established and maintained whether they are reimbursable under the Short-Doyle Act or not.

Patients shall be charged in whole or in part for services and treatment given them as provided in this Section and in accordance with their ability to pay as determined by the Director of Public Health after investigation. Maximum charges shall be as proposed by the Chief Administrative Officer, concurred in by the controller, and adopted in a resolution by the Board of Supervisors. (Added by Ord. 75-66, App. 4/11/66)

SEC. 115. ADMISSION TO HOSPITALS, ALLIED INSTITUTIONAL FACILITIES OR SERVICES OF CITY AND COUNTY.

There shall be admitted to the institutions defined in Section 111 the following:

(1) An indigent sick person or a dependent poor person of the City and County of San Francisco who possesses the required residence qualifications, upon application and after investigation and approval by the Director of Public Health.

(2) A narcotic addict or habitual inebriate temporarily in custody.

(3) A physically defective and physically handicapped person under the age of 21 years when the parents or guardian of such person are not financially able to secure proper care or treatment and when such person's admission and treatment has been duly authorized in the manner provided by law.

(4) A prisoner confined to the City and County Jail who requires medical or surgical treatment necessitating hospitalization where such treatment cannot be furnished or supplied at such jail when any court of the City and County shall have ordered the removal of such prisoner to the San Francisco General Hospital.

(5) A person in need of immediate hospitalization on account of accident or sudden sickness or injury or mental disorder or by reason of sickness or injury caused by or arising in a public emergency or calamity or disaster.

(6) A person who has or who is suspected of having any communicable disease, or a person who is or who is suspected of being a carrier or other potential source of infectious disease.

(7) A person to be isolated in the San Francisco General Hospital by order of the Health Officer because he has or is suspected of having a communicable or infectious disease or because he is or is suspected of being a carrier of such a disease.

(8) An expectant mother who is unable to pay for her necessary care.

(9) An indigent sick person or dependent poor person from another county whose care is reimbursable by the county of residence, as provided in Section 1475 of the Health and Safety Code of the State.

(10) A City and County employee who is judged by the Retirement Board to have suffered an injury arising out of and in the course of his employment by the City and County, when hospitalization is reasonably required to cure and relieve the effects of such injury.

[INTENTIONALLY LEFT BLANK]

(11) Members of the San Francisco Disaster Corps who are determined under the provisions of the State Labor Code to have suffered an injury arising out of and in the course of performance of duties as members of the San Francisco Disaster Corps, when hospitalization is reasonably required to cure and relieve the effects of such injury.

(12) Any authorized volunteer or trainee assigned by the Director of Public Health, or Administrator of an institution and (a) assisting in the care and treatment of patients in any of the said institutions, or (b) assisting under supervision in any Bureau, Division, or Service of the Department of Public Health, who is judged by the Retirement Board to have suffered injury while actually serving as such volunteer in any of such services, when hospitalization is reasonably required to cure or relieve the effects of such injury.

(13) Any juvenile committed to Log Cabin Ranch School or in custody in the Youth Guidance Center who requires medical or surgical treatment which cannot be furnished in such facility and who is adjudged by the Retirement Board to have suffered injury while actually performing duties assigned by the Chief Probation Officer of the Juvenile Court when hospitalization is reasonably required to cure or relieve the effects of such injury.

(14) Any authorized volunteer including student interns assigned by the Chief Probation Officer of the Juvenile Court and rendering volunteer service at the Youth Guidance Center or Log Cabin Ranch School who is adjudged by the Retirement Board to have suffered injury while actually performing volunteer service, when hospitalization is reasonably required to cure or relieve the effect of such injury.

(15) Any juvenile committed to Log Cabin Ranch School or in custody of Youth Guidance Center who requires medical or surgical treatment which cannot be furnished in such facility when the Juvenile Court shall have ordered removal of such juvenile person.

(16) A person sent by an Agency of the United States Government under conditions as may be contracted for between the Director of Public Health and the United States Government.

(17) A person recommended for admission to special investigative units operated solely with funds of State and/or Federal Government, pursuant to agreement therewith, and such persons shall not be subjected to a financial investigation and shall not be required to have residential qualifications.

(18) A person in need of services not readily available elsewhere in the City and County of San Francisco.

(19) Any patient who becomes mentally ill while in the San Francisco General Hospital may be transferred to the Psychiatric In-patient Service, with the approval of the Chief of that Service or his duly authorized representative.

(20) Any person suspected of being mentally ill who is in the City Prison or County Jail. Such person may be examined in those places or in any appropriate facility of the Department upon an order of any judge of the Superior and Municipal Courts for observation, examination or treatment and for return to the Prison or Jail as medically indicated.

(21) Any resident of the City and County of San Francisco suffering from mental illness may be admitted as a voluntary patient to the Psychiatric Service. Financial investigation shall be made under the rules and regulations of the Department of Public Health. Such a patient must be, at the time of making application for admission, in such a state of mind as to render him competent to make such application. Any person so received and detained shall be deemed a voluntary patient. Such patient shall not be detained in said Psychiatric Service for more than seven days after having given notice in writing of his desire to leave to the person in charge, and in no case shall a patient remain for a period longer than 90 days.

(22) Any mentally disturbed person brought into the Psychiatric Service by the police, City ambulance, relatives or friends, transferred from

any of the institutions of the City and County may be accepted for temporary hospitalization on the certification by the Chief of Psychiatric Service, or his duly authorized representative, that emergency detention is necessary. The person may be cared for and treated for a period not to exceed 72 hours, excluding Sundays and non-judicial days at which time such person shall be discharged unless a petition of mental illness is presented to a judge of the Superior Court and the Court issues an order for detention of such person, or unless he requests treatment pursuant to Subsection (21) above.

Provided, nothing in Subsections (1) to (22) inclusive hereof shall be construed as restraining the Director of Public Health from obeying or carrying out or giving effect to any law that may exist or be hereafter passed, relating to the hospitalization of patients in County institutions. (Added by Ord. 75-66, App. 4/11/66)

SEC. 115.1. PRIORITY OF ADMISSION TO INSTITUTIONS OF THE DEPARTMENT OF PUBLIC HEALTH.

Notwithstanding any other provision of this Code, any sick, disabled, or injured person may be admitted to the institutions of the Director of Public Health of the City and County of San Francisco as an in-patient or out-patient. The Director of Public Health shall give preference in the admission of patients in the following order of priority.

1. Sick or injured persons in need of emergency care.

2. Sick, medically indigent residents of the City and County of San Francisco.

3. Sick persons certified by the San Francisco Department of Social Services as eligible for benefits under Chapter 7 (commencing with Section 14000) and Chapter 8 (commencing with Section 14500) of Part 3 of Division 9 of the Welfare and Institutions Code.

4. Sick residents of the City and County of San Francisco.

5. The determination of residence under this Article shall be made in accordance with the provisions of Sections 17100 through 17105 of the Welfare and Institutions Code. (Added by Ord. 75-66, App. 4/11/66)

SEC. 116. UNIT COST.

The Director of Public Health each year shall compute the unit cost of maintaining, treating, and caring for each type of patient at the institutions and their out-patient services, the definition or classification of types of patients to be determined by the Director of Public Health. The method of said computation of unit cost with respect to each type of patient cared for in each institution shall be as approved by the Controller of the City and County of San Francisco. The unit cost so determined shall be approved by the Chief Administrative Officer and the Board of Supervisors.

Sec. 117.
(Added by Ord. 75-66, App. 4/11/66; repealed by Ord. 106-03, File No. 030624, App. 5/23/2003)

SEC. 118. CONTROLLER TO PRESCRIBE FORMS, ETC.

Pursuant to Section 64 of the Charter, the Controller shall prescribe the forms, methods, and procedure to be followed in billing said persons or their relatives under Sections 115 to 122 inclusive of this Article. (Added by Ord. 75-66, App. 4/11/66)

SEC. 119. INVESTIGATION OF PATIENTS.

All persons admitted or committed to the Hassler Hospital, Laguna Honda Hospital, or San Francisco General Hospital of the City and County of San Francisco, or who receive prehospital emergency medical services from the San Francisco Fire Department, except under provisions of Subsections (10) to (14) inclusive and (17) of Section 115 hereof, or persons who are recipients of public assistance, shall be investigated by the Director of Public Health or the San Francisco Fire Department for those who receive prehospital emergency medical services, who shall determine the financial ability of such persons to pay, in whole or in part, either directly or through relatives legally obligated to pay in whole or in part for the institutional or prehospital emergency medical service rendered.

The spouse and every relative who may be legally obligated to support an applicant or recipient of indigent aid shall furnish, within 10 days of request by the Director of Public Health and/or the San Francisco Fire Department on forms provided by the Department, information necessary to the determination of the liability of said spouse and relative, or either of them to support said applicant or recipient of aid.

Provided, however, that whenever any person admitted to the Hassler Hospital or Laguna Honda Hospital receives a total monthly income in an amount less than the actual cost of his care and from which income no personal allowance is made as a condition or term thereof, the Director of Public Health shall permit such person to retain from his said total income each month a reasonable amount to be used for his personal and incidental needs. If the source of monthly income is aid to needy disabled or old age aid or blind aid, as provided in the Welfare and Institutions Code, the amount to be retained for personal and incidental needs shall be the same as allowed by the regulations of the State of California Social Welfare Department for such personal and incidental needs.

Any person admitted to any institution who shall own a life insurance policy or policies having an actual cash surrender value of $500 or more may be required by said Director of Public Health to assign by proper written instruments said policy or policies to the City and County of San Francisco.

No provisions of this code shall constitute a waiver of the right of the City and County of San Francisco to recover the full cost of care from any person or persons able to pay therefor or from the estates of such person, where such ability is subsequently shown. (Added by Ord. 75-66, App. 4/11/66; amended by Ord. 106-03, File No. 030624, App. 5/23/2003)

SEC. 120. BILLING.

The Director of Public Health shall bill every person legally obligated to pay for institutional service rendered, and the San Francisco Fire Department shall bill every person legally obligated to pay for prehospital emergency medical services provided by Fire Department personnel, on the basis of the rates to be established as provided in Section 128 and 128.1 hereof, and to the extent of his ability to pay, in whole or in part, either directly or through relatives legally obligated to pay in whole or in part, as determined under Sections 116 to 122, inclusive, hereof.

Billing to patients at the Institutions may consist of a direct charge against the patient's Home Trust Fund Account or Patient's Account in the amount established by his ability to pay as provided in Section 119.

Such billing shall include costs and fees application under the provisions of Section 5201 of the Welfare and Institutions Code of the State of California relative to proceedings and medical examiners' fees for the mentally ill. (Added by Ord. 75-66, App. 4/11/66; amended by Ord. 106-03, File No. 030624, App. 5/23/2003)

SEC. 120.1. FEES FOR EMERGENCY MEDICAL SERVICES WAIVED.

(a) The San Francisco Fire Department shall waive its fee for Emergency Medical Services if the patient and/or any other person legally obligated to pay provides the Department with reliable information that:

1. The patient and/or any other persons who are legally obligated to pay have insufficient annual income to pay the bill without undue hardship. The Fire Department shall define "insufficient income" but may not define it at a rate less than 300% of the Federal Poverty Level as set forth in the Federal Register; and

2. The patient is not covered by an insurance that would pay for the services and cannot obtain MediCal or MediCare.

(b) The Fire Department has the sole authority to determine whether the information provided supports a waiver of the fee. (Added by Ord. 185-05, File No. 050993, App. 7/29/2005)

SEC. 121. BILLING TO COUNTY OF RESIDENCE.

The care of all persons admitted to the several institutions enumerated herein under the

provisions of Section 115(9) hereof, shall be billed under provisions of the Health and Safety Code of the State of California, Section 1475, unless a reciprocal agreement between the County of Residence and City and County of San Francisco is in existence pursuant to Section 1475 of the State Health and Safety Code. (Added by Ord. 75-66, App. 4/11/66)

SEC. 122. BILLING TO RETIREMENT SYSTEM.

The care of all persons admitted to the several institutions enumerated herein under the provisions of Subsections (10) to (14), inclusive of Section 115, hereof, shall be billed to the City and County of San Francisco Employees' Retirement System. (Added by Ord. 75-66, App. 4/11/66)

SEC. 123. PENALTY.

Every person who knowingly, fraudulently and designedly conceals or withholds any information concerning his financial condition or means or ability to pay or concerning other conditions, or who knowingly makes or causes to be made, either directly or indirectly or through any agency whatsoever, any false statement in writing, with intent that it shall be relied upon, respecting the financial condition or means or ability to pay of himself or any other person in whom he is interested, or for whom he is acting, for the purpose of gaining admission to and receiving care and treatment in the institutions, shall be guilty of a misdemeanor, punishable by a fine of not more than $500, or by imprisonment in the County Jail for not more than six months, or by both such fine and imprisonment.

Said person, in addition the penalties hereinabove set forth, shall be billed by the institution rendering said services for the full amount of the cost of such institutional care and treatment, thus fraudulently obtained, in accordance with the basic rates, legally established and determined therefor. (Added by Ord. 75-66, App. 4/11/66)

SEC. 124. REIMBURSEMENT FOR AID GRANTED.

Every person; except persons enumerated in Subsections (10) to (14) inclusive, and Section (17) of Section 115 hereof, and persons found to be exempt from liability for benefits under the provisions of Chapter 7 or Chapter 8, Part 3, Division 9 of the Welfare and Institutions Code of the State of California, who is given or shall receive aid directly or indirectly from public monies drawn through the Treasury of the City and County of San Francisco, shall be liable to the extent of his ability to pay as determined by Section 119 hereof, for the value of said aid so allowed, granted, or given, and if any of said aid granted to said person is for injury sustained by reason of an accident or wrongful act, the value of aid shall, if said person or other persons entitled to bring such action asserts or maintains a claim against another for damages on account of his or her injury or because of his or her death, constitute a lien upon the damages recovered, or to be recovered, either by judgment, settlement or compromise by said person, or by his or her heirs or personal representative in case of his or her death, or other persons lawfully entitled to a cause of action because of his or her death. (Amended by Ord. 304-80, App. 6/27/80; Ord. 355-90, App. 10/17/90)

SEC. 124.1. VALUE OF AID RENDERED.

The actual cost of the aid shall constitute its value. The rates established by the Board of Super-visors pursuant to Section 128 and 128.1 hereof for aid granted or given to persons at the institutions or by the San Francisco Fire Department shall constitute prima facie evidence of the reasonableness of said charge and the resulting amount which shall be due to the City and County of San Francisco. (Added by Ord. 75-66, App. 4/11/66; amended by Ord. 106-03, File No. 030624, App. 5/23/2003)

SEC. 124.2. AGREEMENT TO REIMBURSE.

As a consideration for the allowing, granting or giving of aid, the officer, board, or commission shall take from every person receiving aid except for persons enumerated in Subsections (10) to (14), inclusive, and (17) of Section 115, hereof the following agreement:

"AGREEMENT TO REIMBURSE

"In consideration of the granting of aid to me by the City and County of San Francisco, I hereby pledge, promise and agree to reimburse and repay said City and County all sums of money actually expended in my behalf or aid granted or given by the City and County of San Francisco for my care and maintenance, provided I am able to pay for the same in whole or in part, and I further agree that if any of said aid consists of care and treatment for injury sustained by me by reason of accident or wrongful act, the value of such aid shall be, if I assert or maintain a claim against another for damages on account of said injury, a lien upon any damages recovered, or to be recovered, either by judgment, settlement or compromise by myself, or by my heirs or personal representative in case of my death.

"I further agree that if and when I enter Laguna Honda Hospital or Hassler Hospital as a patient therein, I shall deposit in the Home Trust Fund an amount not less than the sum fixed for payment by toward cost of such institutional care as determined by my ability so to pay, and which sum I hereby expressly agree to pay; and I further agree that a direct charge against my Home Trust Fund account in that amount may be made by the said hospital at the completion of each month or portion of a month during the time I remain therein to discharge this obligation to pay, as aforesaid.

"For valuable consideration, I hereby assign to the San Francisco General Hospital the amount equal to the total cost of care rendered to me (or the total amount due to me if the amount thus due be less than the total amount of the cost of care rendered to me) from any monies due or to become due to me under my insurance policies, including any hospital benefits payable from the California State Disability Program or any private carrier in lieu thereof, and hereby authorize you to make such payment directly to said San Francisco General Hospital.

"This agreement is binding upon myself, my heirs, executors, administrators and assigns.

"The foregoing agreement is executed on the express condition, and with the understanding that it shall be binding on the applicant only in the event that he (or she) is found to be exempt from liability for such benefits under the provisions of Chapter 7 or Chapter 8, Part 3, Division 9, Welfare and Institutions Code of the State of California and that it shall be null and void if the applicant is found to be exempt from liability for such benefits.

Dated this _____ day of 197____

Witness _____

Witness _____

Signature of Applicant in full

_____"

SEC. 124.3. EVALUATION OF INSTITUTIONAL CARE—LAGUNA HONDA HOSPITAL.

The Controller of the City and County of San Francisco shall prescribe the procedure governing the evaluation of institutional care at the Laguna Honda Hospital, the auditing, accounting, reporting and collecting of all obligations arising under Sections 124 to 124.4, inclusive, hereof in accordance with the provisions of Section 64 and 75 of the Charter. (Added by Ord. 75-66, App. 4/11/66)

SEC. 124.4. LIENS.

Any lien created by the provisions of Section 124 of this Article upon damages recovered, or to be recovered by a recipient of aid, shall be referred to the Bureau of Delinquent Revenue for collection pursuant to the provisions of Chapter 10, Article V, of the San Francisco Code. (Amended by Ord. 155- 68; App. 6/13/68; Ord. 386-89, App. 10/25/89)

SEC. 124.5. LIENS ON ACTIONS AGAINST THIRD PARTY.

(a) As used in this section:

(1) "Recipient" means any person who has received medical care or hospitalization or will be provided medical care or hospitalization rendered by the San Francisco Department of Public Health or the San Francisco Fire Department

because of an injury for which another person may be liable. This term includes the recipient's guardian, conservator, other personal representative, estate, or survivors, including any heir, as defined in California Code of Civil Procedure Section 377, who is a party in a cause of action arising out of the death of the person who received the medical care or hospitalization.

(2) "Action" means any cause of action demanding payment of damages filed in any court, or with any public agency, including but not limited to any application for compensation under the Workers Compensation Act of the California Labor Code, or with a private adjudicator, including but not limited to a private arbitrator or mediator, arising out of the injuries that resulted in the medical care or hospitalization of the recipient. This term also includes any cause of action arising out of the death of the recipient from such injuries.

(3) "Claim" means any demand by the recipient for damages against another, including but not limited to any written demand by the recipient for payment under the provisions of any insurance contract providing for payment to injured persons, including payment from the recipient's insurance carrier or the third party's insurance carrier or both carriers.

(b) When any recipient, as defined in Subsection (a)(1) of this section, asserts an action or claim for damages against a third party or insurance carrier based upon an injury requiring medical care, the cost of the medical care shall constitute a lien in favor of the City and County of San Francisco upon any such recovery received by the recipient.

(c) When any recipient who has been billed for the cost of medical care rendered by the San Francisco Department of Public Health or the San Francisco Fire Department fails to pay in full for such care and asserts an action or claim for damages against a third party or insurance carrier, the recipient's attorney retained to assert the action or claim shall provide written notice of such action or claim by personal delivery or first-class mail to the Bureau of Delinquent Revenue Collection in the Office of the Treasurer-Tax Collector within 10 days of asserting such action or claim. Such notice by the retained attorney to the Bureau of Delinquent Revenue Collection shall adequately identify the recipient, and his or her action or claim, including the name of the insurance carrier against which claim has been made, or the court or state or local agency in which the action or claim is asserted, in order to allow the Bureau of Delinquent Revenue Collection to prepare and file the lien as authorized by Subsection B of this section. In addition, if the recipient as defined in Subsection (a)(1) of this section does not retain an attorney to assert the action or claim, he or she shall give the same notice as described in this subsection. A mailed billing statement sent by the San Francisco Department of Public Health, the San Francisco Fire Department or the Bureau of Delinquent Revenue Collection to the address of the recipient as given on the medical records shall constitute prima facie evidence of knowledge by the recipient of such billing for medical care.

(d) When the Bureau of Delinquent Revenue Collection has perfected a lien upon a judgment, award, or settlement in favor of a recipient against any third party or third-party insurance carrier for an injury for which the recipient has received medical care from the San Francisco Department of Public Health or the San Francisco Fire Department, the Bureau of Delinquent Revenue Collection as lien claimant shall be entitled to foreclose its lien against any proceeds from such judgment, award, or settlement to enforce payment of the lien against the third party or third-party insurance carrier, with interest at the legal rate. If the amount of such judgment, award, or settlement so recovered has been paid to the recipient, as defined in Subsection (a)(1) of this section, or to his or her attorney retained to assert the action or claim, the Bureau of Delinquent Revenue Collection shall be entitled to foreclose its lien against the proceeds received by such recipient, recipient's agent, recipient's transferee, or against the retained attorney if he or she has received such payment, to the extent of the San Francisco Department of Public Health's or the San Francisco Fire

Department's or the Bureau of Delinquent Revenue Collection's lien, with interest at the legal rate.

(e) The failure by the attorney retained by the recipient, as defined in Subsection (a)(1) of this section, to give notice to the Bureau of Delinquent Revenue Collection in the Office of the Treasurer-Tax Collector regarding the recipient's action or claim for damages against a third party or insurance carrier after the recipient has received a billing for medical care from the San Francisco Department of Public Health, the San Francisco Fire Department or the Bureau of Delinquent Revenue Collection shall constitute fraud and deceit by the retained attorney. Likewise, the failure by any recipient, as defined in Subsection (a)(1) of this section, to give such notice as described in this subsection after receiving a billing for medical care from the San Francisco Department of Public Health or by the recipient. In addition, either the recipient or the recipient's attorney retained to assert such action or claim who receives any payment from the third party or insurance carrier resulting from the assertion of such action or claim and who fails to apply such payment toward the satisfaction of the outstanding bill for medical care shall be liable as a constructive trustee for all damages that may be awarded by any court to the City and County of San Francisco for breach of constructive trustee duties and responsibilities.

(f) Commencing 30 days after the enactment of this ordinance, the affected medical facilities of the San Francisco Department of Public Health and the San Francisco Fire Department shall make every reasonable effort where feasible to include a statement in English, Spanish, and Chinese with every billing setting out the notice requirement, as described in Subsection (c) of this section, imposed on the recipient's retained attorney, or if there is no retained attorney, imposed on the recipient, regarding any action or claim for recovery asserted against a third party or insurance carrier. The statement shall read:

"IMPORTANT: If your attorney or you alone demand money from another person or insurance company because of your injuries and you have not paid this bill in full, your attorney or you must notify: The Bureau of Delinquent Revenue Collection, City Hall, Room 107, San Francisco, California 94102. Failure to notify the Bureau within 10 days of making your demand may result in civil liability for your attorney or you. S.F. Health Code Section 124.5." (Added by Ord. 355-90, App. 10/17/90; amended by Ord. 106-03, File No. 030624, App. 5/23/2003)

SEC. 125. CHIEF ADMINISTRATIVE OFFICER AUTHORIZED TO CONTRACT WITH OTHER HOSPITALS.

When adequate facilities are not available in any of the institutions enumerated in Section 111 of this Article, the Chief Administrative Officer may contract with other hospitals for the admission and care of persons enumerated in Section 115 of this Article, for in-patient or out-patient care. The Chief Administrative Officer shall not enter into any such agreement until after the Board of Supervisors has made an appropriation to provide funds for the payment to such hospitals, and the rates agreed to be paid such hospitals in any such agreement for in-patient care shall not exceed the cost of maintaining and caring for like classes of person at the San Francisco General Hospital. In any such agreement for out-patient care other than psychiatric care the rates agreed to be paid each hospital shall not exceed said hospital's actual costs or $12, whichever is the lesser as determined and approved by the Controller of the City and County of San Francisco. In any such agreement for out-patient psychiatric care the rates agreed to be paid each hospital shall not exceed said hospital's actual costs or $16, whichever is the lesser as determined and approved by the Controller of the City and County of San Francisco. (Amended by Ord. 149-66, App. 6/22/66)

SEC. 126. PROFESSIONAL FEE OF PHYSICIANS AND DENTISTS.

Any licensed physician or dentist who is a member of the medical or dental staff of any of the institutions maintained by the Department of Public Health, except an intern or resident,

may charge and collect professional fees for direct medical or dental care furnished by him to any patient in an institution of the Department of Public Health, provided said patient is able to pay or carries sickness or accident insurance or medical expense indemnity insurance or is eligible for health care and related remedial or preventive service care under Public Law 89-97 of the United States (the 1965 Amendment to the Social Security Act) or Chapters 7 and 8 of Part 3 of Division 9 of the Welfare and Institutions Code, except as provided in Section 150 of the Charter. (Added by Ord. 247-66, App. 9/19/66)

SEC. 127. DISPOSAL OF UNCLAIMED PERSONAL PROPERTY AT LAGUNA HONDA HOSPITAL.

(a) **Definition Unclaimed Property.** Personal property left at Laguna Honda Hospital for a period of more than 90 days after the patient has left the Hospital shall be considered unclaimed personal property.

(b) **Disposition of Unclaimed Personal Property.** Such unclaimed personal property shall be disposed of according to the following procedure:

(1) Notice shall be sent by certified mail to the former patient at his last known address advising that such unclaimed personal property must be claimed within 30 days.

(2) Such unclaimed personal property as remains after 30 days' notice to reclaim it shall be disposed of as follows:

A. Any sums of money which remain over and above Laguna Honda's charges shall be transmitted to the Controller of the City and County of San Francisco for deposit in the General Fund.

B. Other unclaimed personal property shall be delivered to the Purchaser of Supplies for disposition as provided for in Section 7.100 of the Charter of the City and County of San Francisco.

C. Proceeds derived from the sale of unclaimed property are to be deposited with the City Treasurer and used exclusively for such items that may be of general benefit for the patients of Laguna Honda Hospital and which are not provided for them by any other appropriation. (Added by Ord. 277-73, App. 7/13/73)

SEC. 128. PATIENT RATES.

(a) The Board of Supervisors of the City and County of San Francisco does hereby determine and fix the proper reasonable amounts to be charged to persons for services furnished by the Department of Public Health as follows, which rates shall be effective for services delivered as of July 1, 2007.

TYPE OF SERVICE	UNIT	AMOUNT
COMMUNITY HEALTH NETWORK		
San Francisco General Hospital		
In General		
Surgical Supplies		Special Price List
Pharmacy (IP)		Special Price List
Medical Supplies		Special Price List
Diagnostic Radiology		Special Price List
Clinical Lab		Special Price List
Anatomic Pathology		Special Price List
Surgical Services—Women's Options	Procedure	Special Price List
All Other Special Services		Special Price List
In-Patient Care		
Medical Surgical	Day	$ 3,625.00
Intensive Care	Day	7,248.00
Intensive Care - Trauma	Day	7,248.00
Coronary Care	Day	7,248.00
Chest-Pulmonary	Day	6,040.00

TYPE OF SERVICE	UNIT	AMOUNT
COMMUNITY HEALTH NETWORK		
San Francisco General Hospital		
Stepdown Units	Day	5,235.00
Pediatrics	Day	3,625.00
Obstetrics	Day	3,625.00
Nursery		
Newborn	Day	1,852.00
Observation/Well Baby	Day	3,221.00
Semi-Intensive Care	Day	4,831.00
Intensive Care	Day	7,248.00
Labor/Delivery—6G	Day	2,870.00
Labor/Delivery Hours of Stay	Hour	161.00
Psychiatric Inpatient	Day	3,625.00
Psychiatric Forensic Inpatient—7L	Day	3,625.00
AIDS Unit—5A	Day	3,625.00
Security Unit—7D	Day	3,625.00
Skilled Nursing Facility	Day	1,450.00
Mental Rehab Unit	Day	1,198.00
Adult Residential Facility	Day	242.00
Respiratory Therapy		
O^2 Therapy	Hour	15.00
Surgical Services		
Minor Surgery I (Come & Go)	1st Hour	1,898.00
	Ea. Add'l ½ Hour	967.00
Minor Surgery II	1st Hour	2,072.00
	Ea. Add'l ½ Hour	1,033.00
Major Surgery I	1st Hour	3,119.00
	Add'l ½ Hour	1,247.00
Major Surgery II	1st Hour	3,513.00
	Add'l ½ Hour	1,406.00
Major Surgery III	1st Hour	3,909.00
	Add'l ½ Hour	1,564.00
Extraordinary Surgery	1st Hour	4,290.00
	Add'l ½ Hour	1,716.00
Surgery (2 Teams)	1st Hour	6,061.00
	Add'l ½ Hour	2,424.00
Surgery (3 Teams)	1st Hour	7,803.00
	Add'l ½ Hour	3,122.00
Major Trauma III	First Hour	6,149
	Add'l ½ Hour	2,460.00
Major Trauma II	First Hour	4,831.00
	Add'l ½ Hour	1,933.00
Major Trauma I	First Hour	3,675.00
	Add'l ½ Hour	1,470.00
Recovery Room	1st Hour	1,209.00
	2nd Add'l Hour	967.00
	Each Add'l Hour	725.00
Anesthesia	First Hour	2,715.00

TYPE OF SERVICE	UNIT	AMOUNT
COMMUNITY HEALTH NETWORK		
San Francisco General Hospital		
Anesthesia	Each Add'l 15 Minutes	677.00
Trauma Care		
Trauma Activation—Level 2	Visit	10,249.00
Trauma Activation—Level 1	Visit	5,125.00
Consultation	Visit	3,025.00
Trauma Activation Pediatric—Level 2	Visit	10,249.00
Trauma Activation Pediatric—Level 1	Visit	5,125.00
Pediatric—Consultation	Visit	3,025.00
Emergency Clinic		
Level I	Room	250.00
Level II	Room	790.00
Level III	Room	1,521.00
Level IV	Room	2,277.00
Level V	Room	4,597.00
Resuscitation		3,185.00
Psychiatric Emergency Services		
Crisis Intervention—PES		660.00
Crisis Stabilization—PES		146.00
General Clinic		
Initial		
E/M Focused Exam	Visit	167.00
E/M Expanded Exam	Visit	279.00
E/M Detailed Exam	Visit	319.00
E/M Comprehensive Exam	Visit	426.00
E/M Complex Exam	Visit	532.00
Established Patient		
E/M Brief Exam	Visit	123.00
E/M Focused Exam	Visit	146.00
E/M Expanded Exam	Visit	194.00
E/M Detailed Exam	Visit	274.00
E/M Comprehensive Exam	Visit	426.00
Consultation		
E/M Focused Consult	Visit	140.00
Medical Marijuana		
Medical Marijuana ID	Card	103.00
Medical Marijuana ID (Medi-Cal)	Card	52.00
Primary Care		
Initial		
E/M Focused Exam	Visit	184.00
E/M Expanded Exam	Visit	228.00
E/M Detailed Exam	Visit	330.00
E/M Comprehensive Exam	Visit	410.00
E/M Complex Exam	Visit	644.00
Established Patient		
E/M Brief Exam	Visit	88.00
E/M Focused Exam	Visit	132.00

TYPE OF SERVICE	UNIT	AMOUNT
COMMUNITY HEALTH NETWORK		
San Francisco General Hospital		
E/M Expanded Exam	Visit	213.00
E/M Detailed Exam	Visit	330.00
E/M Comprehensive Exam	Visit	388.00
Dental Services		
Initial Complete Exam	Visit	81.00
Periodic Exam	Visit	81.00
Prophylaxis—Adult	Visit	110.00
Prophylaxis—Child	Visit	103.00
Extract Single Tooth	Visit	161.00
One Surface, Permanent Tooth	Visit	132.00
Home Health Services		
Skilled Nursing	Visit	250.00
Home Health Aide Services	Visit	132.00
Medical Social Services	Visit	345.00
Physical Therapy	Visit	287.00
Occupational Therapy	Visit	287.00
Speech Therapy	Visit	285.00
Laguna Honda Hospital		
Regular Hospital Rates		
Acute	Day	2,555.00
Rehabilitation	Day	2,555.00
Skilled Nursing Facility	Day	546.00
All Inclusive Rates		
Acute	Per Diem	3,354.00
Rehabilitation	Per Diem	2,795.00
Skilled Nursing Facility	Day	636.00

TYPE OF SERVICE	UNIT	AMOUNT
POPULATION HEALTH & PREVENTION		
Community Mental Health Services		
24-Hour Service		
Inpatient	24 Hours	$3,625.00
Skilled Nursing	24 Hours	1,198.00
Psychiatric Health Facility (PHF)	24 Hours	605.00
Crisis Residential	24 Hours	355.00
Residential	24 Hours	175.00
Day Services		
Day Rehabilitation	Full Day	155.00
Day Rehabilitation	Half Day	100.00
Day Treatment Intensive	Full Day	240.00
Day Treatment Intensive	Half Day	170.00
Day Treatment Intensive (Children)	Full Day	350.00
Day Treatment Intensive (children)	Half Day	250.00
Crisis Stabilization	Hour	146.00
Socialization	Hour	50.00
Outpatient Services		
Case Management Brokerage	Hour	145.00
Mental Health Services	Hour	190.00
Therapeutic Behavioral Services	Hour	190.00
Medication Support	Hour	340.00
Crisis Intervention	Hour	285.00
Other Services		Special Price List
Community Substance Abuse Services		
Residential—Detoxification	24 Hours	130.00
Residential—Basic	24 Hours	125.00
Residential—Family	24 Hours	200.00
Residential—Medical Support	24 Hours	295.00
Recovery Home	24 Hours	105.00
Therapeutic Community	24 Hours	120.00
Day Care—Rehabilitative	Per Visit	145.00
Outpatient—Individual Counseling	Per Visit	145.00
Outpatient—Group Counseling	Per Visit	75.00
Prevention/Intervention	Hour	70.00
Methadone	Per Day	37.00
Buprenorphine	Per Day	65.00
Naltrexone	Per Visit	60.00
Levoalphacethimethadol (LAAM)	Per Dose	60.00
Narcotic Treatment Program—Individual Counseling	Per 10 minutes	37.00
Narcotic Treatment Program—Group Counseling	Per 10 minutes	11.00

TYPE OF SERVICE	UNIT	AMOUNT
POPULATION HEALTH & PREVENTION		
Vital Records		
Birth Certificate	Per Certificate	Rates Per State of California
Death Certificate	Per Certificate	Rates Per State of California
Permit—Disposition of Human Remains	Per Permit	Rates Per State of California
Out-of-County Cross File Fee	Per Certificate	Rates Per State of California
Letter of Non-Contagious Disease	Per Letter	10.00
Expedited Registration of Vital Event	Per Event	40.00
Expedited Documents	Per Delivery	Market Rate + 15.00
Reproduction of Documents	Per Page	2.00
ADULT IMMUNIZATION CLINIC		
Vaccines		
Hepatitis A	Per injection	58.00
Hepatitis B	Per injection	65.00
Influenza	Per injection	27.00
FluMist	Per Dose	35.00
Other Vaccines	Per injection	Special Price List

(b) Beginning with fiscal year 2007-2008, no later than April 15 of each year, the Controller shall adjust the fees provided in this Article to reflect changes in the relevant Consumer Price Index, without further action by the Board of Supervisors. In adjusting the fees, the Controller may round up or down these fees to the nearest dollar, half-dollar or quarter-dollar. The Director shall perform an annual review of the fees scheduled to be assessed for the following fiscal year and shall file a report with the Controller no later than May 1st of each year, proposing, if necessary, an adjustment to the fees to ensure that they do not produce significantly more revenue than required to cover the costs of operating the program. The Controller shall adjust fees when necessary to ensure that fees do not recover significantly more than estimated cost. (Added by Ord. 313-96, App. 8/8/96; amended by Ord. 332-97, App. 8/19/97; Ord. 278-98, App. 8/28/98; Ord. 236-99, File No. 991389, App. 8/27/99; Ord. 20-00, File No. 000043, App. 2/11/2000; Ord. 218-00, File No. 001337, App. 9/8/2000; Ord. 13-01, File No. 002148, App. 1/26/2001; Ord. 173-01, File No. 011220, App. 8/10/2001; Ord. 151-02, File No. 021073, App. 7/12/2002; Ord. 34-03, File No. 030167, App. 3/13/2003; amended by Ord. 189-03. File No. 030986, App. 7/25/2003; Ord. 185-04, File No. 040748, App. 7/22/2004; Ord. 178-05, File No. 050985, App. 7/29/2005; Ord. 197-06, File No. 060782, App. 7/21/2006; Ord. 195-07, File No. 070810, App. 8/3/2007)

SEC. 128.1. PATIENT RATES/FIRE DEPARTMENT EMS SERVICES.

(a) The Board of Supervisors approves the following fee schedule for Fire Department ambulance services and emergency medical service supplies for fiscal year 2003-2004.

1. Emergency Medical Services

Treatment without Transportation, a base rate fee of $195.00 per call

Basic Life Service, a base rate fee of $700.00 per call

Advanced Life Service, a base rate fee of $850.00 per call

Mileage, an additional fee above the base rate of $15.00 per mile

2. Emergency Medical Supplies

Supplemental charges for supplies will be assessed at a flat fee of $20.00 per incident.

(b) Beginning with Fiscal Year 2005-2006, the fees set in this section may be amended without further action by the Board of Supervisors, to reflect changes in the Medical Consumer Price Index as determined by the Controller. No later than April 15th of each year, the Fire Department shall submit its current fee schedule to the Controller, who shall apply the price index adjustment to produce a new fee schedule for the following year.

(c) No later than May 15th of each year, the Controller shall file a report with the Board of Supervisors reporting the new fee schedule and certifying that: (a) the fees produce sufficient revenue to support the costs of providing the services for which each fee is assessed, and (b) the fees do not produce revenue which is significantly more than the costs of providing the services for which each fee is assessed. (Added by Ord. 106-03, File No. 030624, App. 5/23/2003; amended by Ord. 185-05, File No. 050993, App. 7/29/2005)

SEC. 129. CHARITY CARE POLICY REPORTING AND NOTICE REQUIREMENT.

Declaration of policy. It is the policy of the City and County of San Francisco that charity care—medical care provided to those who cannot afford to pay and without expectation of reimbursement—is a vital portion of community health care services. While San Francisco General Hospital is the primary provider of charity care services in San Francisco, private hospitals also have a responsibility to serve uninsured and poor patients. Nonprofit hospitals in particular have an obligation to provide community benefits in the public interest in exchange for favorable tax treatment by the government. It is essential that, on an ongoing basis, the City and County of San Francisco evaluate the need for charity care in the community given the City's responsibility to provide care to indigents. To plan for the continuing fulfillment of this responsibility, the City needs information from the hospitals in San Francisco on each hospital's policies on the availability of and criteria for charity care. For planning purposes, the City also needs information on the amount of charity care provided by each hospital. Upon receipt of such information, the City can better fulfill its mandate to provide care to indigents and fashion an appropriate response to unmet needs for charity care including the recommendation of budgetary, regulatory or other action at the State and Federal levels.

To maximize the access to charity care within the community and to enhance the health of the public by informing individuals of the availability of charity care, it is further the policy of the City and County of San Francisco that each hospital notify patients of that hospital's policies on charity care. Such notice shall include visually prominent multilingual postings explaining the hospital's policy on charity care. It shall also be the policy of the City and County of San Francisco to require hospitals, when practicable, to verbally notify patients at the time of admission as to the availability of charity care and the process for applying or qualifying for such care. (Added by Ord. 163-01, File No. 010142, App. 7/20/2001)

SEC. 130. DEFINITIONS.

For purposes of Sections 129—137 of Article 3, certain words and phrases shall be construed as hereafter defined. Words in the singular include the plural, and words in the plural shall include the singular. Words in the present tense shall include the future. Masculine pronouns include feminine meaning and are not gender-specific.

(a) **Bad Debt.** The term "Bad Debt" means the unpaid accounts of any person who has received medical care or is financially respon-

sible for the cost of care provided to another, where such person has the ability to pay but is unwilling to pay.

(b) **Charity Care.** The term "Charity Care" means emergency, inpatient or outpatient medical care, including ancillary services, provided to those who cannot afford to pay and without expectation of reimbursement and that qualifies for inclusion in the line item "Charity-Other" in the reports referred to in Section 128740(a) of the California Health and Safety Code, after reduction by the Ratio of Costs-to-Charges.

(c) **Cost.** The term "Cost" means the actual amount of money a hospital spends to provide each service, but not the full list price charged by the hospital for that service.

(d) **Department.** The term "Department" means the Department of Public Health of the City and County of San Francisco.

(e) **Director of Health.** The term "Director of Health" includes the Director of Health or a designee.

(f) **Hospital.** The term "Hospital" includes every entity in San Francisco licensed as a general acute care hospital, as defined by Section 1250(a) of the California Health and Safety Code, other than hospitals exempt from taxation under Section 6.8-1 of the San Francisco Business and Tax Regulations Code. For purposes of Section 131, the term "Hospital" shall also not include hospitals owned and operated by a nonprofit system that does not provide a significant level of service on a fee-for-service basis and whose annual financial statement is consolidated with a nonprofit health maintenance organization, filed with the California Department of Managed Health Care.

(g) **Policies.** The term "policies" means the hospital's criteria and procedures on the provision of charity care including any criteria and procedures for patient and community notification of charity care availability, the application or eligibility process, the criteria for determinations on eligibility for charity care and the appeal process on such determinations, and the hospital's internal accounting procedures for charity care.

(h) **Ratio of Cost-to-Charge.** The term "Cost-to-Charge" shall have the same meaning as that given by the Office of Statewide Health Planning and Development in the reports referred to in Section 128740(a) of the California Health and Safety Code and describes the relationship between the hospital's cost of providing services and the charge assessed by the hospital for the service. (Added by Ord. 163-01, File No. 010142, App. 7/20/2001)

SEC. 131. REPORTING TO THE DEPARTMENT OF PUBLIC HEALTH.

(a) Hospitals shall disclose to the Department of Public Health the following information in the form of reports to be filed annually with the Department within 120 days after the end of each hospital's fiscal year.

1. The dollar amount of charity care provided during the prior year as specified by the Department, after adjustment by the Cost-to-Charge ratio. Each hospital shall file a calculation of its Ratio of Costs-to-Charges with its report. Figures representing bad debt shall not be included in the amount reported.

2. The total number of applications, patient and third party requests for charity care, and the total number of hospital acceptances and denials for charity care received and decided during the prior year; the zip code of each patient's residence on each such acceptance and denial, and the number of individuals seeking, applying, or otherwise eligible for charity care who were referred to other medical facilities along with the identification of the facility to which the individuals were referred.

3. The total number of patients who received hospital services within the prior year reported as being charity care and whether those services were for emergency, inpatient or outpatient medical care, or for ancillary services.

4. All charity care policies, including but not limited to explanations regarding the availability of charity care and the time periods and procedures for eligibility, application, determination, and appeal; any application or eligibility

forms used, and the hospital locations and hours at which the information may be obtained by the general public.

5. Such other information as the Department shall require. (Added by Ord. 163-01, File No. 010142, App. 7/20/2001)

SEC. 132. NOTIFICATION.

(a) During the admission process whenever practicable, hospitals shall provide patients with verbal notification as to the hospital's policies describing the availability of charity care and any process necessary to apply for charity care.

(b) Hospitals shall post multilingual notices as to any policies on charity care in several prominent locations within the hospital, including but not limited to the emergency department, billing office, waiting rooms for purposes of admissions, the outpatient area, and the inpatient area. Said notices shall be published in at least the following languages—English, Spanish, and Chinese; and shall be clearly visible to the public from the location where they are posted. (Added by Ord. 163-01, File No. 010142, App. 7/20/2001)

SEC. 133. AUTHORITY TO ADOPT RULES AND REGULATIONS.

The Director may issue and amend rules, regulations, standards, or conditions to implement this ordinance. The Director is authorized to implement the provisions of this ordinance, including any rules, regulations, standards, or conditions issued hereunder. (Added by Ord. 163-01, File No. 010142, App. 7/20/2001)

SEC. 134. ENFORCEMENT.

Any hospital which fails to comply with the reporting or notification requirements specified in this ordinance or in the rules and regulations of the Department may be liable for a civil penalty, in an amount not to exceed $500 for each day the violation continues. The penalty shall be assessed and recovered in a civil action brought on behalf of the City and County of San Francisco. Any monies recovered pursuant to this section shall be deposited in the Treasury of the City and County of San Francisco and appropriated for use by the Department of Public Health. (Added by Ord. 163-01, File No. 010142, App. 7/20/2001)

SEC. 135. CITY UNDERTAKING LIMITED TO PROMOTION OF GENERAL WELFARE.

In undertaking the adoption and enforcement of this ordinance, the City and County is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury. (Added by Ord. 163-01, File No. 010142, App. 7/20/2001)

SEC. 136. SEVERABILITY.

If any part or provision of this ordinance, or the application thereof to any person or circumstances, is held invalid, the remainder of the ordinance, including the application of such part or provision to the other persons, or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this ordinance are severable. (Added by Ord. 163-01, File No. 010142, App. 7/20/2001)

SEC. 137. PREEMPTION.

Nothing in these sections shall be interpreted or applied so as to create any power, duty or obligation in conflict with any Federal or State law. (Added by Ord. 163-01, File No. 010142, App. 7/20/2001)

SEC. 138. ANNUAL REPORT TO THE HEALTH COMMISSION.

The Department shall make a report on an annual basis to the Health Commission on the information obtained from the hospitals for use including but not limited to future planning on the Department's provision of care to the community. (Added by Ord. 163-01, File No. 010142, App. 7/20/2001)

SEC. 139. WRITTEN INFORMED CONSENT AND PRE-TEST COUNSELING PRIOR TO HIV TESTING.

(a) The Board of Supervisors encourages the San Francisco Department of Pubic Health to modify the San Francisco General Hospital

Medical Center's policies and procedures to require that providers obtain written informed consent from and provide pre-test counseling to patients consistent with State and Federal law, before administering an HIV antibody test to such patients.

(b) Written informed patient consent may consist of documentation by the provider in the patient's medical record if such consent satisfies State and Federal law. (Added by Ord. 144-06, File No. 060702, App. 6/22/2006)

[INTENTIONALLY LEFT BLANK]

ARTICLE 4: DECEASED PERSONS

SEC. 185. DEATHS FROM CRIMINAL CAUSES.

It shall be unlawful for any person to perform, or assist in performing, any autopsy or other post-mortem examination upon the body of any person who has died suddenly or whose death has resulted from injury, or upon the bodies of persons found under such circumstances as to lead to a suspicion of crime having been committed, or in cases of accidental deaths or suicides, or under any other circumstances in which it is the duty of the Coroner to sign the certificate of death, unless a permit to perform such autopsy or post mortem examinations has been issued by the Coroner.

It shall be unlawful for any person to remove, or aid in removing, the body of any deceased person from the place where the death of such person has occurred unless permission to remove said body has been granted by the Director of Public Health, or unless a regularly licensed physician who has been in attendance upon the deceased for not less than 24 hours next prior to death shall have certified that the death was not directly or indirectly the result of criminal causes, and that it did not occur under circumstances making the death reportable to the Coroner.

It shall be unlawful to move from the position or place of death the body of any person who died under circumstances making such death reportable to the Coroner except with permission of the Coroner, unless said body is directly in the public view, or unless death occurred in a hospital where the person had been taken for treatment of the condition which caused death in which case said body may be moved to another place in the same hospital.

It shall be unlawful for any person, except upon authorization by the Coroner or Department of Public Health, to dispose of or in any manner to aid in the disposal of, whether by burial, dissection or otherwise, the body or parts thereof of any persons whose death has resulted from the performance or an effort to perform a criminal abortion.

It shall be unlawful for any person to obtain, or induce or assist others in obtaining or attempting to secure, from the proper authorities any permit to inter, remove or otherwise dispose of the remains of any deceased person unless the person desiring such permit presents to the Department of Public Health a certificate of death which clearly and truthfully shows the name and age of decedent and the precise location where the death occurred; if the same has been caused by criminal abortion, either as a direct or indirect consequence, the certificate shall so state.

SEC. 186. DUTY TO REPORT DEATH TO CORONER.

Death occurring under circumstances making such death reportable to the Coroner shall be immediately so reported by any physician, funeral director, embalmer, ambulance attendant or other person having knowledge thereof.

No embalmer shall embalm a body when he has information reasonably indicating such death is reportable to the Coroner unless permission to embalm said body has been given by the Coroner.

When a person dies, having had medical attendance for less than 24 hours next prior to death, it shall be the duty of the physician in attendance, or any other person having knowledge thereof, to report such death to the Coroner.

SEC. 187. PRELIMINARY INQUIRY.

Any death reported to the Coroner shall be subject to a preliminary inquiry, which shall be a matter of record and after which the Coroner, if the circumstances warrant, shall order a full investigation subject to the provisions of the Government Code; if such case does not fall within the jurisdiction of the Coroner, he shall so advise the person reporting said death or physician last in attendance, if any.

SEC. 190. CREMATION OF HUMAN REMAINS.

When a person dies in the City and County of San Francisco, and it is the intention of the person whose duty it is to dispose of the body to cremate it, there must be filed on a form prescribed by the Department of Public Health an application for a permit to cremate said body signed by the Department of Public Health or his agents.

(a) **Applications and Permits.** The person applying must file with the proper officer a certificate, signed by a physician, or a Coroner, or two reputable citizens, setting forth as near as possible the name, age, color, place of birth, occupation, date, locality and cause of death of the deceased.

After the application and certificate are filed, the duly authorized agent of the Department of Public Health shall immediately inquire into the circumstances relating to the death, and within 12 hours after such application is filed, shall report, in writing, to the Department of Public Health as to whether, in his opinion, death resulted from natural causes and whether there are reasons why said body should be cremated.

When said report is filed and sufficient reasons are not given why cremation should not take place, the Director of Public Health shall issue a written permit for the cremation.

A permit shall not be given to cremate a body upon which a Coroner's inquest is pending until the cause of death has been attested by the proper authority—except any part of a body, or the contents of a body proposed to be cremated may be removed and preserved as evidence, the same as in the case of interment, and when such parts or contents are removed the body may be cremated.

(b) **Removal of Remains.** It shall be unlawful, without a permit, to remove from said City and County, for the purpose of cremation, the remains of any human being, who died within its limits; nor shall any such remains be removed and cremated without a permit from said Director of Public Health to so remove and cremate, as provided for in this Section, and any person who, as undertaker, or agent, or otherwise, obtains a permit to remove a body from said City and County for the purpose of interment, who cremates said body or is privy thereto, is guilty of a misdemeanor. When death resulted from a contagious disease a special permit to remove and cremate may be issued by the Department of Public Health.

Provided, that in case of death from any cause whatever, a special permit may be issued by the Department of Public Health, to remove and cremate a body at any time.

(c) **Death from Contagious Disease.** When death results from contagious disease (within the meaning of the words "contagious disease"), as defined by said Department of Public Health or by law, the body shall not be publicly exposed, and said remains shall be cremated without being taken from the case enclosing them, and

said Department of Public Health may adopt regulations prescribing the manner and shape in which the remains referred to in this Section shall be prepared for cremation.

SEC. 195. CREMATION OF HUMAN REMAINS IN CITY AND COUNTY LIMITS PROHIBITED.

It shall be unlawful for any person, association or corporation, to cremate, or cause to be cremated, the dead body of any human being within the City and County of San Francisco, exclusive of those portions of said City and County belonging to or under the exclusive jurisdiction of the United States.

SEC. 200. BURIALS WITHIN CITY AND COUNTY LIMITS PROHIBITED.

It shall be unlawful for any person, association or corporation, to bury, or inter, or cause to be interred or buried, the dead body of any person in any cemetery, graveyard, or other place within the City and County of San Francisco, exclusive of those portions thereof which belong to the United States or are within its exclusive jurisdiction, provided however, that in cathedral churches, as that term is generally used and understood today, the bodies of Bishops and Archbishops, acting or retired, and their spouses, if any, and cathedral clergy who, at the time of their death, were attached to the cathedral or held honorary titles therefrom, and their spouses, if any, may be buried or interred in areas designated for that purpose within the cathedral building; provided that said place of burial or interment constitutes a cemetery within the meaning of Section 7054 of the Health and Safety Code of the State of California. (Amended by Ord. 168-66, App. 7/21/66)

SEC. 201. PENALTY.

Any person, association or corporation violating any of the provisions of Section 200 of this Article shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than $100 nor more than $500, or by imprisonment not exceeding six months, or by both such fine and imprisonment.

SEC. 215. EMBALMING—CERTIFICATE OF DEATH, ETC.

No person shall use any embalming or preservative material in or upon the body of any deceased person, either by what is known as "cavity injection" or "temporary embalming," or by injection into the blood vessels, or by any other means, or at all, without first obtaining a certificate of death from the attending physician, if there had been no attending physician, then a certificate of death or a permit to embalm from the Coroner. Nothing herein contained shall be deemed to forbid the use of ice in and upon such body, from the preservation thereof.

SEC. 216. RECORD OF MATERIAL USED.

Every person using any of the material mentioned in Section 215 of this Article (excepting ice), after having obtained the certificate or permit therein required, shall make and keep a record of the use of such material, showing the time and place of its use and the means employed and the material used. Said record shall be exhibited by the person keeping the same to the Coroner or any peace officer whenever an exhibition thereof is demanded by him.

SEC. 217. DUTY OF PHYSICIAN.

It shall be the duty of every attending physician to give the certificate of death required by law within two hours after demand made therefor, except in such cases where a post-mortem examination is necessary to determine the cause of death.

SEC. 218. PENALTY.

Any person violating any of the provisions of Sections 215 to 217, inclusive, of this Article shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than $100, nor more than $500, or by imprisonment not exceeding six months, or by both such fine and imprisonment.

SEC. 220. TITLE.

This ordinance may be cited as the "Homeless Death Count Ordinance." (Added by Ord. 120-05, File No. 050825, App. 6/23/2005)

SEC. 221. FINDINGS.

The Board of Supervisors of the City and County of San Francisco hereby finds:

(a) Homelessness in San Francisco is a crisis.

(b) There are thousands of homeless individuals in San Francisco.

(c) Every year homeless individuals die in San Francisco.

(d) Currently, San Francisco has no accurate way to count the number of homeless individuals who die in San Francisco or collect information regarding the circumstances of their deaths.

(e) It is necessary to collect information regarding the deaths of homeless individuals in San Francisco in order to better target services for homeless people and educate the public regarding the plight of homeless people in San Francisco. (Added by Ord. 120-05, File No. 050825, App. 6/23/2005)

SEC. 222. DEFINITIONS.

For purposes of this section, "homeless" shall have the same meaning as set forth in Section 23A.4 of the Administrative Code. (Added by Ord. 120-05, File No. 050825, App. 6/23/2005)

SEC. 223. FILING OF HOMELESS DEATH FORM.

At the time of registering a death by filing a death certificate with the San Francisco Health Department pursuant to California Health and Safety Code sections 102775 et seq. and San Francisco Health Code Article 4, the registrant shall also file with the San Francisco Health Department a completed Homeless Death Form. (Added by Ord. 120-05, File No. 050825, App. 6/23/2005)

SEC. 224. DEVELOPMENT OF HOMELESS DEATH FORM.

(a) The Homeless Death Form shall be developed by the San Francisco Health Department and reviewed and approved by the Health Commission.

(b) The Homeless Death Form shall seek information regarding the identity of the deceased, the age of the deceased, a description of the deceased, the homeless status of the deceased, and the date, location, and circumstances of the death of the deceased.

(c) The Homeless Death Form shall not contain information that could reasonably be used to commit identity theft.

(d) The San Francisco Health Department shall make the Homeless Death Form available to the public. (Added by Ord. 120-05, File No. 050825, App. 6/23/2005)

SEC. 225. ACCESS TO HOMELESS DEATH FORMS.

(a) The San Francisco Health Department shall retain Homeless Death Forms filed with it.

(b) Before being granted access to Homeless Death Forms filed with the San Francisco Health Department or the information contained therein, members of the public must first sign a statement under penalty of perjury that they will not use the Homeless Death Forms or the information contained therein for fraudulent purposes. (Added by Ord. 120-05, File No. 050825, App. 6/23/2005)

SEC. 226. EFFECTIVE DATE.

This Ordinance shall become effective no earlier than July 1, 2005. (Added by Ord. 120-05, File No. 050825, App. 6/23/2005)

[The next page is 161]

ARTICLE 5: PUBLIC HEALTH—GENERAL

SEC. 230. HOMES FOR CHILDREN, ESTABLISHMENT, ETC.

Any person who, without having first obtained a written permit so to do from the Department of Public Health, establishes, maintains, conducts or manages any institution, day nursery, or other place for the reception or care of children, exclusive of boarding homes as defined in Section 1620(a) of the Welfare and Institutions Code of the State of California, or who keeps at any such place any child under the age of 12 years, not his relative, apprentice or ward, without legal commitment, or neglects, refuses or omits to comply with the provisions of this Section, or who violates the provisions of such permit, is guilty of a misdemeanor.

(a) **Permits.** The Department of Public Health, shall have power to issue permits for such places, and every such permit shall specify the name and residence of the person so undertaking the care of such children and the location of the place where the same are kept and the number of children thereby allowed to be received or kept therein, and shall be revocable for cause by the said Department of Public Health in any case where the provisions of this Section are violated, or in any case where, in the opinion of the Department of Public Health, such institution, day nursery, or other place as previously described herein, is being managed, conducted or maintained without regard for the health, comfort or morality of the inmates thereof, or without thereof, or without due regard to proper sanitation or hygiene.

(b) **Registration of Children.** Every person holding such permit must keep a register, wherein he shall enter the names and ages of all

such children and the names and residence of their parents, so far as known; the time of the reception and discharge of such children and the reasons therefor, and, also the name and age of every child who is given out, adopted, taken away or indentured from such place to or by any person, together with the name and residence of the person so adopting, taking away or indenturing such child, and within 48 hours after such child is so given out, taken away or indentured shall cause a correct copy of the register to be sent to the Department of Public Health.

It shall be lawful for the officers and representatives of the Department of Public Health, and for all Health Officers at all reasonable times to enter and inspect the premises wherein such children are so received and kept, and to call for and inspect the permit and register, and also to see and visit such children.

SEC. 231. PENALTY.

Any person who shall violate any of the provisions of Section 230 of this Article shall be guilty of a misdemeanor and upon conviction thereof, shall be punished by a fine not to exceed $250, or by imprisonment in the County Jail for not more than three months, or by both such fine and imprisonment.

SEC. 254. ESTABLISHMENT, ETC., OF MEDICAL COLLEGES.

It shall be unlawful for any person, corporation or association to erect, establish or maintain any medical college or building or place of the dissection of human bodies without permission from the Department of Public Health.

SEC. 255. TATTOOING.

Definitions. For the purpose of this ordinance certain words and phrases shall be construed as hereafter defined. Words in the singular include the plural, and words in the plural shall include the singular. Words in the present tense shall include the future.

(a) **Director of Public Health.** The term "Director of Public Health" shall include the Director of Public Health, his assistant, or any regularly qualified employee or inspector of the Department of Public Health in the City and County of San Francisco.

(b) **Tattooing.** Tattooing shall mean any method of placing designs, letters, scrolls, figures, symbols, or any other marks upon or under the skin with ink or colors, by the aid of needles or instruments.

(c) **Person.** Person shall mean any individual, firm or corporation, owner or operator of a tattooing establishment.

SEC. 256. PERMIT.

It shall be unlawful for any person, firm or corporation, owning, controlling and leasing, acting as agent for, conducting, managing or operating any establishment to practice the art of tattooing or to engage in the practice of tattooing, without first applying for and receiving a permit from the Director of Public Health of the City and County of San Francisco in the manner hereinafter provided.

Every applicant for such permit shall file with the Department of Public Health of the City and County of San Francisco a written application, which shall state the name and address of the applicant, a description of the property by street and number, wherein and whereon it is proposed to conduct the tattooing establishment, the number of persons to be employed in such establishment, together with a description of the experience and qualifications of each person engaged in the practice of tattooing, and such other pertinent information as the Department of Public Health may require.

SEC. 257. INVESTIGATION AND INSPECTION.

It shall be the duty of the Director of Public Health of the City and County of San Francisco to investigate the statements made in the application, and the premises where it is proposed to practice the business of tattooing, and if it shall appear to the Director of Public Health that the statements contained in the application are true and that the sanitary conditions prevailing upon the premises comply with the provisions of this

ordinance and State laws and conform to the rules and regulations of the Director of Public Health of the City and County of San Francisco, a permit therefor shall be granted for the establishment. Such permit shall be granted only upon the express condition that it shall be subject to suspension or revocation by the Director of Public Health upon a showing satisfactory to said Director of a violation by the holder of such permit, or person or employee, acting with his consent or under this authority, of any provision of this ordinance or any law of the State of California, or any rule or regulation of the Director of Public Health of the City and County of San Francisco regulating tattooing establishments, which rules or regulations the Director of Public Health is hereby authorized to make.

SEC. 258. LICENSE FEES.

Upon approval of an application for a permit to engage in the practice of tattooing, the Director of Public Health shall forward the permit therefor to the Tax Collector, who, upon payment of the license fee hereinafter provided shall issue the permit to the designated permittee.

Every person engaged in the business of conducting, managing or operating any establishment for the practice of the art of tattooing shall pay a license fee of $129 per year, or for any portion of a year, payable annually in advance. (Amended by Ord. 206-93, App. 6/25/93; Ord. 121-97, App. 4/9/97; Ord. 37-05, File No. 0401733, App. 2/11/2005)

SEC. 259. QUALIFICATIONS OF OPERATOR.

It shall be unlawful for any person to employ an operator in the practice of tattooing without such operator having first secured an operator's card. The issuance of the operator's card herein provided shall be subject to the applicant's compliance with the regulations and passage of the physical examination required by the rules and regulations of the Director of Public Health. An operator's card shall be granted only on the express condition that it shall be subject to suspension or revocation by the Director of Public Health upon a showing satisfactory to the Director of Public Health of a violation by the holder of said operator's card of any rule of the Director or provision of this ordinance or of State law or upon a satisfactory showing that the operator does not possess sufficient skill or that he is negligent and has been responsible for communication of infections.

SEC. 260. SUSPENSION OR REVOCATION OF OPERATOR'S PERMIT.

Suspension or revocation of a permit for an operator's card shall automatically suspend or revoke any license issued to such person under the provisions of this or any other ordinance of the City and County of San Francisco. Upon the making of any order of suspension or revocation, the Director of Public Health shall in writing notify the Tax Collector and the Police Department.

SEC. 261. EXPIRATION DATE OF PERMIT.

A permit for a tattooing establishment or an operator's card under the provisions of this ordinance may be granted at any time during the year, but all permits and operators' cards issued hereunder shall expire on the thirtieth day of the next succeeding June. Said permit or operator's card shall not be transferable.

SEC. 262. PERMITS AND OPERATOR'S CARDS—POSTING OF.

All permits, operators' cards and regulations of the Director of Public Health shall be posted at all times in a conspicuous place in the establishment.

SEC. 263. VIOLATIONS—PENALTY.

Any person, firm or corporation who shall violate any of the provisions of this ordinance or fail to comply with any order or regulation made thereunder shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than $50 nor more than $500, or by imprisonment in the County Jail for a period of not less than 10 days or more than six months or by both such fine and imprisonment.

SEC. 264. POLICY.

It is the policy of the City and County of San Francisco to require every person who sells smokeless tobacco to post a conspicuous warning at the point of retail sale as to the addictive and possible cancer-causing nature of smokeless tobacco, the illegality of, and the punishment for selling, giving, or in any way furnishing smokeless tobacco, or any other tobacco product or paraphernalia, to another person who is under the age of 18 years. (Added by Ord. 329-87, App. 7/31/87)

SEC. 264.1. FINDINGS.

Scientific evidence has shown that use of smokeless tobacco is causally related to oral cancer with the risk of developing such cancers being four times as great among snuff users than nonusers. Smokeless tobacco has been shown to contain nicotine which is a dependence-producing drug that frequently results in addictive behavior. Scientific evidence has shown that smokeless tobacco has been associated with a number of oral problems including gingivitis, gingival recession, tooth abrasion and caries. The use of smokeless tobacco has increased substantially in recent years particularly among adolescent males, and is highly prevalent among certain population groups. Users generally are unaware of the possible harmful effects associated with using smokeless tobacco.

Therefore, the Board of Supervisors declares that it is in the public interest to require every person who sells smokeless tobacco to post a conspicuous warning at the point of retail sale as to the addictive and possible cancer-causing nature of smokeless tobacco, the illegality of, and the punishment for selling, giving or in any way furnishing smokeless tobacco, or any other tobacco product or paraphernalia, to another person who is under 18 years. (Added by Ord. 329-87, App. 7/31/87)

SEC. 264.2. DEFINITIONS.

(a) "Chewing tobacco" shall mean any leaf tobacco that is not intended to be smoked.

(b) "Person" shall mean an individual, firm, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate, or any other group or combination acting as a unit, excepting the United States of America, the State of California, and any political subdivision thereof.

(c) "Smokeless tobacco" shall mean any finely cut, ground, powdered, or leaf tobacco that is not intended to be smoked.

(d) "Snuff" shall mean any finely cut, ground, or powdered tobacco that is not intended to be smoked. (Added by Ord. 329-87, App. 7/31/87)

SEC. 264.3. SMOKELESS TOBACCO WARNINGS.

Every person who sells, offers for sale, or keeps for sale, smokeless tobacco shall post at the point of retail sale, that is a place within close proximity of the shelves or other area where smokeless tobacco is displayed for consumer purchase, a conspicuous warning sign as provided in this section. Such sign shall be not less than eight inches by 11 inches in size and shall be printed on a contrasting background and in a legible manner, conveying the following warning:

"WARNING: SMOKELESS TOBACCO IS NOT A SAFE ALTERNATIVE TO CIGARETTES. IT IS ILLEGAL TO SELL, GIVE, OR IN ANY WAY FURNISH SMOKELESS TOBACCO, OR ANY OTHER TOBACCO PRODUCT, OR PARAPHERNALIA, TO A PERSON UNDER THE AGE OF 18 YEARS.

A VIOLATION OF THIS LAW IS A MISDEMEANOR."

The word "warning" shall be in a print of 84-point height and Helvetica type and the remainder of the text in a print of 24-point height and in Helvetica medium-face, Futura medium-face or Universe 65 type. (Added by Ord. 329-87, App. 7/31/87)

SEC. 264.4. PENALTIES AND ENFORCEMENT.

(a) The Director of Health shall enforce Section 264.3 against violations by serving notice requiring the correction of any violation within a reasonable time specified by the Director. Upon failure to comply with the notice within the time period specified, the Director shall call upon the City Attorney to maintain an action for injunction to enforce the provisions of Section 264.3, to cause the correction of any such violation, and for assessment and recovery of a civil penalty for such violation.

(b) Any individual, firm, partnership, corporation, company, association, society, group or other person or legal entity that violates, disobeys, omits, neglects, or refuses to comply with, or resists, or opposes the execution of Section 264.3, shall be liable for a civil penalty, not to exceed $500 for each day such violation is committed or permitted to continue, which penalty shall be assessed and recovered in a civil action brought in the name of the people of the City and County of San Francisco, by the City Attorney, in any court of competent jurisdiction. Any penalty assessed and recovered in a civil action brought pursuant to this paragraph shall be paid to the Treasurer of the City and County of San Francisco.

(c) Any individual, firm, partnership, corporation, company, association, society, group or other person or legal entity that violates, disobeys, omits, neglects, or refuses to comply with, or who resists, or opposes the execution of any of the provisions of Section 264.3, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding $500, or by imprisonment, not exceeding six months, or by both such fine and imprisonment, and shall be deemed guilty of a separate offense for every day such violation, disobedience, omission, neglect or refusal shall continue.

(d) For a second or subsequent violation, any local retail business license of the business facility where the offense occurred shall be revoked by the licensing agency until the violator complies with Section 264.3. (Added by Ord. 329-87, App. 7/31/87)

SEC. 265. POLICY.

It is the policy of the City and County of San Francisco to require every person who sells alcohol intended to be used as a beverage to post a conspicuous warning at the point of retail sale warning that drinking alcohol during pregnancy can cause birth defects. (Added by Ord. 6-88, App. 1/7/88)

SEC. 265.1. FINDINGS.

Recent research indicates that alcohol consumption during pregnancy can have severe and adverse effects on the fetus, resulting in birth defects including growth retardation, facial abnormalities and congenital heart disease. Such adverse effects are known individually as Fetal Alcohol Effects and collectively as Fetal Alcohol Syndrome. Fetal Alcohol Syndrome is the leading preventable birth defect in infants, affecting brain, limb and motor reflex development for developing fetuses. These are irreversible birth defects. Public awareness of Fetal Alcohol Effects and Fetal Alcohol Syndrome is dangerously low. It is the policy of the City and County of San Francisco that the public should be informed that consumption of alcohol during pregnancy may be harmful to a fetus and may result in birth defects.

Therefore, the Board of Supervisors declares that it is in the public interest to require every person who sells alcohol intended to be used as a beverage to post a conspicuous warning at the point of retail sale as to the possible danger in consuming alcohol during pregnancy. (Added by Ord. 6-88, App. 1/7/88)

SEC. 265.2. ALCOHOL CONSUMPTION WARNINGS.

(a) Every person who sells, offers for sale, or keeps for sale, alcohol intended to be used as a beverage shall post at the point of retail sale a warning as provided in this Section.

(b) Such sign shall be not less than 10 inches by 10 inches in size and shall be conspicuously displayed so as to be readable; except that for persons who sell, offer for sale, or keep for sale, alcohol intended to be used as a beverage in "mini-bars," which are small refrigerators which do not exceed 2 feet in height by 2 feet in width, the required warning signs at the point of retail sale shall be not less than 3½ inches by 4½ inches in size and shall be readable. The signs required for "mini-bars" shall be attached and secured by adhesive material to the inside door of the "mini-bars." Lettering thereon shall be not less than ⅜ inch in height and shall be printed on a contrasting background and in a legible manner, conveying the following warning:

"WARNING: DRINKING DISTILLED SPIRITS, BEER, COOLERS, WINE AND OTHER ALCOHOLIC BEVERAGES DURING PREGNANCY CAN CAUSE BIRTH DEFECTS"

(c) Where alcohol intended to be used as a beverage is sold, offered for sale or kept for sale to a substantial number of persons who use a language other than English as a primary language, an additional sign shall be worded in the primary language or languages involved and posted pursuant to Paragraph (b). (Added by Ord. 6-88, App. 1/7/88; amended by Ord. 87-89, App. 3/29/89)

SEC. 265.3. PENALTIES AND ENFORCEMENT.

(a) The Director of Health shall enforce Section 265.2 against violations by serving notice requiring the correction of any violation within a reasonable time specified by the Director. Upon failure to comply with the notice within the time period specified, the Director shall call upon the City Attorney to maintain an action for injunction to enforce the provisions of Section 265.2, to cause the correction of any such violation, and for assessment and recovery of a civil penalty for such violation.

(b) Any individual, firm, partnership, corporation, company, association, society, group or other person or legal entity that violates, disobeys, omits, neglects, or refuses to comply with the execution of Section 265.2, shall be liable for a civil penalty not to exceed $500 for each day such violation is committed or permitted to continue.

(c) Any individual, firm, partnership, corporation, company, association, society, group or other person or legal entity that violates, disobeys, omits, neglects, or refuses to comply with the execution of any of the provisions of Section 265.2 shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine not exceeding $500, or by imprisonment, not exceeding six months or by both such fine and imprisonment, and shall be deemed guilty of a separate offense for every day such violation, disobedience, omission, neglect or refusal shall continue.

(d) For a second or subsequent violation, any local retail business license of the business facility where the offense occurred may be revoked by the licensing agency until the violator complies with Section 265.2. (Added by Ord. 6-88, App. 1/7/88)

SEC. 266. REGISTRY FOR SENIOR AND DISABLED PERSONS WHO WISH TO BE CONTACTED IN THE EVENT OF A DISASTER.

The Department of Public Health shall establish and maintain a register identifying those persons who wish to be visited after a major earthquake or other disaster which poses a threat of injury to such persons. The persons eligible to register are those 65 years of age or older, those who are disabled, and those who employ or house persons who are eligible to register. A "disabled person" is one whose life functions have been significantly altered by their medical condition or disease, or who has any other significantly disabling physical, or mental condition including, but not limited to, a physical condition that significantly impairs his or her ability to move normally, a chronic illness that requires continuing medication to prevent a life-threatening disease, or a condition (such as heart disease) that could result in a serious medical problem in a disaster. Persons who wish to be included in the

register shall provide their name, address, telephone number and the names, addresses and telephone numbers of any relatives, neighbors, or other persons who regularly communicate with the person registered and may be able to provide information as to that person's condition in the event of a disaster. In the event of a major earthquake or other disaster which poses a threat of injury to senior and disabled persons, the Department shall attempt to visit or otherwise communicate with registered persons in order to determine if they need medical or other assistance. The Department shall act as expeditiously as possible, taking into consideration the need to allocate resources to respond to the disaster. The Department shall provide notice to the public that registration is available by such means as the Department determines best suited to reach seniors and the disabled.

By adopting this ordinance, the City and County of San Francisco is assuming an undertaking only to promote the general welfare. It is not assuming, not is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach approximately caused injury. (Added by Ord. 259-90, App. 7/6/90)

SEC. 267. POLICY.

It is the policy of the City and County of San Francisco to require every person who sells condoms made of natural membrane (lambskin) intended to be used for disease or pregnancy prevention to post a conspicuous warning at the point of retail sale, display for purchase, or dispensing of condoms that latex condoms labeled for disease prevention provide greater protection against AIDS, Hepatitis B and Herpes viruses than do natural (lambskin) condoms. (Added by Ord. 381-91, App. 10/28/91)

SEC. 267.1. FINDINGS.

Recent testing of natural membrane (lambskin) condoms revealed that this type of condom prevents the passage of sperm through the pores of the material, but some viruses and virus-sized particles pass through the barrier membrane. This research indicates that users cannot be assured that natural membrane condoms will be a barrier against all sexually transmitted diseases. Based on research conducted that studied the effectiveness of condoms made of latex and condoms made of natural membrane in preventing the transmission of sexually transmitted diseases, the Food and Drug Administration, of the Department of Health and Human Services, released an educational publication ("Condoms and Sexually Transmitted Disease," 1990) that states: "Tests have shown that latex condoms can prevent the passage of AIDS, hepatitis and herpes viruses but natural (lambskin) condoms may not do this."

Therefore, in order to serve the public health, safety and welfare, the Board of Supervisors declares that the purpose of Sections 267 through 267.6 of this Article is to educate the public by requiring that warning signs be placed at all locations where condoms made of natural membrane (lambskin) are sold to the public. (Added by Ord. 381-91, App. 10/28/91)

SEC. 267.2. DUTY TO POST.

(a) Every person or entity who owns, operates, manages, leases or rents a premises or vending machine offering condoms made of natural membrane (lambskin) for sale, or dispensing for consideration, to the public, shall cause a sign or notice to be posted at one of the following points: the point of sale, display for purchase, distribution, or dispensing. Such notice shall be in English, Spanish, Chinese and Tagalog as provided in this section:

The sign or notice shall read:

"WARNING
LATEX CONDOMS LABELLED FOR
DISEASE PREVENTION PROVIDE
GREATER PROTECTION AGAINST
AIDS, HEPATITIS B AND HERPES
VIRUSES THAN DO NATURAL
(LAMBSKIN) CONDOMS.
FOR MORE INFORMATION
CALL 864-8100

AVISO
LOS CONDONES DE LATEX
CON ROTULOS DE PREVENCION
DE ENFERMEDADES OFRENCEN
UNA MAYOR PROTECCION CONTRA
LOS VIRUS DEL SIDA, HEPATITIS B
Y HERPES QUE LOS CONDONES
NATURALES DE PIEL DE
CORDERO.
PARA MAS INFORMACION
LLAME AL: 864-8100

警告
預防愛滋病、乙性肝炎和疱疹，
用乳膠安全套比天然安全套（用羊皮製造）
更有效。

如果您有什麼問題，請打電話到
864-8100和我們聯絡。

BABALA
ANG CONDOM NA GAWA SA GOMA
AY NAKAPAGBIBIGAY NG HIGIT NA
PROTEKSYON LABAN SA AIDS VIRUS,
HEPATITIS B, AT HERPES KAYSA SA
CONDOM NA GAWA SA BALAT.
PARA SA HIGIT NA IMPORMASYON,
TUMAWAG SA 864-8100

(b) Such sign shall be not less than eight and one-half inches by 11 inches and shall be conspicuously displayed so as to be readable. The word "WARNING" shall not be less than one-half inch in height and shall be centered on a single line with no other text. The sentence "FOR MORE INFORMATION CALL 864-8100" shall be a separate paragraph centered immediately following the last sentence of the English warning and the same format shall be followed for the other languages.

(c) The required sign or notice shall be placed as follows:

(1) Where the sale, display for purchase, or dispensing of condoms made of natural membrane to the public occurs other than through the use of a vending machine, at least one sign shall be posted at one of the following points: point of retail sale, dispensing, or at the display for purchase, and shall be conspicuously displayed so as to be readable.

(2) Where the sale or dispensing of condoms made of natural membrane to the public occurs through the use of a vending machine, the sign or notice and the lettering thereon is not subject to the minimum width, height or length requirements of this Subsection (b) of this Section except at least one sign or notice shall be attached or affixed to the front of the vending machine to assure that it is readable by a person who is physically close enough to the vending machine to actually operate it.

(d) It is the intent of the Board of Supervisors in approving these provisions that the specified warning notices shall be provided by the Department of Public Health to facilitate compliance with the requirements. (Added by Ord. 381-91, App. 10/28/91)

SEC. 267.3. VIOLATIONS AND PENALTIES.

Anyone, subject to the provision of Section 267.2 knowingly failing to post the required warning, is guilty of an infraction. (Added by Ord. 381-91, App. 10/28/91)

SEC. 267.4. ENFORCEMENT.

In addition to any peace officer the following classes of employees of the City and County of San Francisco shall have the authority to enforce the provisions of Section 267.2:

Classification Number	Class Title
6120	Environmental Health Inspector
6122	Senior Environmental Health Inspector
6124	Principal Environmental Health Inspector
6127	Assistant Director, Bureau of Environmental Health
6126	Director, Bureau of Environmental Health
8280	Environmental Control Officer

(Added by Ord. 381-91, App. 10/28/91)

SEC. 267.5. CITY UNDERTAKING LIMITED TO PROMOTION OF GENERAL WELFARE.

In undertaking the adoption and enforcement of Sections 267 through 267.5, the City is assuming an undertaking only to promote the general welfare. This Chapter is not intended to create any new rights for breach of which the City is liable in money damages to any person who claims that such breach proximately caused injury. This section shall not be construed to limit or proscribe any other existing rights or remedies possessed by such person. (Added by Ord. 381-91, App. 10/28/91)

SEC. 267.6. SEVERABILITY.

If any part of this ordinance, or the application thereof, is held to be invalid, the remainder of this ordinance shall not be affected thereby, and this ordinance shall otherwise continue in full force and effect. To this end, the provisions of this ordinance, and each of them, are severable. (Added by Ord. 381-91, App. 10/28/91)

SEC. 267.7. POLICY.

It is the policy of the City and County of San Francisco to require every person who sells personal lubricants intended to be used with condoms to post a conspicuous warning at the point of retail sale or display for purchase that lubricants containing oil or vegetable shortening used with a latex condom may damage the integrity of the condom, water-based lubricants are condom compatible, and lubricants containing nonoxynol-9 may decrease transmission of STD's and HIV when used with a condom. (Added by Ord. 225-93, App. 7/16/93)

SEC. 267.8. FINDINGS.

Testing of short-term exposure to lubricants adjunctly applied to latex condoms concluded that oil-based personal lubricants have a significant deleterious effect on the strength of condoms. The U.S. Department of Health and Human Services, Public Health Service, issued a report ("Condoms for Prevention of Sexually Transmitted Diseases," 1988) that recommends that only water-based lubricants should be used with a condom. Petroleum- or oil-based lubricants (such as petroleum jelly, cooking oils, shortening, and lotions) should not be used since they weaken the latex. This report indicates that use of oil-based lubricants that weaken latex may contribute to the failure of condoms to protect against STD. The effect of oil-based lubricants on condom performance was tested by CONSUMER REPORTS by using oil-based lubricants in air-burst testing. In this test, at least half of the samples of each condom failed.

Therefore, in order to serve the public health, safety and welfare, the Board of Supervisors declares that the purpose of this Article is to educate the public by requiring that warning signs about oil-based lubricants be placed at all locations where personal lubricants are sold to the public. (Added by Ord. 225-93, App. 7/16/93)

SEC. 267.9. DUTY TO POST.

(a) Every person or entity who owns, operates, manages, leases or rents a premises offering personal lubricants for sale to the public shall cause a sign or notice to be posted at the

point of sale or display for purchase. Such notice shall be in English, Spanish, Chinese and Tagalog as provided in this Section.

The sign or notice shall read:

"CAUTION
CHECK THE LABEL BEFORE YOU BUY. USE ONLY WATER-BASED LUBRICANTS WITH A CONDOM. STUDIES SHOW CONDOMS BREAK IF USED WITH LUBRICANTS CONTAINING OIL OR VEGETABLE SHORTENING.
For More Information Call: _____"

(b) Such sign shall be not less than eight and one-half inches by eleven inches and shall be conspicuously displayed so as to be readable. The word "CAUTION" shall not be less than one-half inch in height and shall be centered on a single line with no other text. The sentence "For More Information Call _____" shall be a separate paragraph centered immediately following the last sentence of the English warning and the same format shall be followed for the other languages.

(c) The required sign or notice shall be placed as follows: At least one sign shall be posted where the sale or display for purchase of personal lubricants to the public occurs and shall be conspicuously displayed so as to be readable.

(d) It is the intent of the Board of Supervisors in approving these provisions that the specified warning notices shall be provided by the Department of Public Health within 30 days of the effective date of this ordinance to facilitate compliance with the requirements. (Added by Ord. 225-93, App. 7/16/93)

SEC. 267.10. VIOLATIONS AND PENALTIES.

Anyone, subject to the provision of Section 267.9 knowingly failing to post the required warning, is guilty of an infraction. (Added by Ord. 225-93, App. 7/16/93)

SEC. 267.11. ENFORCEMENT.

In addition to any peace officer the following classes of employees of the City and County of San Francisco shall have the authority to enforce the provisions of Section 267.9:

Classification Number	Class Title
6120	Environmental Health Inspector
6122	Senior Environmental Health Inspector
6124	Principal Environmental Health Inspector
6127	Assistant Director, Bureau of Environmental Health
6126	Director, Bureau of Environmental Health
8280	Environmental Control Officer
2806	Disease Control Investigator
2808	Senior Disease Control Investigator

(Added by Ord. 225-93, App. 7/16/93)

SEC. 267.12. CITY UNDERTAKING LIMITED TO PROMOTION OF GENERAL WELFARE.

In undertaking the adoption and enforcement of this Article the City is assuming an undertaking only to promote the general welfare. This Article is not intended to create any new rights for breach of which the City is liable in money damages to any person who claims that such breach proximately caused injury. This Section shall not be construed to limit or proscribe any other existing rights or remedies possessed by such person. (Added by Ord. 225-95, App. 7/16/93)

SEC. 267.13. SEVERABILITY.

If any part of this ordinance, or this application thereof, is held to be invalid, the remainder of this ordinance shall not be affected thereby, and this ordinance shall otherwise continue in full force and effect. To this end, the provisions of this ordinance, and each of them, are severable. (Added by Ord. 225-95, App. 7/16/93)

[The next page is 191]

ARTICLE 6: GARBAGE AND REFUSE

SEC. 280. DUMPING OF REFUSE, ETC., IN DESIGNATED PLACES PROHIBITED.

No person, company or corporation shall deposit, dump or cause to be dumped or deposited upon any street, lot or lands within City and County of San Francisco or in any water or waterways within said City and County, or from any wharf or bulkhead on the waterfront of said City and County, except as hereinafter provided, any house refuse, butchers' offal, garbage, refuse, dirt, ashes, cinder, sludge, broken glass, crockery, tins, bones, rubbish or other like matter or any dead animals (not otherwise provided for by contract or franchise heretofore granted by the City and County), or putrid or stinking animal or vegetable matter or fish, flesh and food condemned by the Director of Public Health as unfit for human food.

SEC. 283. CONTAINERIZATION AND BINDING OF REFUSE.

No commercial establishment, dwelling, householder or other person or entity shall store or place out for collection any refuse that is subject to putrefaction and any other refuse destined for disposal unless it is contained or secured to prevent pets and other animals from gaining access to its contents and to prevent its dispersal by the wind or other elements. All refuse other than cardboard boxes that are destined for disposal and all putrescible refuse must be placed in suitable metal or solid plastic receptacles. Plastic bags not otherwise contained in metal or solid plastic receptacles shall not in themselves constitute suitable receptacles. The contents of suitable receptacles for putrescible refuse and refuse destined for disposal shall not extend above the top or rim thereof, and shall be contained by tight-fitting lids or sealed enclosures. Cardboard boxes need not be contained provided they are emptied, flattened, and tied into bundles of sufficient size to prevent their dispersal by the wind. (Added by Ord. 466-85, App. 10/4/85; amended by Ord. 125-01, File No. 010269, App. 6/15/2001)

SEC. 283.1. PENALTY.

Any person, firm or corporation violating any of the provisions of Section 283 of this Article shall be guilty of an infraction and, upon conviction thereof, shall be punished for the first offense by a fine of not less than $80 nor more than $100; and for a second offense by a fine of not less than $150 nor more than $200; and for each additional offense by a fine of not less than $250 nor more than $500. In the alternative, any person, firm or corporation violating any of the provisions of Section 283 of this Article may be assessed an administrative penalty not to exceed $1,000 for each violation. Such penalty shall be assessed, enforced and collected in accordance with Section 39-1 of the Police Code. (Added by Ord. 33-78, App. 1/13/78; amended by Ord. 197-98, App. 6/19/98; Ord. 87-03, File No. 030482, App. 5/9/2003; Ord. 292-04, File No. 040561, App. 12/24/2004)

SEC. 286. HOURS OF REMOVAL OF WASTE FROM FISH MARKETS FIXED.

The garbage and waste from all wholesale fish markets, or places from which fish is distributed to markets and stalls, must be removed daily between the hours of 5:00 a.m. and 8:00 a.m.

SEC. 287. PENALTIES.

Any person who shall violate any of the provisions of Section 280 or 286 of this Article, shall be guilty of an infraction or a misdemeanor. If charged as an infraction, upon conviction thereof, said person shall be punished for the first offense by a fine of not less than $80 nor more than $100; for a second offense by a fine of not less than $150 nor more than $200; and for each additional offense by a fine of not less than $250 nor more than $500.

If charged as a misdemeanor, upon conviction thereof, said person shall be punished by imprisonment in the County Jail not exceeding one year or a fine not exceeding $1,000. The complaint charging such violation shall specify whether the violation is a misdemeanor or infraction, which decision shall be solely that of the District Attorney.

As an alternative to any other fines and penalties applicable to a violation of Section 280 of this Article, any person who is in violation of Section 280 may be subject to an administrative penalty not to exceed $1,000 for each violation. The administrative penalty shall be assessed, enforced and collected in accordance with Section 39-1 of the Police Code. (Amended by Ord. 46-83, App. 2/4/83; Ord. 197-98, App. 6/19/98; Ord. 87-03, File No. 030482, App. 5/9/2003; Ord. 292-04, File No. 040561, App. 12/24/2004)

SEC. 288. CONSTRUCTION AND DEMOLITION DEBRIS.

No commercial establishment, dwelling, householder or other person or entity, including the City and County of San Francisco, shall place out for regular refuse collection any construction and demolition debris. Unless otherwise required by Chapter 14 of the Environment Code or accept-

able in an on-site residential or commercial recycling or composting collection program, construction and demolition debris must be disposed of at a construction and demolition debris facility registered pursuant to Chapter 14 of the Environment Code. For purposes of this section, construction and demolition debris means building materials and solid waste generated by construction and demolition activities, including but not limited to: fully-cured asphalt, concrete, brick, rock, soil, lumber, gypsum wallboard, cardboard and other associated packaging, roofing material, ceramic tile, carpeting, fixtures, plastic pipe, metals, tree stumps, and other vegetative matter resulting from land clearing and landscaping for construction, deconstruction, demolition or land developments. Construction and demolition debris does not include any refuse regulated under the 1932 Refuse Collection and Disposal Initiative Ordinance or sections of the Municipal Code that implement the provisions of that ordinance. Hazardous waste, as defined in California Health and Safety Code Section 25100 et seq., as amended, is not construction and demolition debris for purposes of this section. (Added by Ord. 27-06, File No. 051142, App. 2/16/2006)

SEC. 288.1. PENALTY.

Any person, firm or corporation violating any of the provisions of Section 288 of this Article shall be guilty of an infraction and, upon conviction thereof, shall be punished for the first offense by a fine of not less than $80 nor more than $100; and for a second offense by a fine of not less than $150 nor more than $200; and for each additional offense by a fine of not less than $250 nor more than $500. In the alternative, any person, firm or corporation violating any of the provisions of Section 288 of this Article may be assessed an administrative penalty not to exceed $300 for each violation. Such penalty shall be assessed, enforced and collected in accordance with Section 39-1 of the Police Code. (Added by Ord. 27-06, File No. 051142, App. 2/16/2006)

SEC. 290. REFUSE COLLECTION AND DISPOSAL ORDINANCE NO. 17.083.

This Section is enacted to set forth portions of the Refuse Collection and Disposal Ordinance No. 17.083, Appendix A of the San Francisco City Charter, heretofore has been adopted to read as follows:

"**Section 1.** The term "refuse" as used in this ordinance shall be taken to mean all waste and discarded materials from dwelling places, households, apartment houses, stores, office buildings, restaurants, hotels, institutions and all commercial establishments, including waste or discarded food, animal and vegetable matter from all kitchens thereof, waste paper, cans, glass, ashes and boxes and cutting from trees, lawns and gardens. Refuse as used herein does not include debris and waste construction materials, including, wood, brick, plaster, glass, cement, wire, and other ferrous materials, derived from the construction of or the partial or total demolition of buildings or other structures.

"**Section 2.** It shall be unlawful for any person, firm or corporation to dispose of refuse as defined in this ordinance except as herein provided, save that the provisions of this ordinance shall not include refuse which may be incinerated by an owner of a building for himself or for his tenants on the premises where produced; provided, however, that such incineration shall be subject to inspection and control by the Director of Public Health and the Fire Department. Failure of any householder producing refuse to subscribe to and pay for refuse collection, unless such householder is a tenant for whom refuse collection service is provided by his landlord, shall be prima facie evidence that such householder is disposing of refuse in violation of this ordinance.

"**Section 3.** Refuse consisting of waste or discarded food, animal and vegetable matter, discharged containers, of food, animal and vegetable matter and ashes shall be collected and placed in suitable metal cans of such capacity as the Director of Public Works may prescribe (but not to exceed 32 gallons in the case of a can serving one single family dwelling unit) by the producer or landlord who by reason of contract or

lease with an occupant is obligated to care for such refuse, for collection by a refuse collector to be disposed of as herein provided. Waste paper and boxes and other refuse materials not subject to putrefaction or decay, and cuttings from trees, lawns and gardens may be placed in any suitable container and delivered by the producer or landlord, who by reason of contract or lease with the occupant is obligated to care for such refuse and deliver same to a refuse collector, to be disposed as herein provided; provided, however, that it shall be optional with the producer or landlord to deliver waste paper or other refuse having a commercial value to a refuse collector, and the producer or landlord may dispose of the same in any manner he may see fit. (Refuse which under the provisions hereof must be deposited in a metal can of suitable capacity shall be removed daily from the place where the same is created.)

"**Section 4.** It shall be unlawful for any person, firm or corporation, other than a refuse collector licensed by the Director of Public Health as in the ordinance provided, to transport through the streets of the City and County of San Francisco any refuse as in this ordinance defined, or to collect or to dispose of the same, except waste paper, or other refuse having a commercial value."

* *

"Person, firms or corporations desiring to transport through the streets of the City and County of San Francisco only waste paper or other refuse having commercial value, and to collect and dispose of same need not obtain a permit therefor under the provisions of this ordinance."

"**Section 11.** Disputes over charges made by collectors or as to the character of the service performed shall be decided by the Director of Public Health. Any charges made in excess of rates fixed pursuant to this ordinance, when determined by the Director of Public Health, shall be refunded to the person or persons who paid the excess charge.

"**Section 12.** A refuse collector shall be entitled to payment for the collection of refuse at the end of each month from each householder or landlord served by him and from whom the payment is due."

"**Section 14.** Any person, firm or corporation who shall violate any of the provisions of this ordinance shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine not to exceed $500 or by imprisonment in the County Jail for not more than six months, or by both such fine and imprisonment. (Added by Ord. 316-75, App. 7/11/75)

SEC. 291. OWNER RESPONSIBILITY FOR MAINTENANCE OF REFUSE COLLECTION SERVICE TO DWELLINGS; DEFINITIONS.

Unless the context otherwise specifies or requires, the terms defined in this Section shall, for all purposes of this Article, have the meanings herein specified, the following definitions to be equally applicable to both the singular and plural forms of any of the terms herein defined:

(a) The term "City" means the City and County of San Francisco;

(b) The term "Collector" means a refuse collector duly licensed pursuant to the provisions of the Initiative Ordinance;

(c) The term "Director" means the Director of Health of the City, or his authorized agents;

(d) The term "dwelling" means a residence, flat, apartment, or other facility, used for housing one or more persons in the City and County of San Francisco;

(e) The term "Initiative Ordinance" means the Initiative Refuse Collection and Disposal Ordinance adopted November 8, 1932, as amended; and

(f) The term "Owner" when used with reference to a dwelling shall mean, and shall conclusively be deemed to be, the legal Owner of the dwelling. (Added by Ord. 47-83, App. 2/4/83)

SEC. 291.1. OWNER RESPONSIBLE FOR REFUSE COLLECTION SERVICE.

The owner of any dwelling shall subscribe to and pay for refuse collection service rendered to such dwelling by a collector and shall provide at a location accessible to the collector an adequate container or containers for deposit of refuse of such capacity as the Director of Public Works may prescribe. The necessity for and type of refuse collection service required and the rates charged therefor shall be governed by the Initiative Ordinance.

Nothing in this Section is intended to prevent an arrangement or the continuance of an existing arrangement, under which payments for refuse collection service are made by a tenant or tenants, or any agent, in behalf of the Owner. However, any such arrangement will not affect the Owner's obligation to the City. (Added by Ord. 47-83, App. 2/4/83)

SEC. 291.2. FAILURE TO INITIATE SERVICE OR TO PROVIDE SUFFICIENT REFUSE CONTAINERS.

When an owner fails to initiate adequate refuse collection service within 15 days of occupancy of a Dwelling by any person, the Director will give the Owner notification that such service is required. A copy of said notice will be sent to the Collector. If the Owner does not arrange with the Collector for service within 15 days from the date of mailing of the notice, then the Collector shall initiate and continue refuse collection service for said dwelling.

When in the judgment of the Director additional refuse containers are required, they shall be provided by the Owner upon written notification from the Director. (Added by Ord. 47-83, App. 2/4/83)

SEC. 291.3. VIOLATION A MISDEMEANOR.

Any Owner who shall violate any of the provisions of Section 291.1 and 291.2 of this Article shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not to exceed $500 or by imprisonment in the County Jail for not more than six months, or by both such fine and imprisonment. (Added by Ord. 47-83, App. 2/4/83)

SEC. 291.4. COLLECTOR ENTITLED TO PAYMENT FOR SERVICES RENDERED.

Pursuant to the provisions of the Initiative Ordinance, the Collector shall be entitled to payment from the owner for services rendered. When the Owner has been directed to initiate service but fails to provide an adequate container or containers at an accessible location and the Collector attempts to collect refuse from the dwelling then such attempt shall be deemed the rendering of collection service for which Collector is entitled to compensation in the same manner and amount as if refuse had actually been collected. Should there be failure to make payment for any service rendered by the Collector, the means for effecting payment shall be in accordance with the procedure set forth hereunder. (Added by Ord. 47-83, App. 2/4/83)

SEC. 291.5. COMPLAINT OF NONPAYMENT.

Any account shall be deemed delinquent 15 days after the last day of the normal billing period for which service has been rendered when the bill has not been paid in full. Not less than 15 days after the Owner has been mailed the bill containing the notice described in Section 291.6 hereunder regarding a delinquent account and not more than 180 days after such account has become delinquent respecting such bill, said Collector may file with the Director a verified written complaint which shall contain the specific allegation setting forth the name or names of the Owner, the address of the Dwelling served, the period of service, the amount due, the steps taken to secure payment and such other information as the Director may reasonably require.

Pending satisfactory payment by said Owner, or by the City pursuant to Section 291.6 hereunder, the Collector shall continue to provide uninterrupted normal refuse collection service to the

Dwelling covered by the complaint; provided, however, that said Collector shall not be required to continue to provide such uninterrupted normal refuse collection service if the City fails or is unable to pay the fees due under this Article after the City has received the complaint and the rates or service to the Dwelling are not under adjudication as provided by the Initiative Ordinance. (Added by Ord. 47-83, App. 2/4/83)

SEC. 291.6. FORM OF COLLECTOR'S BILL.

The bill presented to the Owner pursuant to Section 291.5 shall include a warning notice that if the bill is not paid within 15 days, it may be paid by the City and that payment by the City may render the Owner responsible for penalties, interest and may result in the recordation of a lien against the property to which service was rendered. (Added by Ord. 47-83, App. 2/4/83)

SEC. 291.7. PAYMENT BY DEPARTMENT OF PUBLIC HEALTH LIEN.

Within 45 days following the receipt of the complaint filed in accordance with Section 291.5, the Director shall, regardless of any sale or other transfer of property following the date of receipt of such complaint, process the complaint for payment to the Collector from a continuing appropriation account so provided herein under Section 291.14, and the Owner shall be liable to the City for fees paid. The payment by the City will, upon the recording thereof in the manner herein provided, create a lien on the real property to which the service was rendered. The lien will be officially recorded in the County Recorder's files, the lien to carry and will include additional charges for administrative expenses of $50 or 10 percent of the amount owned, whichever is higher, and interest at a rate of 1½ percent per full month compounded monthly from the date of the recordation of the lien on all fees and charges due. The Owner shall be notified by the Director that the fees and charges are due to the City. In addition, the Owner shall be notified that if the fees and charges remain unpaid, subsequent proceedings may be taken to make said fees and charges a special assessment on the real property to which said refuse collection service was rendered. (Added by Ord. 47-83, App. 2/4/83; amended by Ord. 206-93, App. 6/25/93))

SEC. 291.8. PAYMENT BASED ON INCORRECT INFORMATION.

If City makes payment to Collector and the information provided by Collector pursuant to Section 291.5 is found to be inaccurate so as to prevent City from recovering the amount of payment from Owner, Collector shall reimburse City for the amount paid to Collector and the administrative cost incurred pursuant to this Ordinance. (Added by Ord. 47-83, App. 2/4/83)

SEC. 291.9. DIRECTOR'S HEARING.

Prior to the report of delinquent collection services fees being submitted to the Board of Supervisors, the Director shall cause a hearing to be held as to each owner of the real property to which service was rendered. At such hearing, the Owner may make any protest or objection regarding inclusion on the list.

The Director shall fix a date, time and place of hearing and shall cause a notice, at least 10 days prior to said hearing, to be mailed to the Owners.

At the conclusion of the hearing, the Director shall issue a report of delinquent charges together with his recommendation as to any charge. (Added by Ord. 47-83, App. 2/4/83)

SEC. 291.10. COLLECTION OF DELINQUENT FEES AS A SPECIAL ASSESSMENT.

The Director may initiate proceedings to make delinquent refuse collection service fees a special assessment against the parcels of property situated within the City to which said service was rendered and fees paid by City. (Added by Ord. 47-83, App. 2/4/83)

SEC. 291.11. REPORTS OF DELINQUENCIES TRANSMITTED TO BOARD OF SUPERVISORS.

A report of delinquent charges shall be transmitted to the Board of Supervisors by the Director. Upon receipt by the Board of Supervisors of

the report, it shall fix a time, date and place for hearing the report and any protests or objections thereto. (Added by Ord. 47-83, App. 2/4/83)

SEC. 291.12. HEARING.

The Board of Supervisors shall cause notice of the hearing to be mailed to the Owner of the real property to which the service was rendered not less than 10 days prior to the date of hearing. At the time fixed for the report, the Board of Supervisors shall hear it with any objections of the Owner liable to be assessed for delinquent accounts. The Board of Supervisors may make such revisions, corrections or modifications of the report as it may deem just and in the event that the Board of Supervisors is satisfied with correctness of the report (as submitted or as revised, corrected or modified), it shall be confirmed or rejected by resolution. The decision of the Board of Supervisors on the report and on all protests or objections thereto shall be final and conclusive. (Added by Ord. 47-83, App. 2/4/83)

SEC. 291.13. COLLECTION OF ASSESSMENT.

Upon confirmation of the report by the Board of Supervisors, the delinquent charges contained therein shall constitute a special assessment against the property to which the services were rendered. Thereafter, said assessment may be collected at the same time and in the same manner as ordinary municipal taxes are collected and shall be subject to the same penalties and same procedure of sale as provided for delinquent, ordinary municipal taxes.

The assessments shall be subordinate to all existing special assessment liens previously imposed upon the property and paramount to all other liens except those for state, county and municipal taxes with which it shall be upon parity. The lien shall continue until the assessment and all interest and penalties due and payable thereon are paid. All laws applicable to the levy, collection and enforcement of municipal taxes shall be applicable to said special assessments. (Added by Ord. 47-83, App. 2/4/83)

SEC. 291.14. CONTINUING APPROPRIATION ACCOUNT.

There is hereby created in the general fund a continuing appropriation account entitled "Payment of Property Owners' Delinquencies for Refuse Collection Service." This account shall be credited with such sums as may be appropriated by the Board of Supervisors, delinquencies collected by the Director of Public Health, assessments collected by the Tax Collector, and sums received in consideration of release of liens. Expenditures from said sums shall be made to Collectors for Owner delinquent accounts. In the event that the unexpended balance in said account shall exceed $160,000, such excess shall be transferred to the unappropriated balance of the general fund. (Added by Ord. 47-83, App. 2/4/83)

SEC. 291.15. MANNER OF GIVING NOTICES.

Any notice required to be given hereunder by the City, the Director or any Collector to an Owner shall be sufficiently given or served upon the Owner for all purposes hereunder if personally served upon the Owner or if deposited, postage prepaid, in a post office letter box addressed to the "Owner" at the official address of the Owner maintained by the Tax Collector of the City for the mailing of tax bills or, if no such address is available, to the Owner at the address of the dwelling. (Added by Ord. 47-83, App. 2/4/83)

SEC. 291.16. PENALTY.

Notwithstanding the provisions of Section 291.3 of this Article, any person who shall violate any of the provisions of Sections 291.1 or 291.2 of this Article shall be guilty of an infraction or a misdemeanor. If charged as an infraction, upon conviction thereof, said person shall be punished for the first offense by a fine of not less than $10 nor more than $50; and for a second and each additional offense by a fine of not less than $20 nor more than $100.

If charged as a misdemeanor, upon conviction thereof, said person shall be punished by imprisonment in the County Jail not exceeding one year or a fine not exceeding $1,000. The compli-

ant charging such violation shall specify whether the violation is a misdemeanor of infraction, which decision shall be solely that of the District Attorney. (Added by Ord. 47-83, App. 2/4/83)

SEC. 291.17. SEVERABILITY.

If any part or provision of Sections 291 through 291.16 or application thereof, to any person or circumstance is held invalid, the remainder of the Section, including the application of such part or provision to other persons or circumstances shall not be affected thereby and shall continue in full force and effect. To this end the provisions of the Sections are severable. (Added by Ord. 47-83, App. 2/4/83)

SEC. 292. CHARACTER OF VEHICLES FOR REFUSE REMOVAL.

All vehicles used by refuse collectors licensed by the Director of Public Health pursuant to that certain Ordinance No. 17.083, approved by the electors at the general election held on November 8, 1932, as amended, for the purpose of collecting, disposing of, or transporting through the streets of the City and County of San Francisco, any "refuse," as defined by Section 1 of said ordinance, shall be lined with zinc, sheet iron, or other metallic substance and shall be constructed so as to prevent any liquid refuse substance from escaping from such vehicles. The total outside width of such vehicles, or the loads thereon, may exceed the width limitation prescribed by Section 35100 of the Vehicle Code of the State of California; provided, however, that in no event shall the width of such vehicles exceed 107 inches, nor shall the width of any load thereon exceed 115 inches. Such vehicles shall also be provided with canvas covers, which shall be kept in a reasonably clean condition, and which shall at all times when said vehicles are passing along or standing upon any street or alley of this City (except when the owner or person having such vehicle in charge is in the act of securing a load of refuse to be emptied into said vehicle) be kept on such vehicles in such manner that the covers shall extend well down the sides and ends of the vehicles, and be securely fastened at the corners, sides and ends of the vehicles; provided, however, that when the vehicles are empty of refuse and are reasonably clean and free from noisome odors, the covers need not be kept on the vehicles in the manner above prescribed.

Vehicles used for the transportation of swill shall be so constructed that the same shall be watertight, and that no leakage can escape from such vehicles, and such vehicles shall be provided with a hinged metal or wood cover which can be tightly closed. All vehicles for the transportation of swill or garbage of any character shall be subject to the approval of the Director of Public Health before licenses for their operation are issued. (Amended by Ord. 257-61, App. 9/14/61)

SEC. 293. DEFINITIONS APPLICABLE TO SECTIONS 293—293.4.

(a) "Recyclable materials" shall mean materials segregated from refuse by the producer or user of such materials and placed for collection for subsequent reuse or use as raw materials for new products. Recyclable materials shall consist only of the materials designated by the Chief Administrative Officer for collection pursuant to the City's curbside recycling program.

(b) "Placed for collection" shall mean the deposit of recyclable materials by the producer or user of such materials on public street or sidewalk areas for collection and removal for recycling purposes.

(c) "Person" shall mean any living human being, firm, partnership, association, corporation, company, organization, or government entity. (Added by Ord. 106-90, App. 3/23/90)

SEC. 293.1. VIOLATIONS.

It shall be unlawful for any person other than an authorized City employee or the City's authorized curbside recycling program collectors to take, remove, move or otherwise appropriate the container in which recyclable materials are placed for collection and the matters contained therein. The City and its duly authorized collectors shall have the exclusive right to collect recyclable

materials placed for collection in public sidewalk and street areas. (Added by Ord. 106-90, App. 3/23/90)

SEC. 293.2. PENALTY.

Any person who shall violate any of the provisions of Section 293.1 of this Article shall be guilty of an infraction or a misdemeanor. If charged as an infraction, upon conviction thereof, said person shall be punished for the first offense by a fine of not less than $20 nor more than $250; and for a second and each additional offense by a fine of not less than $100 nor more than $250. If charged as a misdemeanor, upon conviction thereof, said person shall be punished by imprisonment in the county jail not exceeding six months or a fine not exceeding $500, or both. (Added by Ord. 106-90, App. 3/23/90)

SEC. 293.3. ENFORCEMENT.

In addition to any peace officer, the following classes of employees of the City and County of San Francisco shall have the authority to enforce the provisions of Sections 293 to 293.2:

Classification Number	Class Title
6120	Environmental Health Inspector
6122	Senior Environmental Health Inspector
6124	Principal Environmental Health Inspector
6126	Director, Bureau of Environmental Health
6127	Assistant Director, Bureau of Environmental Health
8280	Environmental Control Officer

(Added by Ord. 106-90, App. 3/23/90)

SEC. 293.4. APPLICATION.

The provisions of Sections 293 to 293.3 of this code prohibit the collection of recyclable materials from public sidewalk and street areas by any person other than authorized City employees or the City's authorized curbside recycling program collectors. The provisions of Sections 293 to 293.3 do not limit or otherwise affect the disposal of refuse having commercial value by its producer in any lawful manner he or she may choose or the recycling of collected refuse by licensed refuse collectors. (Added by Ord. 106-90, App. 3/23/90)

SEC. 294. SOLID WASTE TRANSFER STATION—PERMIT REQUIRED.

It shall be unlawful for any person, firm or corporation to operate a Solid Waste Transfer Station within the City and County of San Francisco without a permit issued and signed by the Director of Public Health. A Solid Waste Transfer Station is any facility defined as a transfer or processing station under Section 40200 of the California Public Resources Code, which definition is incorporated by reference as if fully set forth herein. (Added by Ord. 206-93, App. 6/25/93)

SEC. 297. USE OF MANURE WAGONS.

It shall be unlawful for any person, firm or corporation to transport or carry manure or stable refuse in any vehicle without a permit from the Director of Public Health certifying its approval of the construction of such vehicle, and specifying the manner in which such vehicle may be used.

It shall be unlawful for any person to load manure or stable refuse upon any vehicle elsewhere than within the premises from which the same is to be removed, or to transport manure or stable refuse through the public streets in such manner as to permit the same to fall upon any street; or to unload or deposit manure or stable refuse from any vehicle anywhere within the City and County, without a permit from the Director of Public Health.

All manure or stable refuse must be removed from the stable at least semi-weekly, and at all times shall such stable or other place, and every part and appurtenance thereof, be kept in a clean and sanitary condition.

SEC. 307. REMOVAL OF WASTE FROM WHOLESALE VEGETABLE MARKETS.

The rubbish, garbage and waste from all wholesale vegetable markets and from the side-

walks and streets in front of said wholesale vegetable markets must be removed daily, between the hours of 5:00 p.m. and 9:00 a.m.

Cross reference:

Refuse collection and disposal ordinance, see Sec. 290

SEC. 308. SALE ON SIDEWALK OR FROM STANDING VEHICLES PROHIBITED.

It shall be unlawful for any person, firm, or corporation, engaged in the sale or barter of vegetables, to use any sidewalk in the City and County of San Francisco for the purpose of selling, storing, dealing in or bartering said vegetables, and it shall be unlawful for any such person, firm or corporation to keep or permit any vehicle standing alongside of said sidewalk, for the purpose of selling, storing, bartering or dealing in vegetables, or for the purpose of carrying on the business of selling, bartering or dealing in vegetables, and it shall be unlawful for any such person, firm or corporation to deal in, sell or barter any vegetables from any standing vehicle while in said street.

Nothing in this Section, however, shall be interpreted to prevent a person owning or renting a store or stall for the purpose of dealing in, selling or bartering vegetables, from using the sidewalk in front of the said store or stall for the purpose of transporting said vegetables from the said store or stall to any vehicle or from any vehicle to the said store or stall, or from storing the same on the sidewalk for the purpose of such transportation or from keeping any vehicle standing in front of the said store or stall for the purpose of said transportation.

SEC. 313. ROUTES OF GARBAGE COLLECTORS—COLLECTION PERMITS.*

It shall be unlawful for any person, firm or corporation (whether such person, firm or corporation is licensed to collect refuse or not, as provided in Sections 4 and 8 of that certain ordinance "No. 17.083, approved by the electors at the general election held on November 8, 1932, providing for the collection and disposition of refuse in the City and County of San Francisco; providing for the licensing of refuse collectors by the Director of Public Health; fixing the maximum rates or charges for the collection of refuse by licensed refuse collectors, from homes, apartment houses, stores, etc.; dividing the City and County of San Francisco into collection routes; providing for penalties for the violation of the provisions of said ordinance") to collect any refuse from any dwelling place, household, apartment house, store, office building, restaurant, hotel, institution or commercial establishment in the City and County of San Francisco or on any of the garbage routes into which said City and County, is divided (under and by virtue of the provisions of Section 4 of the aforesaid ordinance, approved by the electors at the general election held on November 8, 1932) without first having obtained from the Director of Public Health a permit so to do in the manner and on the terms and conditions specified in Section 4 of the aforesaid ordinance approved by the electors at the general election held on November 8, 1932.

Any permit applied for by any person, firm or corporation and issued by the Director of Public Health under the provisions of the aforesaid ordinance approved by the electors at the general election held on November 8, 1932, shall be for a certain route or certain routes as said route or routes are defined, designated and delineated by Section 4 of said ordinance approved by the electors at the general election held on November 8, 1932, and shall constitute permission to collect refuse only on the route or routes designated in said permit.

It shall be unlawful for any person, firm or corporation holding a permit from the Director of Public Health (under the provisions of Section 4 of the aforesaid ordinance adopted by the electors at the general election on November 8, 1932) to collect garbage or to attempt to collect refuse from any dwelling place, household, apartment house, store, office building, restaurant, hotel, institution or commercial establishment, situated on any other route or routes than the route or routes for which such permit is issued.

The term "refuse" as used in this Section shall be taken to mean all waste and discarded

materials as defined by Section 1 of the aforesaid ordinance adopted by the electors at the general election held November 8, 1932.

Cross reference:

Refuse collection and disposal ordinance, see Sec. 290

[The next page is 231]

ARTICLE 7: LAUNDRIES

SEC. 348. SPRAYING OF CLOTHES BY CERTAIN METHODS PROHIBITED.

It shall be unlawful for any person or persons, owning or employed in any laundry in the City and County of San Francisco, to spray the clothing of any person or persons with water emitted from the mouth of said owner or employee.

SEC. 349. PENALTY.

Any person violating any of the provisions of Section 348 of this Article shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding $50, or by imprisonment in the County Jail for not more than one month, or by both such fine and imprisonment.

SEC. 354. ESTABLISHMENT AND MAINTENANCE OF PUBLIC LAUNDRIES.

It shall be unlawful for any person, firm, corporation or association of persons to establish, maintain, operate or carry on the business of a public laundry or washhouse, where clothes or other articles are cleansed, ironed, washed, starched, marked or sorted for hire or profit, including automatic laundries as defined in Section 360 of this Code, in any building or premises within the limits of the City and County of San Francisco, without having first obtained a permit therefor from the Director of Public Health, which said permit shall specify the name of the permittee and the location of the premises used or to be used as such laundry or washhouse.

(a) **Permit Conditions.** No permit shall be granted except upon satisfactory evidence that the premises are properly and sufficiently drained, and that all proper arrangements for carrying on the business without injury to the sanitary condition of the neighborhood have been complied with, and particularly that the provisions of all ordinance pertaining thereto have been complied with and upon a report from the Chief of the Division of Fire Prevention and Investigation of the City and County of San Francisco, or other satisfactory evidence that the stoves, chimneys, machinery, equipment, washing and drying apparatus and the appliances for heating smoothing-irons are adequate and in good condition, and that their use is not dangerous to the surrounding property from fire, and that all proper precautions have been taken to comply with the provisions of the ordinance defining the fire limits of the City and County of San Francisco and regulating the erection and use of buildings in said city and county, and of all ordinances pertaining thereto.

It shall be the duty of the Director of Public Health and of the Chief of the Division of Fire Prevention and Investigation, respectively, upon request of any applicant for a permit hereunder to inspect the premises on which it is proposed to establish, maintain, operate or carry on said business, or in which said business is being maintained, operated or carried on with a view to ascertaining the existence or nonexistence of the conditions and matters set forth in this Section.

(b) **Revocation of Permits, etc.** The Director of Public Health shall not grant, refuse or revoke any permit hereunder except after a full hearing, publicly had, at which the applicant or permittee may appear in person and by counsel and introduce evidence; and in the granting,

refusal or revocation of permits said Director of Public Health shall exercise a sound and reasonable discretion.

Permits issued hereunder are not transferable.

Any permit granted hereunder shall be revocable by the Director of Public Health for any violation of the provisions of any ordinances of the City and County of San Francisco, in the conduct of such laundry or washhouse.

(c) **Persons Afflicted with Contagious Diseases.** No person, firm, corporation or association of persons maintaining, operating or carrying on the business of a public laundry or washhouse or automatic laundry, as defined in Section 360 hereof, within the limits of the City and County of San Francisco, shall permit any person suffering from any infectious or contagious disease to lodge, sleep or remain within or upon the premises used by him, her, it or them, for the purpose of such laundry or washhouse.

It shall be unlawful for any person, firm, corporation or association of persons to establish, maintain, operate or carry on a public laundry or washhouse, or automatic laundry as defined in Section 360 hereof, within the City and County of San Francisco in any building or any portion thereof, or in any annex or outhouse thereto or other premises that is frequented by persons likely to spread infectious, contagious or loathsome diseases or that is occupied or used or frequented directly or indirectly for any immoral or unlawful purpose, or that is occupied or used as a public hall or store unless there is a complete wall separation between said hall or store and said laundry, washhouse, or automatic laundry and the latter has its own separate entrance from the street.

(d) **Lettering on Laundry Vehicles.** It shall be unlawful for any person, firm or corporation either as owner, agent or employee of any public laundry or public washhouse, where clothes or other articles are cleansed for hire, or for any owner or operator of any independently owned laundry route, to operate or to cause to be operated any vehicle for the purpose of receiving clothes or other articles to be cleansed or for the purpose of delivering any clothes or other articles which have been cleansed, unless such vehicle shall carry in letters at least four inches high, painted on both sides, the name of the laundry where said clothes or other articles have been or are to be cleansed.

(e) **Exception.** The provisions of this Section shall not apply to hotels, or hospitals maintaining or operating laundries exclusively for the convenience, service or accommodation of the respective guests, patients or employees.

(f) **Violation.** It shall be unlawful for any owner, lessee, occupant, or person in charge or control of any building or premises within the limits of the City and County of San Francisco or for the president, manager, superintendent or other managing officer of any firm, corporation or association to cause or to permit the business of public laundry or public washhouse, or automatic laundry as defined in Section 360 hereof, to be established, maintained, operated or carried on in any building or premises within the City and County of San Francisco in violation or in disregard of the provisions of this Article.

SEC. 355. CHANGES OR REPLACEMENTS OF MACHINERY OR EQUIPMENT.

No permittee may change or replace existing machinery or equipment or install additional machinery or equipment in any building or premises for which a permit has been previously issued under the provisions of Section 354 of this Article without first having obtained a certificate of approval therefor from the Director of Public Health. No certificate of approval shall be granted except upon satisfactory evidence that such change, replacement or installation is in compliance with the conditions and requirements set forth in subdivision (a) of Section 354 for the original issuance of a permit for the laundry operation. (Amended by Ord. 257-59, App. 5/14/59)

SEC. 359. HANDLING OF CLOTHES.

It shall be unlawful for any person, firm or corporation to maintain any device for receiving soiled clothing for the purpose of being laun-

dered, or to conduct any office or place for the collection of soiled clothing for laundering purposes, or for the distribution of clothing after laundering, within any building, room, apartment, dwelling, basement or cellar where food stuffs are sold, offered for sale, prepared, produced, manufactured, packed, stored, or otherwise disposed of; or in any premises wherein the business of secondhand or misfit clothing, hat or clothing renovating, cleaning and dyeing and repairing of shoes is conducted.

SEC. 360. AUTOMATIC LAUNDRIES, DEFINITION.

Any automatic laundry is defined to be any place where two or more self-service type automatic washing machines are installed, each powered by electric motors; where one or more gas-fired or electric heated drying machines are installed; where one or more extractor machines are installed; and where a fee is charged for the individual use of such washing machines and drying machines or either of them.

(a) **Solicitation of Business, Collection of Laundry.** It shall be unlawful for the owner, operator or there agent to solicit or collect clothing to be laundered from the customer outside the premises.

(b) **Operation, Removal of Clothes by Operators.** Nothing in this Section shall be construed to prevent the operator of an automatic laundry, as defined herein, from operating and controlling the mechanical operations of the equipment in such automatic laundry, or from removing clothes from the washing machines after the washing operation has been completed, or from placing such cleansed clothes in and removing them from an extractor or drying machine.

(c) **Maintenance of Machines.** It shall be the duty of the owner, operator, or their agent of the automatic laundry, to post in a conspicuous manner, the name, address and telephone number of the person or entity responsible for the servicing of defective machinery in the automatic laundry. For purposes of this Section, a post office box number constitutes an address.

(d) **Penalty.** Any person violating any of the provisions of this Section 360 shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine not to exceed $200, or by imprisonment in the County Jail for not more than one month, or by such fine and imprisonment. (Amended by Ord. 331-75; App. 7/16/75)

[The next page is 245]

ARTICLE 8: FOOD AND FOOD PRODUCTS

SEC. 385. GATHERING, SALE, ETC., OF WATERCRESS GROWN NEAR SEWER OUTLETS.

No person shall gather, or sell, or offer for sale, or keep for sale, or give, or distribute, or otherwise dispose of any watercress, or any other edible herb or vegetable which has been, or is, or may be, growing within 1,000 feet of any sewer outlet, or any cesspool or any other place where stagnant water, or seepage, or other drainage, or any offensive matter, or any matter dangerous to health has, or may be accumulated.

SEC. 390. MANUFACTURE, ETC., OF DANGEROUS FOOD ADULTERANTS.

No person, firm or corporation shall manufacture, sell, expose for sale, give away, distribute or deliver or have in their possession, with intent to sell, expose for sale, give away, distribute or deliver, or cause to sell, expose for sale, give away, distribute or deliver any baneful or injurious substance intended to be used in the preservation of any article of food or drink for human consumption.

SEC. 391. PENALTY.

Any person, company or corporation violating any of the provisions of Section 390 of this Article shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined a sum not exceeding $100, nor less than $25, or by imprisonment in the County Jail for a term not exceeding 100 days, nor less than 30 days, or by both such fine and imprisonment.

SEC. 396. FURNISHING OF SAMPLES OF FOOD PRESERVATIVES TO DEPARTMENT.

Every person, firm or corporation who shall manufacture, sell, expose for sale, give away, distribute, deliver or have in their possession, with intent to sell, expose for sale, give away, distribute or deliver, any mixture, compound or other substance intended to used in the preservation of any article of food or drink for human consumption is hereby required to furnish to the Department of Public Health on its demand a sample of said mixture, compound or other substance intended to be used in the preservation of any article of food or drink for human consumption.

SEC. 397. PENALTY.

Any person, company or corporation violating any of the provisions of Section 396 of this Article shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined a sum

not exceeding $100, nor less than $25, or by imprisonment in the County Jail for a term not exceeding 100 days, nor less than 30 days, or by both such fine and imprisonment.

SEC. 402. USE OF PARAFFIN IN PREPARATION OF RICE.

It shall be unlawful for any person, firm or corporation to use, or cause to be used, any oil, paraffin or other similar substance in the process of cleaning or preparing rice for market.

SEC. 407. CONVEYANCE OF BREAD, ETC., THROUGH PUBLIC STREETS.

It shall be unlawful for any person, company or corporation to carry, transport or convey, or to cause to be carried, transported or conveyed through the public streets in open baskets or exposed containers, or vehicles or otherwise, any bread, cakes or pastry intended for human consumption.

SEC. 412. WIRE SCREENS, ETC., IN PLACES WHERE FOOD IS SOLD.

It shall be unlawful for any person, firm, association or corporation, engaged in maintaining, conducting, carrying on or managing a restaurant place, kitchen, meat market, fruit store, vegetable store, delicatessen store, bakery store, street vendor's store, or any other place in which or where food is prepared, sold or disposed of for human consumption, to maintain, conduct, carry on or manage said place or store, except in the manner provided for in this Section.

It shall be unlawful for any person, firm, association or corporation to maintain, conduct, carry on or manage a restaurant place or kitchen where foodstuffs are cooked, prepared, sold or disposed of for human consumption, unless the doors, windows, apertures or other openings to the premises or place where said restaurant or kitchen is conducted, maintained, carried on or managed are effectively enclosed with finely woven wire mesh screens.

It shall be unlawful for any person, firm, association or corporation, between the hours of 9:00 a.m. and 6:00 p.m., to maintain, conduct, carry on or manage a meat market, fruit store, vegetable store, poultry store, delicatessen store or bakery store where food is offered for sale or disposed of for human consumption, unless all doors, windows, apertures and other openings to the premises or place where the business above mentioned is conducted, carried on, maintained or managed are tightly enclosed with finely woven wire mesh screens; and, furthermore, unless the food which is offered for sale or disposed of is kept within the doors of the store or place where said business is maintained, conducted, carried on or managed.

Provided, however, that this Section shall not apply to those who sell or offer for sale fruit solely in original, covered or unbroken packages.

It shall be unlawful for any person, firm, association or corporation to maintain, conduct, carry on or manage a street stand, whether stationary or movable, where is exposed for sale any food, candy or other edibles for human consumption, whether consumed at said stand or elsewhere, unless the said stand is furnished with tight glass cases, so as to protect said food, candy or other edibles from exposure to dirt, dust, flies or other insects.

Provided that this Section shall not apply to fruit or vegetables exposed for sale in street stands, stationary or movable.

It shall be unlawful for any person, firm, association or corporation to maintain, conduct, carry on or manage a street stand, whether stationary or movable, where is exposed for sale any fruit or vegetables, whether consumed at the said stand or elsewhere, unless the said stand is furnished, so as to protect said fruit and vegetables, with tight glass cases or finely woven wire mesh screens, mosquito netting, or other dirt, dust and fly proof covering, so placed over and about said fruit or vegetables as not to touch the same at any point.

Nothing contained in this Section shall require those selling or offering for sale bananas, pineapples, oranges, limes, lemons, or other citrus fruits, or fruits or vegetables whose rind or skin must be removed before eating, to enclose said fruits or vegetables with any covering or to

keep the same within the doors of the store or place where the same may be sold or offered for sale.

SEC. 417. CRABS, SHELLFISH, ETC.—CONDITIONS, PREPARATIONS, ETC.

It shall be unlawful to send, bring or cause to be sent or brought into the City and County of San Francisco any live crabs, crawfish or other shellfish unless the same be in good healthy condition.

It shall be unlawful to prepare for food for human consumption any crabs, crawfish or other shellfish which are not at the time of preparation alive or in good wholesome condition, or to sell, expose or offer for sale or have possession of the same.

It shall be unlawful to send, bring or cause to be brought into the City and County of San Francisco any cooked crabs, crawfish or other shellfish, unless the same shall have been cooked for a period of not less than 40 minutes in boiling water at the time of preparation, and properly packed in ice while in transit to this City.

SEC. 422. VEGETABLE CULTURE—WATERING AND GROWING AGENTS.

It shall be unlawful for any person, firm or corporation to use human discharges or excrement, or any water containing any human discharges or excrement, or the waters of any well, spring, pond or creek, which receives the discharges of any sewer or drain, or which by any means whatever has become polluted with sewage discharges, for the purpose of irrigating or sprinkling vegetables used for human consumption.

It shall be unlawful for any person, firm or corporation to bring into the City and County of San Francisco, or to produce, sell, offer for sale or have in his or their possession for sale for human consumption in the City and County of San Francisco, without first obtaining a license from the Department of Public Health, to produce, sell, or offer for sale, vegetables for human consumption; and further they shall also be required to have a certificate by the Department of Public Health that said vegetables are produced in a manner that does not violate any of the provisions of this Section, and that the same are being handled and transported in wagons and containers satisfactory to the Department of Public Health, and said wagons and containers shall bear the legend "Inspected by the Department of Public Health, San Francisco, California," before a license for their operation is issued.

SEC. 423. PENALTY.

Any person, firm or corporation who shall violate any of the provisions of Section 422 of this Article shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not less than $25 and not more than $500 or by imprisonment in the County Jail not exceeding six months, or by both such fine and imprisonment.

SEC. 428. MANUFACTURE, ETC., OF FOOD AND LIQUOR.

The manufacture, production, preparation, compounding, packing, selling, offering for sale or keeping for sale within the City and County of San Francisco, or the introduction into this City from any other County, state, territory or the District of Columbia, or from any foreign country, of any article of food or liquor which is adulterated, mislabeled or misbranded within the meaning of this Section, is hereby prohibited. Any person, firm, company or corporation who shall import or receive from any other County, state or territory, or the District of Columbia, or from any foreign country, or who having so received shall deliver for pay or otherwise, or offer to deliver to deliver to any other person, any article of food or liquor adulterated, mislabeled or misbranded within the meaning of this Section, or any person who shall manufacture or produce, prepare or compound, or pack or sell, or offer for sale, or keep for sale in the City and County of San Francisco, any such adulterated, misbranded food or liquor shall be guilty of a misdemeanor; provided, that no article of food shall be deemed adulterated, mislabeled or misbranded within the provisions of this Section, when prepared for export beyond the jurisdiction

of the United States and prepared or packed according to the specifications or directions of the foreign purchaser, when no substance is used in the preparation or packing thereof in conflict with the laws of the foreign country to which said article is intended to be shipped; but if such food shall be in fact sold, or kept or offered for sale for domestic uses and consumption, then this proviso shall not exempt said article from the operation of any provision of this Section.

(a) **Definition.** The term food as used in this Section shall include all articles used for food, drink, liquor, confectionery or condiment by man or other animals, whether simple, mixed or compound.

(b) **Standard of Purity.** The standard of purity of food and liquor shall be that proclaimed by the Secretary of the United States Department of Agriculture, where standards are not fixed by ordinance of the City and County of San Francisco.

(c) **Adulteration.** Food shall be deemed adulterated within the meaning of this act in any of the following cases:

(1) If any substance has been mixed or packed, or mixed and packed with the food so as to reduce or lower or injuriously affect its quality, purity, strength or food value;

(2) If any substance has been substituted wholly or in part for the article of food;

(3) If any essential or any valuable constituent or ingredient of the article of food has been wholly or in part abstracted;

(4) If the package containing it or its label shall bear in any manner any statement, design or device whereby damage or inferiority is concealed;

(5) If it contains any added poisonous or other added deleterious ingredient;

(6) If it consists in whole or in part of a filthy, decomposed or putrid animal or vegetable substance, or any portion of an animal or vegetable unfit for food, whether manufactured or not, or if it is the product of a deceased animal, or one that has died otherwise than by slaughter; provided that an article of liquor shall not be deemed adulterated, mislabeled or misbranded if it be blended or mixed with like substance so as not to injuriously lower or injuriously reduce or injuriously affect its quality, purity or strength;

(7) In the case of confectionery, if it contains terra alba, barytes, talc, chrome yellow, or other mineral substance or poisonous color or flavor, or other ingredient deleterious or detrimental to health, or any vinous, malt or spirituous liquor or compound or narcotic drug;

(8) In the case of vinegar, if it be artificially colored;

(9) If it does not conform to the standard of purity therefor as proclaimed by the Secretary of the United States Department of Agriculture, when not fixed by ordinance of the City and County of San Francisco.

(d) **Misbranding.** The term "misbranded" as used herein shall apply to all articles of food, or articles which enter into the composition of food, the package or label of which shall bear any statement, design, or device regarding such article, or the ingredients or substances contained therein which shall be false or misleading in any particular, and to any food product which is falsely branded as to the county, city and county, city, town, state, territory, District of Columbia or foreign country in which it is manufactured or produced.

Food and liquor shall be deemed mislabeled or misbranded within the meaning of this Section in any of the following cases:

(1) If it be an imitation of or offered for sale under the distinctive name of another article of food;

(2) If it be labeled or branded or colored so as to deceive or mislead, or tend to deceive or mislead the purchaser, or if it be falsely labeled in any respect, or if it purport to be a foreign product tending to mislead the purchaser, or purport to be a foreign product when not so, or if the contents of the package as originally put up shall have been removed in whole or in part and other contents shall have been placed in such package;

(3) If in package form, and the contents are stated in terms of weight measure, they are not plainly and correctly stated on the outside of the package;

(4) If the package containing it or its label shall bear any statement, design or device regarding the ingredients or the substance contained therein, which statement, design or device shall be false or misleading in any particular;

(5) When any package bears the name of the manufacturer, jobber or seller, or the grade or class of the product, it must bear the name of the real manufacturer, jobber or seller, and the true grade or class of the product, the same to be expressed in clear and distinct English words in legible type; provided that an article of food shall not be deemed misbranded if it be a well-known product of a nature, quality and appearance and so exposed to public inspection as not to deceive or mislead nor tend to deceive or mislead a purchaser, and not misbranded and not of the character included within the definitions, first to fourth of this subsection;

(6) If, having no label, it is an imitation or adulteration, or is sold or offered for sale under the name, designation, description or representation which is false or misleading in any particular whatever; and in case of eggs and poultry, if they have been kept or packed in cold storage, or otherwise preserved, they must be so indicated by written or printed label or placard plainly designating such fact when offered or exposed for sale.

(e) **Package Defined.** The term "package" as used in this Section shall be construed to include any phial, bottle, jar, demijohn, carton, bag, case, can, box or barrel, or any receptacle, vessel or container of whatsoever material or nature which may be used by a manufacturer, producer, jobber, packer or dealer for enclosing any article of food.

(f) **Evidence of Violation.** The possession of any adulterated, mislabeled, or misbranded article of food or liquor by any manufacturer, producer, jobber, packer or dealer in food, or broker, commission merchant, agent, employee or servant of any such manufacturer, producer, jobber, packer or dealer, shall be prima facie evidence of the violation of this Section.

(g) **Rights to Samples.** The Department of Public Health and all its officers, agents and employees shall have the right at any time to obtain by purchase a sample of food from any person, persons or concern selling or exposing for sale or exchanging in the City and County of San Francisco, such sample to be taken and sealed in full view and in the presence of the person from whom said sample is taken, and shall then and there furnish to the person from whom such sample is taken approximately one-half such sample sealed, and shall deliver to the said Department of Public Health immediately the sample so taken, properly sealed.

(h) **Exemption from Prosecution.** No dealer shall be prosecuted under the provisions of this Section when he can establish a guaranty signed by the wholesaler, jobber, manufacturer or other party residing in the United States from whom he purchased such an article to the effect that the same is not adulterated, mislabeled or misbranded within the meaning of this Section, designating it. Said guaranty to afford protection, must contain the name and address of the party or parties making the sales of such article to said dealer, and an itemized statement showing the article purchased; or a general guaranty may be filed with the Secretary of the United States Department of Agriculture by the manufacturer, wholesaler, jobber or other party in the United States and be given a serial number, which number shall appear on each and every package of goods sold under such guaranty, with the words, "Guaranteed under the food and drugs act, June 30, 1906". In case the wholesaler, jobber, manufacturer or other party making such guaranty to said dealer resides within this state, and it appears from the report of the City Chemist that such article or articles were adulterated, mislabeled or misbranded within the meaning of this Section, or the National Pure Food Act, approved June 30th, 1906, the District Attorney must forthwith notify the Attorney General of the United States of such violation.

SEC. 429. PENALTY.

Any person, firm, company or corporation violating any of the provisions of Section 428 of this Article shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than $25 nor more than $500 or shall be imprisoned in the County Jail for a term not exceeding six months, or by both such fine and imprisonment. Food found to be adulterated, mislabeled or misbranded within the meaning of Section 428 may be seized and destroyed.

SEC. 434. RECEIPT AND DELIVERY OF BREAD, ETC., AT BAKERIES, STORES, ETC.

It shall be unlawful for any person, firm or corporation to conduct and maintain, or carry on, or cause to be conducted, maintained or carried on, any bakery, store, shop or stand where there is to be received or delivered bread or other bakery products, unless the said bakery, store, shop or stand be provided with proper receptacles for bread, or other bakery products, as in Section 435 of this Article provided.

Every bakery, store, shop or stand where bread or other bakery products of any kind are received or delivered shall be provided with a wooden receptacle for the reception and protection of bread or other bakery products, and into which all bread or other bakery products shall be placed when delivered as herein provided.

SEC. 435. CHARACTER OF RECEPTACLES.

(a) The said receptacle for the reception of bread or other bakery products as aforesaid, shall be constructed of clear pine board, dressed on both sides, and shall have not less than two coats of paint on the outside. The outside must present a smooth surface, with no bottom or side mouldings thereon. The receptacle shall be furnished with four bent iron legs, each two inches in height, fastened to two cleats which shall extend across the bottom of the receptacle, one inch from the ends of the receptacle, and the ends of said cleats shall extend to within one inch from the side thereof. The inside corners shall be filled and reinforced with right angle pine uprights with smooth surfaces to exclude dust accumulating in the corners of receptacle.

(b) There shall be no aperture, nor openings in said receptacle, and the top thereof shall be placed in a position slanting toward the front and shall extend one inch over the sides and front of said receptacle, and shall be used as a cover therefor, and shall be attached thereto with two hinges at the top and back, and be furnished with appliances for locking the cover on receptacle at the front.

(c) The minimum size of such receptacle shall be 20 inches in length, 15 inches in width, and 18 inches in height, exclusive of legs, and of whatever size said receptacle shall be built, it shall, in the main adhere to the proportions in the minimum size as hereinbefore set forth.

Such receptacle as aforesaid shall be placed and kept in a convenient place for the reception and delivering of bread or other bakery products outside any bakery, store, shop or stand as aforesaid at any time, and at all times, when the said bakery, store, shop or stand is closed between the hours of 6:00 in the afternoon of any day and 8:00 in the forenoon of the following day, the said receptacle shall be taken into and kept inside said bakery, store, shop or stand at and during all times when bread or other bakery products may be delivered to and into said bakery, store, shop or stand.

SEC. 440. FOOD PRODUCT AND MARKETING ESTABLISHMENT.

(a) Food Product and Marketing Establishment means any room, building, cart or vehicle, except those peddler wagons used for peddling as defined in Articles 13, 17.2 and 17.3 of Part II, Chapter VIII of the San Francisco Municipal Code, or place or portion thereof, maintained, used or operated for the purpose of commercially storing, selling, vending, packaging, making, cooking, mixing, processing, bottling, canning, packing, slaughtering, or otherwise preparing or handling food, except Food Preparation and Service Establishments as defined in Section 451 and Food Product and Marketing delivery vehicles.

(b) Food, as used in this Section, includes all articles used for food, drink, confectionery, or condiment, whether simple or compound, including perishable foods, such as fruits, vegetables, fish, meat, poultry, eggs, and bakery goods, whether sold after processing or sold in a fresh or frozen form. Food as used in this Section, shall not include whole pumpkins sold during the month of October for purely decorative purposes, which are not intended for human consumption, and which are clearly marked as being sold only for such limited purposes.

(c) "Bakery" is included within this Section and means any room, building, premises, or place which is used or operated for commercial baking, manufacturing, preparing, processing, retail selling, or packaging of bakery products. It includes all rooms of a bakery in which bakery products or ingredients are stored or handled. It does not, however, include any Food Preparation and Service Establishment as defined in Section 451.

(d) It shall be unlawful for any person, persons, firm or corporation to maintain or operate within any room, building, vehicle or place or portion thereof a Food Product and Marketing Establishment within the City and County of San Francisco, without having first obtained a permit issued and signed by the Director of Public Health of said City and County to do so.

Said permit when issued shall be kept displayed in a prominent place on the premises of the establishment, vehicle or cart for which or whom it is issued. (Amended by Ord. 492-84, App. 12/13/84)

SEC. 440.1. INSPECTION BEFORE ISSUANCE OF PERMIT.

It shall be the duty of the Department of Public Health, upon application from any person, firm or corporation desiring to open, conduct or continue any place of business within the limits of the City and County of San Francisco, before issuing the permit specified in Section 440 to cause the premises on which it is proposed to carry on such business or in which said business is being carried on to be inspected with view of ascertaining whether said premises are in a proper sanitary and rat-proof condition for the conduct of such business, also, whether the provisions of all ordinances or regulations made in accordance with provisions thereof relating thereto have been complied with. (Amended by Ord. 241-70, App. 7/14/70)

SEC. 440.2. PERMIT PROCEDURES.

The permit provided in Section 440 shall set forth the commercial uses permitted and shall be valid until suspended or revoked. Said permit shall not be transferable and shall be deemed revoked upon sale, transfer or assignment of the commercial use for which the permit was issued.

A permit may at any time be suspended or revoked for cause after a hearing by the Department of Public Health. Upon suspension or revocation the premises for which the permit was issued shall be posted with the order of the Department. (Amended by Ord. 93-68, App. 4/19/68)

SEC. 440.3. PROHIBITION.

(a) No person, firm or corporation engaged in the manufacture, handling or sale of food stuffs shall require, permit or allow any person suffering from any communicable disease to work, lodge, sleep or remain within or upon the premises.

(b) It shall be unlawful for any person, firm or corporation to allow any dog or dogs or cat or cats, to enter any place of business designated in Section 440, provided, however, that this subsection shall not apply to any Seeing-Eye dog accompanied by a blind person.

(c) It shall be unlawful for any person, firm or corporation to display on the street, or in the open air, food products liable to be injured, infected or polluted, without adequate protection from dirt, flies, animals or insects.

(d) The carrying on of any occupation in the place or room set apart for the preparation, storage, or sale of foodstuffs, whether cooked or raw or any allied operations that will generate or cause to arise a dust, smoke or offensive odor, is prohibited.

(e) It shall be unlawful for any person, firm or corporation to use any stable or other place where animals are kept as a place of storage for fruits, vegetables, meats, milk or any other foodstuffs.

(f) The plucking of chickens and other fowl, and the skinning or cleaning of animals shall be carried on in a separate room, and all dust, smoke or offensive odors arising therefrom must be disposed of by air shafts, fans, forced air, or such other means as may be approved by the Department of Public Health.

(g) No person shall be allowed to nor shall he reside or sleep in any room of a bake shop, public dining room, hotel, restaurant, kitchen, confectionery, or other place where food or foodstuffs are prepared, produced, manufactured, served or sold.

(h) It shall be the duty of every occupant, whether owner or lessee, of any bakery, candy factory, delicatessen, restaurant, warehouse or other place where foodstuff are manufactured, prepared, stored commercially in opened or unopened containers or served, to provide full protection for his cooked food and other wares from dust, dirt, flies and vermin by the use of suitable glass cases, wire screens or other methods approved by the Department of Public Health, and shall cause the abatement and destruction of vermin and flies wherever found. (Added by Ord. 237-63; App. 9/6/63)

SEC. 440.4. SANITATION OF PREMISES.

The floors, sidewalks, ceilings, furniture, receptacles, utensils, implements and machinery of every establishment or place where food is manufactured, packed, stored commercially in opened or unopened containers, sold or distributed shall at all times be kept in a healthful and in a sanitary condition, and for the purposes of this Section, unclean, unhealthful and unsanitary conditions shall be deemed to exist if food in the process of manufacture, preparation, packing, storing, sale or distribution is not securely protected from dust, dirt, rats, flies and other vermin, and, so far as may be possible, protected by any reasonable means from all other foreign or injurious contamination; and all refuse, dirt and waste products subject to putrefaction and fermentation incident to the manufacture, preparation, packing, storing, selling of and distribution of food, shall be removed once in each day; and all trucks, trays, trays, boxes, baskets and buckets and other receptacles, chutes, platforms, racks, tables, shelves, and all knives, saws, cleavers and other implements and machinery used in the moving, handling, cutting, chopping, mixing, canning and all other processes used in the preparation of food shall be thoroughly cleaned at least once in each day, and all operatives, employees, clerks and other persons therein employed or engaged shall maintain their persons and clothing in a clean and sanitary condition at all times and shall not store or keep unclean or soiled clothing or articles for personal use in or about said premises. (Added by Ord. 237-63; App. 9/6/63)

SEC. 440.5. TOILET AND HANDWASHING FACILITIES TO BE PROVIDED.

(a) Every food establishment, as defined in Section 27520 of the California Health and Safety Code, must provide toilet and handwashing facilities for use by employees. Every such establishment as to which construction or substantial reconstruction or rehabilitation is commenced on or after September 1, 1986, selling food for the purpose of immediate consumption without the reasonable expectation of further preparation or addition to other foods, shall make such toilet and handwashing facilities available for use by patrons without charge and shall comply with the Plumbing Code of the City and County of San Francisco.

(b) Provisions of this Section shall not apply to roadside stands, food establishments which are open to outside air or businesses which primarily sell at retail, meat, poultry and their by-products. (Amended by Ord. 199-86, App. 6/6/86)

SEC. 440.6. AUTHORITY TO MAKE RULES, ETC.

The Department of Public Health shall from time to time adopt such rules and regulations as

it may deem necessary and proper to give effect to the provisions of Sections 440 to 440.5, inclusive, hereof and in accordance therewith. (Added by Ord. 237-63; App. 9/6/63)

SEC. 441. PENALTIES AND ENFORCEMENT.

(a) The Department of Public Health shall enforce Section 440.5 hereof against violations by either of the following actions:

(1) Serving notice requiring the correction of any violation of this Section;

(2) Calling upon the City Attorney to maintain an action for injunction to enforce the provisions of Section 440.5, to cause the correction of any such violation, and for assessment and recovery of a civil penalty for such violation.

(b) Any individual, firm, partnership, corporation, company, association, society, group or other person or legal entity that violates any provision of Section 440.5 hereof shall be liable for a civil penalty, not to exceed $500 for each day such violation is committed or permitted to continue, which penalty shall be assessed and recovered in a civil action brought in the name of the people of the City and County of San Francisco by the City Attorney in any court of competent jurisdiction. Any penalty assessed and recovered in an action brought pursuant to this paragraph shall be paid to the Treasurer of the City and County of San Francisco. (Amended by Ord. 199-86; App. 6/6/86)

SEC. 446. SALE OF BREAD FOR OTHER THAN HUMAN CONSUMPTION.

It shall be unlawful for any person, firm or corporation operating any bakery or place where bread for human consumption is baked for sale to the public, or for any person, firm or corporation who sells or exposes such bread for sale, to knowingly sell or otherwise dispose of any bread for other than human consumption which was wholesome and suitable for such use at the time it was baked and of the standard weight as now established or as may be hereafter established by ordinance of the City and County of San Francisco, until after the expiration of a period of five days from the time such bread was baked.

No bread baked for human consumption which was suitable for such use at the time it was baked and of the standard weight as established by ordinance shall be sold for other than human consumption until such bread has been offered and exposed for sale to the public for human consumption for a period of not less than three days.

Every person, firm or corporation selling or offering for sale any bread for human consumption which at the time of such sale or offering for sale is more than 48 hours old, excepting Sundays or Holidays, shall cause such bread to be indicated as more than 48 hours old either by written or printed label or placard clearly announcing such fact.

SEC. 451. FOOD PREPARATION AND SERVICE ESTABLISHMENT.

(a) "Food preparation and service establishment" as defined in this Section shall mean and include any restaurant, itinerant restaurant, guest house, boardinghouse, special events, school food concessions, bar or tavern, take-out establishment, fast food establishment, catering facility, temporary facility, food demonstration, commissary, pushcart, stadium concession, vending machine, bed and breakfast establishment, private school cafeteria, and hospital kitchen, as those terms are defined herein.

(b) "Restaurant" means any coffee shop, cafeteria, short-order cafe, luncheonette, cocktail lounge, sandwich stand, soda fountain, public school cafeteria or eating establishment, in-plant or employee eating establishment and any other eating establishment, organization, club, including Veterans' Club, boardinghouse, bed and breakfast establishments, guest house, caterer, which gives, sells or offers for sale, food to the public, guests, patrons, or employees as well as kitchens or other food preparation areas in which food is prepared on the premises for serving or consumption on or off the premises, and requires no further preparation and also includes manufac-

turers of perishable food products that prepare food on the premises for sale directly to the public. The term "restaurant" shall not include itinerant restaurants, cooperative arrangements made by employees who purchase food or beverages for their own consumption and where no employee is assigned full time to care for or operate equipment used in such arrangement, or private homes; nor shall the term "restaurant" include churches, church societies, private clubs or other nonprofit associations of a religious, philanthropic, civic improvement, social, political, or educational nature, which purchase food, food products, or beverages, or which receive donations of food, food products, or beverages for service without charge to their members, or for service or sale at a reasonable charge to their members or to the general public at occasional fundraising events, for consumption on or off the premises at which the food, food products, or beverages are served or sold, if the service or sale of such food, food products or beverages does not constitute a primary purpose or function of the club or association, and if no employee or member is assigned full-time to care for or operate equipment used in such arrangements.

(c) "Itinerant restaurant" means any restaurant, operating from temporary facility, cart or vehicle, except those peddler wagons used for peddling as defined in Section 132(a) and (b) of Part III of the San Francisco Municipal Code, serving, offering for sale, selling or giving away food or beverage, and includes, but is not limited to, facility or vehicle where only wrapped sandwiches or other wrapped and packaged, ready-to-eat foods are served, and any mobile unit on which food is prepared and served.

(d) "Guest house" means any building or portion thereof occupied or intended, arranged, or designed for occupation by 35 or more guests where sleeping rooms and meals are provided to the guests for compensation and shall include "guest house," "residence club," "lodge," "dormitory," "residence cooperative" and any of its variants.

(e) "Boardinghouse" shall mean any building or portion thereof occupied or intended, arranged or designed for occupation by six or more but less than 35 guests where sleeping rooms and meals are provided to the guests for compensation and includes all private institutional type homes where inspection is made by the San Francisco Department of Public Health.

(f) The term "owner" or "owners" as used herein, shall mean those persons, partnerships, or corporations who are financially interested in the operation of a food preparation and service establishment.

(g) An "operator" as used herein shall mean any person engaged in the dispensing of or in assisting in the preparation of food, or a person otherwise employed in a food preparation and service establishment.

(h) "Director" as used herein, shall mean the "Director of Public Health of the City and County of San Francisco," and "Inspectors" shall mean the "Inspectors of the Department of Public Health," administered by said Director. The Director shall be responsible for the administration and enforcement of Sections 451 to 454, inclusive, of this Article and the rules and regulations relating thereto. The Director shall, after a public hearing, prescribe the rules and regulations relating thereto. Said rules and regulations shall be issued in pamphlet form. All such food preparation and service establishments shall be operated, conducted and maintained in accordance therewith.

(i) "Special events" means any organized collection of food purveyors operating individually or collaboratively out of approved temporary or mobile food facilities at a fixed location for a period of time not to exceed 25 days in a 90-day period in conjunction with a single, weekly, or monthly community event as defined in the California Health and Safety Code Section 113895(b).

(j) "School food concessions" means any food preparation, food service or food products intended for consumption by students attending or participating in activities within a school facility.

(k) "Bar or tavern" shall mean any food preparation and service establishment which primarily prepares and/or serves alcoholic beverages.

(l) "Take-out establishment" shall mean any food preparation and service establishment which primarily prepares food for consumption off premises.

(m) "Catering facility" shall mean any food preparation and service establishment which prepares food on a contractual basis within a fixed location for service at another location.

(n) "Temporary facility" shall mean any food preparation and service facility operating out of temporary facilities approved by the Director of Public Health at a fixed location for a period of time not to exceed 25 days in any 90-day period in conjunction with a single event or celebration.

(o) "Food demonstrations" shall mean any food preparation and/or service facility operating out of temporary facilities approved by the Director of Public Health for a period of time not to exceed seven consecutive days for purposes of demonstrating food preparation or equipment.

(p) "Commissary" shall mean any food establishment in which food, containers, equipment, or supplies are stored or handled for use in vehicles, mobile food preparation units, food carts, or vending machines.

(q) "Stadium concession" shall mean any food preparation and/or service facility operating within a stadium, arena, or auditorium with a seating capacity of 25,000 or more.

(r) "Vending machine" shall mean any self-service device, which upon insertion of money or tokens, dispenses food without the necessity of replenishing the device between each vending operation.

(s) "Private school cafeteria" shall mean any food preparation and service facility serving food to faculty and/or students of a school not operated by the San Francisco Unified School District.

(t) "Hospital kitchen" shall mean any food preparation and service facility operating within a hospital that serves food to patients, staff, or the general public.

(u) "Bed and breakfast establishment" shall mean a "restricted food service transient occupancy establishment" as defined in Health and Safety Code Section 113870. (Amended by Ord. 241-70; App. 7/14/70; Ord. 26-88, App. 1/28/88; Ord. 341-88, App. 7/28/88; Ord. 206-93, App. 6/25/93; Ord. 121-97, App. 4/9/97; Ord. 84-00, File No. 000424, App. 5/12/2000)

SEC. 452. APPLICATIONS FOR PERMITS, ETC.

(a) It shall be unlawful to maintain or operate a food preparation and service establishment within the City and County of San Francisco without having first obtained a permit therefor issued and signed by the Department of Public Health. Any person, partnership or corporation shall, before opening or operating a food preparation and service establishment in the City and County of San Francisco, make an application for a permit in the manner and upon a form provided by the Director, giving the information and particulars required by the Director.

(b) If the applicant for any permit under this Section is a corporation or other business entity, the application shall contain the names of its principal officers and such other particulars as the Director may require.

(c) Before granting the permit the Director shall investigate the facts stated in the application and examine the premises to which the permit shall apply to assure that the applicant is or will be in compliance with the laws, rules and regulations pertaining to the proper operation of a food preparation and service establishment, including the California Uniform Retail Food Facilities Law and the Health Code of the City and County of San Francisco. If the Director determines from its investigation and examination of the premises that the applicant is not in compliance with any or all of the laws, rules and regulations pertaining to the proper operation of a food preparation and service establishment prior to the issuance of a permit, the Director shall allow the applicant a reasonable time within which to comply. The applicant's refusal or ne-

glect to comply in a timely fashion shall be sufficient cause for the Director to deny the application.

(d) Any denial of an application for permit under this section shall be subject to an appeal to the Board of Appeals.

(e) The permit (1) shall set forth the commercial uses permitted and shall be valid until suspended or revoked; (2) shall not be transferable and shall be deemed revoked upon sale, transfer or assignment of the commercial uses for which the permit was issued; and (3) shall at all times be displayed on the premises.

(f) The permit may at any time be suspended or revoked for cause after a hearing by the Department of Public Health. Any determination of suspension or revocation of a permit for cause after a hearing shall be subject to appeal to the Board of Appeals. Upon suspension or revocation, the premises for which the permit was issued shall be posted with the order of the Department.

(g) Applications for temporary permits to operate special events shall be submitted no later than fourteen (14) calendar days prior to the commencement of the event along with the applicable filing fees listed in Section 249.11(c) of the Business and Tax Regulations Code of the City and County of San Francisco. If the application and/or filing fees are submitted less than fourteen (14) calendar days prior to the commencement of the event, the applicant shall pay an additional fifty percent (50%) of the filing fee as a late charge before the application can be processed or approved. Applications and/or fees (including any late charges) which are submitted seven (7) calendar days or less prior to the commencement of the event cannot be processed. (Added by Ord. 241-70; App. 7/14/70; amended by Ord. 341-88, App. 7/28/88; Ord. 84-00, File No. 000424, App. 5/12/2000)

SEC. 453. DISEASED EMPLOYEES.

No employer shall require, permit or suffer any person to work, nor shall any person work, in a building, room, basement, cellar, place or vehicle, occupied or used for the production, preparation, manufacture, packing, storage, sale, distribution or transportation of food, who is afflicted or affected with or who is a carrier of any venereal disease, smallpox, diphtheria, scarlet fever, yellow fever, tuberculosis, consumption, bubonic plague, Asiatic cholera, leprosy, trachoma, typhoid fever, epidemic dysentery, measles, mumps, German measles, whooping cough, chicken pox, or any other infectious or contagious disease.

SEC. 454. REGULATIONS.

The rules and regulations to be issued by said Director, shall, among other matters, provide for the following:

(a) Suitable ducts in said kitchens and elimination of obnoxious and disagreeable odors from said public eating places;

(b) Suitable hoods for ranges;

(c) Proper ventilation for kitchens and dining rooms;

(d) Basements and storerooms to be dry, clean and sanitary;

(e) Regulation of refrigeration and storage of foodstuffs;

(f) Installation and maintenance of proper sanitary plumbing;

(g) Handling, storage and dispensing of milk;

(h) Receptacles for soiled linen, use of clean linens and laundering thereof;

(i) Methods and manner of dishwashing;

(j) Collection and disposition of garbage and proper receptacle and containers therefor;

(k) Adequate toilet facilities and the location of water closets, dressing rooms, lockers and wash basins;

(l) Cleanliness of the premises, utensils and towels.

SEC. 455. PENALTY.

Any person, firm, association, company or corporation violating any of the provisions of Sections 451 to 454, inclusive, of this Article, shall be guilty of a misdemeanor and shall be punished by a fine of not less than $10 and not in

excess of $500, or by imprisonment in the County Jail for a term not exceeding 100 days, or by both such fine and imprisonment.

SEC. 456. FOOD PREPARATION AND SERVICE ESTABLISHMENT DISCLOSURES.

A. "Food preparation and service establishment" is defined in Section 451 and for the purposes of Section 456 et seq. shall include a food preparation and service establishment operating in conjunction with a "food product and marketing establishment" (as defined in Section 440).

B. "Food inspection report" means the written notice prepared and issued by a county environmental health inspector after conducting an inspection of a food preparation and service establishment to determine compliance with all applicable federal, state and local statutes, orders, ordinances, quarantines, rules, regulations, or directives relating to the public health.

C. "Symbol" means a representative mark issued by a county environmental health inspector at the conclusion of the routine or scheduled inspection of a food preparation and service establishment. The Symbol shall be issued only to a food preparation and service establishment that scores ninety (90) percent or higher as a total numerical percentage score as set forth in the food inspection report. The character of the Symbol shall be determined by the Director of Health in consultation with San Francisco food preparation and service establishments.

D. "Inspection score card" means a card that indicates the total numerical percentage score for the establishment as determined by a county environmental health inspector and as set forth in the food inspection report.

E. "Notice of closure" means a public notice that may be posted by a county environmental health inspector at a food preparation and service establishment upon suspension or revocation of the establishment's public health permit to operate and that results in the immediate closure of the establishment and the discontinuance of all operations of the food preparation and service establishment, by order of a county environmental health inspector, because of violations of applicable federal, state and local statutes, orders, ordinances, quarantines, rules, regulations, or directives relating to the public health.

F. "Routine inspection" means a periodic, unannounced inspection of a food preparation and service establishment to determine compliance with all applicable federal, state and local statutes, orders, ordinances, quarantines, rules, regulations, or directives relating to the public health. A routine inspection shall not mean an inspection conducted by a county environmental health inspector to determine compliance with a previously issued food inspection report or any interim inspection conducted to determine compliance with specific regulations or legal requirements. (Added by Ord. 81-04, File No. 040092, App. 5/20/2004)

SEC. 456.1. POSTING REQUIREMENTS—PENALTY FOR NONCOMPLIANCE—DOCUMENTS AVAILABLE FOR PUBLIC REVIEW.

A. Upon issuance of a Symbol by a county environmental health inspector, the food preparation and service establishment shall post the Symbol on the premises of the establishment so as to be clearly visible to patrons of the establishment.

B. Food preparation and service establishments that are not issued Symbols by a county environmental health inspector shall not post the Symbol on the premises of the establishment.

C. Food preparation and service establishments, whether issued Symbols or not, must make the inspection score card and the inspection report available to the general public and patrons for review upon request. In addition, establishments must post the inspection report on the premises so as to be clearly visible to patrons of the establishment. Posting of the inspection report shall not be required of "food preparation and service establishments" defined in Section 451(i, m, n, o, p, or r).

D. The Health Department shall strive to make all current inspection reports of food preparation and service establishments available on the Department's website as soon as is practicable.

E. Once required to be posted, the Symbol and the inspection report shall not be defaced, marred, camouflaged, hidden or removed until superceded. It is unlawful to operate a food preparation and service establishment unless the inspection score card, the Symbol, and the inspection report are in place as set forth hereunder. Removal of the inspection score care, the Symbol, or the inspection report from their required place on the premises is a violation of Section 456 et seq. and may result in the suspension or revocation of the public health permit to operate and shall be punishable as specified in Section 456.

F. Every food preparation and service establishment shall post a legibly lettered sign which displays the following information so as to be clearly visible to the general public and to patrons entering the establishment: Any public health concerns regarding this establishment should be directed to the City and County of San Francisco Department of Public Health, Environmental Health Section located at: (local office address and telephone number to be provided by a county environmental health inspector).

G. The food inspection report upon which the current Symbol and the current inspection score card are based shall be maintained at the food preparation and service establishment and shall be available to the general public and to patrons for review upon request. The food preparation and service establishment shall keep the current food inspection report until such time as a county environmental health inspector completes the next routine or scheduled inspection of the establishment and issues a new food inspection report. (Added by Ord. 81-04, File No. 040092, App. 5/20/2004)

SEC. 456.2. SYMBOL AND INSPECTION SCORE CARD—PERIOD OF VALIDITY.

A. A Symbol, an inspection score card, or both, shall remain valid until a county environmental health inspector completes the next routine or scheduled inspection of the food preparation and service establishment. After a routine inspection, the owner of a food preparation and service establishment may request that the Health Department conduct a scheduled inspection to revise the inspection score. The Health Department shall respond to the request as soon as is practicable. (Added by Ord. 81-04, File No. 040092, App. 5/20/2004)

SEC. 456.3. PUBLIC HEALTH PERMIT SUSPENSION OR REVOCATION—NOTICE OF CLOSURE.

A. A county environmental health inspector, in his or her discretion, may immediately close any food preparation and service establishment which, upon completion of a routine or scheduled inspection, does not achieve the lowest satisfactory inspection report score as determined by the Director of Health. Nothing in this provision shall prohibit a county environmental health inspector from immediately closing any food preparation and service establishment if, in his or her discretion, immediate closure is necessary to protect the public health.

B. Upon issuance of a written notice of suspension or revocation of the public health permit to operate by a county environmental health inspector, he or she shall post a notice of closure at the food preparation and service establishment so as to be clearly visible to the general public and to patrons.

C. Upon issuance of the written notice of suspension or revocation of the public health permit to operate by a county environmental health inspector, the food preparation and service establishment shall immediately close to the general public and to patrons and shall discontinue all operations until the public health permit to operate has been reissued or reinstated by order of a county environmental health inspector or until the establishment no longer operates as a food preparation and service establishment.

D. The notice of closure shall remain posted until removed by a county environmental health inspector. Removal of the notice of closure by any person other than a county environmental health

inspector or the refusal of a food preparation and service establishment to close upon issuance of the written notice of suspension of the public health permit to operate is a violation of Section 456 et seq. and may result in the suspension or revocation of the food preparation and service establishment's public health permit to operate and shall be punishable as specified in Section 456.4. (Added by Ord. 81-04, File No. 040092, App. 5/20/2004)

SEC. 456.4. PENALTIES.

A. Any person violating any of the provisions of Section 456 et seq., inclusive, of this Article on more than three occasions within a twelve month period, shall be guilty of a misdemeanor and shall be punished by a fine of not less than $10 and not in excess of $500, or by imprisonment in the County Jail for a term not exceeding 100 days, or by both such fine and imprisonment.

B. Any firm, association, company or corporation violating any of the provisions of Section 456 et seq., inclusive, of this Article shall be subject to administrative penalties imposed by the Director of Health. The Director may assess an administrative penalty not exceeding fifty dollars ($50) for a first violation; not exceeding one hundred dollars ($100) for a second violation; and not exceeding two hundred dollars ($200) for the third and each subsequent violation.

C. Before imposing an administrative penalty, the Director must serve upon the firm, association, company or corporation with a notice of initial determination. The notice shall state the proposed administrative penalty and the basis for the Director's initial determination, including the alleged acts or failures to act that constitute a basis for the administrative penalty. The notice shall inform the firm, association, company or corporation that it has the right to request administrative review of the penalty within fifteen (15) days of receipt of the notice.

D. If no request for review of the Director's decision is filed with the Health Department within the appropriate period, the decision shall be deemed final and shall be effective fifteen (15) days after the notice of initial determination was served on the firm, association, company or corporation. The Director shall issue an Order imposing an administrative penalty and serve it upon the party served with the notice of initial determination. Payment of any administrative penalty is due within 30 days of service of the Director's Order. Any administrative penalty assessed and received in an action brought under this Article shall be paid to the Treasurer of the City and County of San Francisco. The firm, association, company or corporation against whom an administrative penalty is imposed also shall be liable for the costs and attorney's fees incurred by the City and County of San Francisco in bringing any civil action to enforce the provisions of this section, including obtaining a court order requiring payment of the administrative penalty.

E. If the firm, association, company or corporation files a timely request for review of the Director's decision with the Health Department, the Director shall conduct a hearing. Within fifteen (15) days of receipt of the request, the Director shall notify the requestor of the date, time, and place of the hearing. Such hearing shall be held no later than thirty (30) days after the Director receives the request, unless time is extended by mutual agreement of the affected parties. The Director may adopt rules and regulations regarding the hearing procedures.

F. Following the hearing, the Director shall serve written notice of the Director's decision on the firm, association, company or corporation. If the Director's decision is that the firm, association, company or corporation must pay an administrative penalty, the notice of decision shall state that the recipient has ten (10) days in which to pay the penalty. Any administrative penalty assessed and received in an action brought under this Article shall be paid to the Treasurer of the City and County of San Francisco. The firm, association, company or corporation against whom an administrative penalty is imposed also shall be liable for the costs and attorney's fees incurred by the City and County of San Francisco in bringing any civil action to enforce the

provisions of this section, including obtaining a court order requiring payment of the administrative penalty.

G. The Director of Health may appoint a designee to perform the Director's functions and responsibilities under Section 456.4. (Added by Ord. 81-04, File No. 040092, App. 5/20/2004)

SEC. 456.5. BOARD REVIEW—HEARING.

A Committee of the Board of Supervisors shall hold a hearing concerning the implementation of Section 456 et seq. before July 1, 2005. (Added by Ord. 81-04, File No. 040092, App. 5/20/2004)

SEC. 456.6. ENFORCEMENT OF SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 AND ITS IMPLEMENTING REGULATIONS; REQUIREMENT THAT WARNINGS BE PROVIDED IN ENGLISH, SPANISH, AND CHINESE.

(a) The Department of Public Health shall enforce the Safe Drinking Water and Toxic Enforcement Act of 1986 (California Health and Safety Code Chapter 6.6, added by Proposition 65 1986 General Election) and its implementing regulations (California Code of Regulations, Title 22, Section 12000 et seq.) by:

(1) Inspecting food product and marketing establishments defined in Section 440 and food preparation and service establishments defined by Section 451 to determine whether these establishments are in compliance with the warning requirements of the Safe Drinking Water and Toxic Enforcement Act of 1986 and its implementing regulations pertaining to exposure to chemicals known to the State of California to cause cancer, birth defects or other reproductive harm;

(2) Serving notices requiring the correction of any violation of the Safe Drinking Water and Toxic Enforcement Act of 1986 or its implementing regulations; and

(3) Calling upon the City Attorney or the District Attorney to maintain an action for violation of the Safe Drinking Water and Toxic Enforcement Act of 1986 or its implementing regulations, to cause correction of such violation, and for assessment and recovery of civil or criminal remedies for such violation.

(b) Written warnings required to be provided by food product and marketing establishments and food preparation and service establishments under the Safe Drinking Water and Toxic Enforcement Act of 1986 and its implementing regulations or any existing settlements and consent judgments pertaining to lawsuits filed pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986 and its implementing regulations shall be made in English, Spanish and Chinese. Written warnings in Spanish and Chinese shall comply with the Safe Drinking Water and Toxic Enforcement Act of 1986 and its implementing regulations and any existing settlements and consent judgments pertaining to lawsuits filed pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986 and its implementing regulations and be provided in the same manner as the warnings in English, including but not limited to location, size, and font of the warning message. (Added by Ord. 250-05, File No. 050253, App. 11/10/2005)

SEC. 460. ESTABLISHMENTS SERVING ALCOHOLIC BEVERAGES AND FOOD AND FURNISHING ENTERTAINMENT DEFINED.

The establishments referred to in Section 460 to 466, inclusive, of this Article, are hereby defined to be any place, room, or space, upon or within any building or structure, where any alcoholic beverage and food of any kind or character is served, and where theatrical, operatic, vaudeville or dancing performance, or any combination of such performance, is conducted or permitted upon the floor, a platform, or a stage, upon or within said place, room or space.

SEC. 461. PERMITS.

It shall be unlawful for any person, firm or corporation to conduct or maintain any such establishment in the City and County of San Francisco without first obtaining a permit therefor from the Department of Public Health. No such permit shall be issued by the Department of

Public Health until the issuance of the same has been approved by the Department of Electricity, the Bureau of Building Inspection of the Department of Public Works and the Bureau of Fire Prevention and Public Safety.

SEC. 462. APPLICATION—INVESTIGATION, ETC.

Application for said permit shall be made to the Department of Public Health, which said application shall state the proposed location of said establishment, the character of the building in which the same is proposed to be conducted or maintained, and a detailed plan of the premises contemplated to be occupied by the applicant, as well as the number of patrons to be accommodated at any time in said establishment. Upon receipt of said application the Department of Public Health shall forthwith send copies thereof to the Department of Electricity, the Bureau of Building Inspection of the Department of Public Works and the Bureau of Fire Prevention and Public Safety. It shall be the duty of each of the said bureaus and departments, upon receipt of said application, to investigate the condition of the premises in which said establishment is proposed to be maintained in so far as said conditions come under the jurisdiction of the said respective bureaus and departments, and, upon the completion of said investigation, to approve or disapprove the granting of said permit. In the event of the disapproval of the application by any of said bureaus or departments, said application for said permit shall be denied.

SEC. 463. APPLICATION, EXISTING ESTABLISHMENTS.

Any person, firm or corporation conducting or maintaining such establishment in the City and County of San Francisco on the 5th day of November, 1936, shall make immediate application to the Department of Public Health for a permit to continue the maintenance and conduct of said establishment.

SEC. 464. GROUNDS FOR PERMIT REVOCATIONS—PROCEDURE.

Any violation of any existing laws of the City and County of San Francisco, shall constitute and shall be so construed as to be sufficient reason for the revocation of any permit. Any permit issued pursuant to the provisions of Sections 460 to 466, inclusive, of this Article, may be revoked by the Department of Public Health for cause upon application of any one or more of the Departments or Bureaus whose approval was first necessary for the issuance of the permit, after due hearing shall be first had therein; and reasonable notice shall be given to the person, firm or corporation charged with the said violation, and of the time, place and date set for the hearing on the revocation of said permit.

SEC. 465. DISCRETION OF OFFICERS, ETC.

Whenever any discretion as to the operation, construction or equipment of any such establishment by Sections 460 to 466, inclusive, of this Article, is given to any officer, board, bureau, department or commission, the said officer, board, bureau, department or commission shall exercise said discretion only in so far as the same is necessary for the safety of the patrons and employees and other persons frequenting said establishment.

SEC. 466. OTHER LAWS, RULES AND REGULATIONS.

All existing laws of the City and County of San Francisco, and all rules and regulations of the Department of Public Health, relative to the keeping, preparation and serving of food and alcoholic beverages in restaurants or other places open to the public shall apply to such establishments; and no such establishment shall permit dancing therein without a permit from the Police Department of the City and County of San Francisco.

SEC. 467. FOOD VENDING MACHINES.

(a) "Food vending machine" means any self-service device which, upon insertion of a coin, coins, or token, or by similar means, dispenses unit servings of food or beverage, either in bulk or in package, without the necessity of replenishing the device between each vending operation, that in operating has food product contact sur-

faces or dispenses foods of a perishable nature, including wrapped sandwiches or pastry goods, but not including devices dispensing peanuts, wrapped candy, gum, bottled beverage or ice exclusively.

(b) Every person, firm or corporation in the business of operating a food vending machine, or food vending machines, as defined in Subsection (a) of this Section, within the City and County of San Francisco, on or after October 1, 1970, must file an application for a permit on a form provided by the Health Department.

The permit shall be valid until suspended or revoked. Said permit shall not be transferable and shall be deemed revoked upon sale or transfer of the business for which it was issued.

Prior to the use and operation of any vending machine by a permittee, said permittee shall pay the fee prescribed in Section 249.12(b) of Part III of the San Francisco Municipal Code and obtain from the Health Department a decal. Upon receipt of said decal, the permittee shall enter upon it the serial number of the vending machine and post said decal on the front panel of the vending machine. The serial number of the vending machine operated shall correspond to the number entered upon the decal.

Any food vending machine that is found to be insanitary, malfunctioning or unposted with the required decal shall be sealed by an Inspector of the Health Department and shall only be removed by said Inspector.

(c) All food vending machine operators shall supply quarterly, on a form approved by the Health Department, certified copies of machine inspection reports made by their supervisory personnel and total number of machines currently in operation. (Added by Ord. 241-70, App. 7/14/70)

SEC. 468. PURPOSE.

The purpose of Sections 468 through 468.8 is to provide consumers with information about the nutritional components of Food prepared, purchased, and eaten outside the home. Consumers must have basic nutritional information readily available in order to make informed choices about the Food that they, and their children and dependants, eat. These sections require Chain Restaurants to provide consumers with specific nutritional information on Menu Items, such as calorie content, so that consumers may be better able to make nutritional choices consistent with their health needs. Furthermore, ensuring informed food choices supports societal public health goals of preventing obesity, diabetes, and other avoidable nutrition-related diseases. (Added by Ord. 347-86, App. 8/15/86; Ord. 40-08, File No. 071661, App. 3/24/2008)

SEC. 468.1. FINDINGS.

The Board of Supervisors hereby finds and declares as follows:

Chronic diseases and obesity are concurrent, serious and growing public health crises affecting states and localities across the country. In California and the City and County of San Francisco, the two epidemics are among the greatest public health challenges, as evidenced by the following:

- Chronic diseases, including cardiovascular disease, diabetes, hypertension, cancer, asthma, are the leading cause of death and disability in San Francisco and California;
- Seventy percent of all U.S. deaths are attributable to chronic disease;
- Hypertension and diabetes are the leading reasons for San Francisco Department of Public Health primary care clinic visits;
- Obesity rates have doubled in children and tripled in teenagers over the past twenty years;
- The rate at which obesity is increasing in California is among the fastest in the country;
- One-third of California children, one-fourth of California teenagers, and one-half of California adults are either overweight or obese;
- Fifty percent of overweight children and teenagers remain overweight as adults;
- Over half of Californians are at greater risk for heart disease, type-2 diabetes, high blood pressure, stroke, arthritis-related disabili-

ties, depression, sleep disorders, and some cancers because of increasing obesity rates;

- In San Francisco, 43% percent of adults are overweight or obese and 24% of school-age children are overweight or obese.

The burden of increasing overweight and obesity and accompanying chronic diseases manifests itself in premature death and disability, health care costs, and lost productivity. Obesity greatly increases the risk of chronic diseases such as high cholesterol, high blood pressure, asthma, and type-2 diabetes. 22% of San Franciscans have high blood pressure and 6.5% of San Franciscans have diabetes. Heart disease is the leading cause of death in San Francisco. The financial cost of chronic disease and obesity is evidenced by the following:

- Health care costs rose nearly two billion dollars in inflation adjusted dollars between 1987 and 2000. Fifteen conditions including diabetes, hypertension, heart disease, cerebrovascular disease accounted for more than half the overall growth;
- Medicare costs for those who were obese when they were middle aged are roughly twice as great as those who were at ideal weight;
- In 2005, California's costs related to obesity; overweight, and lack of physical activity were projected to reach $28 billion for health care and lost work productivity;
- The indirect and direct costs of adult obesity in America are between $69 and $117 billion each year;
- If 10% of currently obese or overweight Californians were to reach and maintain a healthy weight over a five-year period, savings would amount to $13 billion;
- Obesity-related expenditures are thought to have accounted for more than 25% of the increase in national health care spending between 1987 and 2001;
- The San Francisco Department of Public Health estimates that the obesity epidemic costs San Francisco $192 million a year in medical expenses, lost productivity and workers' compensation. The estimated costs to the Department for diabetes for the year 2005 was $25 million.

The rise in obesity rates has coincided with Americans eating more meals outside of the home. Such meals contribute to the growing rate of obesity, as evidenced by the following:

- In 1970, Americans spent just 26% of their food dollars on restaurant meals and other foods prepared outside the home. Today, Americans spend 47.9% of their food dollars on away-from-home foods;
- Between 1972 and 1997, the per capita number of fast-food restaurants doubled, and the per-capita number of full-service restaurants rose by 35%;
- The increase in per capita restaurants accounts for 65% of the increase in the percentage of those who are obese;
- About one-third of the calories in an average American's diet come from restaurant or other away-from-home foods;
- On average, children and youth aged 11—18 visit fast food outlets of twice a week;
- Studies have shown a positive association between eating out and higher caloric intakes and higher body weights;
- Children eat almost twice as many calories (770) when they eat a meal at a restaurant as they do when they eat at home (420);
- Restaurant foods are generally higher in those nutrients for which over consumption is a problem, such as fat and saturated fat, and lower in nutrients required for good health, such as calcium and fiber;
- It is not uncommon for a restaurant entree to provide half of a day's calories, saturated and trans fat, or sodium;
- Portion sizes are often large at restaurants and people tend to eat greater quantities of food when they are served more, whether or not they are hungry;
- Observational studies have shown that people who frequently consume food away from home tend to weigh more.

Without nutrition information, consumers consistently underestimate the nutritional content of restaurant foods, as evidenced by the following:

- In a California field poll about the nutritional value of typical fast food and restaurant menu items, not a single respondent was able to answer all four questions correctly. Less than 1% answered three out of four questions correctly, and only 5% answered two out of four questions correctly. Nearly 68% were not able to answer a single question correctly;
- An FDA-commissioned report concluded that without access to nutritional information, consumers are not able to assess the caloric content of foods;
- One study illustrated that restaurant foods contain almost twice the number of calories estimated by consumers;
- Another study showed that even trained nutrition professionals consistently underestimate the calorie content of restaurant foods by 200 to 600 calories;
- The public's knowledge of the nutritional content of restaurant foods is incomplete, especially compared to pre-packaged foods. Moreover, the fact that chain restaurants' serving sizes are so varied and large, and their prices are so low, can mislead and even deceive the public regarding the amount of an actual serving size and how many calories a portion contains.

When nutrition information is provided, consumers use it to make healthier choices, as evidenced by the following:

- Three-quarters of American adults report using nutritional labels on packaged foods;
- Studies show that the use of food labels is associated with eating more healthful dies;
- Almost half of consumers report that the information provided on food labels has caused them to change their mind about buying a food product;
- With nutrition information, consumers are 24%—37% less likely to select high-calorie items.

The Federal Nutrition Labeling and Education Act requires food manufacturers to provide nutrition information on nearly all packaged foods, but explicitly exempts restaurants from that requirement.

The current system of voluntary nutritional disclosures by restaurants is inadequate. Approximately two-thirds of the largest chain restaurants fail to provide any nutritional information about their menu item to customers. Those that do provide such information often do not do so at the point of sale, but rather on websites or in brochures available only by request.

Competition within the food service industry is healthy and desirable but cannot lead to healthier food options when consumers are not able to make choices based upon the nutritional value of the food offered.

84% of Californians are in favor of nutritional labeling in restaurants. The United States Surgeon General, the Food and Drug Administration, the National Academies' Institute of Medicine, and the American Medical Association have all recommended nutritional labeling of restaurant food as a strategy to address rising obesity rates.

The aforementioned findings are based on studies referenced in the "Statement of Legislative Findings," a copy of which is on file with the Clerk of the Board of Supervisors in File No. _____ and is incorporated herein by reference.

Therefore, it is the intent of the Board of Supervisors, in enacting this ordinance to provide consumers with basic nutritional information about prepared Foods sold at Chain Restaurants so that consumers can make informed Food choices; and to foster fairness and encourage beneficial competition among the Chain Restaurants of the City and County of San Francisco. (Added by Ord. 347-86, App. 8/15/86; Ord. 40-08, File No. 071661, App. 3/24/2008)

SEC. 468.2. DEFINITIONS.

(a) "Chain Restaurant" means a Restaurant within the City and County of San Francisco that offers for sale substantially the same Menu Items, in servings that are standardized for portion size and content, and is one of a group of 20 or more Restaurants in California that either: (1) operate under common ownership or control; or (2) operate as franchised outlets of a parent company, or (3) do business under the same name.

(b) "Director" shall mean the Director of Health, or his designated agents or representatives.

(c) "Food" means any substance in whatever form for sale in whole or in any part for human consumption such as, for example, meals, snacks, desserts, and beverages of all kinds.

(d) "Food Tag" shall mean a label or tag that identifies any Food item offered for sale at a Chain Restaurant, such as, for example, a label placed next to a cherry pie showing a picture of a cherry and listing the price per slice.

(e) "Menu" means any list of Food offered for sale at a Restaurant including menus distributed or provided outside of the Restaurant, but does not include a Menu Board.

(f) "Menu Board" means any list or pictorial display of Food offered for sale at a Restaurant that is posted in a Restaurant and intended for shared viewing by multiple customers such as, for example, back-lit marquee signs above the point of sale at fast-food outlets and chalk boards listing offered Food items or any list of Food offered for sale at a Restaurant that is posted and intended for viewing by customers purchasing Food to go, such as, for example, a drive-through menu.

(g) "Menu Item" means an item described on a Menu, a Menu Board, or a Food Tag that is prepared, un-prepackaged Food; and also means a combination item appearing on a Menu, a Menu Board, or a Food Tag such as, for example, a "kids meal," that contains any prepared, un-prepackaged Food, such as a hamburger, and any prepackaged Food, such as a carton of milk.

(h) "Restaurant" means a facility at which any prepared, un-prepackaged Foods are offered for sale and consumption on or off the premises such as, for example sit-down restaurants; cafes; coffee stands; and fast-food outlets, but not grocery stores. "Restaurant" may also include separately owned food facilities that are located in a grocery store but does not include the grocery store. (Added by Ord. 347-86, App. 8/15/86; Ord. 40-08, File No. 071661, App. 3/24/2008)

SEC. 468.3. MENU LABELING REQUIRED AT CHAIN RESTAURANTS.

(a) **Required Nutritional Information.** Except as provided in Subsection (h), each Chain Restaurant shall make nutritional information available to consumers for all Menu Items. This information shall include, but not be limited to, all of the following, per Menu Item, as usually prepared and offered for sale:

(1) Total number of calories;

(2) Total number of grams of saturated fat;

(3) Total number of grams of carbohydrates; and

(4) Total number of milligrams of sodium.

(b) **Information on Menus.**

(1) Each Chain Restaurant that uses a Menu shall provide the nutritional information required by subsection (a) next to or beneath each Menu Item using a size and typeface that is clear and conspicuous.

(2) Each Chain Restaurant that uses a Menu shall include the following statement on the Menu in a clear and conspicuous manner: "Recommended limits for a 2,000 calorie daily diet are 20 grams of saturated fat and 2,300 milligrams of sodium."

(c) **Information on Menu Boards.**

(1) Each Chain Restaurant that uses a Menu Board shall provide on the Menu Board the nutritional information required by Subsection (a)(1) next to or beneath each Menu Item on the Menu Board using a font and format that is at least as prominent, in size and appearance, as that used to post either the name or price of the Menu Item.

(d) **Information on Food Tags.** Each Chain Restaurant that uses a Food Tag shall provide on the Food Tag the nutritional information required by subsection (a)(1) using a font and format that is at least as prominent, in size and appearance, as that used to post either the name or price of the Menu Item.

(e) **Range of nutritional information for different flavors and varieties.** If a Chain Restaurant offers a Menu Item in more than one flavor or variety (such as beverages, ice cream, pizza, or doughnuts) and lists the item as a single Menu Item, the range of values for the nutritional information for all flavors and varieties of that item (i.e., the minimum to maximum numbers of calories) shall be listed for each size offered for sale.

(f) **Disclaimers.** Menus, Menu Boards, and Food Tags may include a disclaimer that indicates that there may be minimal variations in nutritional content across servings, based on slight variations in overall size and quantities of ingredients, and based on special ordering.

(g) **Verifiable and Reliable Information Required.**

(1) The nutrition information required by this section and Section 468.4 shall be based on a verifiable analysis of the Menu Item, which may include the use of nutrient databases, cookbooks, laboratory testing, or other reliable methods of analysis.

(2) A Restaurant is in violation of this section and Section 478.4 if the provided nutritional information required by these sections:

(i) Is not present in the location or in the form required by these sections:

(ii) Is different than what the Restaurant knows or believes to be the true and accurate information; or

(iii) Deviates from what actual analysis or other reliable evidence shows to be the average content of a representative sample of the Menu Item by more than 20%.

(h) **Food Items Excluded.** This section and section 468.4 shall not apply to:

(1) Items placed on the table or at a counter for general use without charge, such as, for example, condiments:

(2) Alcoholic beverages; and

(3) Items that are on the Menu, Menu Board or Food Tag for less than 30 days in a calendar year. (Added by Ord. 347-86, App. 8/15/86; Ord. 40-08, File No. 071661, App. 3/24/2008)

SEC. 468.4. NUTRITION INFORMATION REQUIRED TO BE DISCLOSED ON DISCLOSURE MEDIA OTHER THAN MENUS, MENU BOARDS AND FOOD TAGS.

(a) Each Chain Restaurant shall make the following nutrition information available to consumers per Menu Item, as usually prepared and offered for sale, on the disclosure media provided for in subsection (c): calories, protein, carbohydrates, total fat, saturated fat, trans fat cholesterol, fiber and sodium. The nutrition information shall consist of the following items:

(1) A heading titled "Nutrition Information" or equivalent heading acceptable to the Department of Public Health.

(2) The nutritional information required by Section 468.3(a).

(3) Protein, fiber, total fat, and trans fat shall be expressed to the nearest gram per serving.

(4) Cholesterol shall be expressed to the nearest milligram per serving.

(b) Customers must be able to obtain nutrition information without the necessity of purchasing food.

(c) The information required by subsection (a) must be disclosed, in a size and typeface that is clear and conspicuous, on a printed poster of a size no smaller than eighteen (18) inches by twenty-four (24) inches, displayed in a conspicuous place and readily visible to customers either: (1) at the point of sale; (2) near the front door; (3) on or near the host/hostess desk or reception

area; or (4) at any point in or near the entryway or waiting area of the restaurant. (Added by Ord. 347-86, App. 8/15/86; Ord. 40-08, File No. 071661, App. 3/24/2008)

SEC. 468.5. REPORTING REQUIREMENTS.

By July 1, 2008, and July 1st of every year thereafter, Chain Restaurants shall report to the Department of Public Health the information required by Sections 468.3 and 468.4 in an electronic format determined by the Department. The Department shall make this information available to the public. (Added by Ord. 347-86, App. 8/15/86; Ord. 40-08, File No. 071661, App. 3/24/2008)

SEC. 468.6. PENALTIES AND ENFORCEMENT.

(a) **Cumulative Remedies.** The remedies provided by this section are cumulative and in addition to any other remedies available at law or in equity.

(b) **Administrative Remedies.** The Director may enforce the provisions of Sections 468.3 through 468.5 by serving a Notice of Violation requesting a Chain Restaurant to appear at an administrative hearing before the Director at least 20 days after the Notice of Violation is mailed. At the hearing, the Chain Restaurant cited with violating the provisions of these sections shall be provided an opportunity to refute all evidence against it. The Director shall oversee the hearing and issue a ruling within 20 days of its conclusion. The Director's ruling shall be final. If the Director finds that a Chain Restaurant has violated any of the provisions of Sections 468.3 through 468.5 or refuses to comply with these sections, the Director may order either of the following penalties:

(1) Suspension or revocation of the permit issued by the Director pursuant to Sections 451 et seq. of this Code; or

(2) An administrative fine in an amount (1) not exceeding one hundred dollars ($100.00) for a first violation; (2) not exceeding two hundred dollars ($200.00) for a second violation within one year; (3) not exceeding five hundred dollars ($500.00) for each additional violation within one year. In assessing the amount of the administrative penalty, the Director shall consider any one or more of the relevant circumstances presented by any of the parties to the hearing, including but not limited to the following: the nature and seriousness of the misconduct, the number of violations, the persistence of the misconduct, the length of time over which the misconduct occurred, the willfulness of the Chain Restaurant's misconduct, and the Chain Restaurant's assets, liabilities, and net worth. Any penalty assessed and recovered pursuant to this paragraph shall be paid to the City Treasurer and credited to the Department Environmental Health Section Special Revenue Account.

(c) **Civil Penalties.** Violations of Sections 468.3 through 468.5 are subject to a civil action brought by the City Attorney, punishable by a civil fine not less than two hundred fifty dollars ($250.00) and not exceeding five hundred ($500.00) per violation. Unless otherwise specified in this section, each day of a continuing violation shall constitute a separate violation. In assessing the amount of the civil penalty, the court shall consider any one or more of the relevant circumstances presented by any of the parties to the case, including but not limited to the following: the nature and seriousness of the misconduct, the number of violations, the persistence of the misconduct, the length of time over which the misconduct occurred, the willfulness of the defendant's misconduct, and the defendant's assets, liabilities, and net worth. Any penalty assessed and recovered in an action brought pursuant to this paragraph shall be paid to the City Treasurer and credited to the Department Environmental Health Section Special Revenue Account.

(d) **Action for Injunction.** The City Attorney may bring a civil action to enjoin a violation of Sections 468.3 through 468.5.

(e) **Aiding and Abetting.** Causing, permitting, aiding, abetting, or concealing a violation of any provision of Sections 468.3 through 468.5 shall also constitute a violation of this ordinance.

(f) **Enforcement Agency.** The Department of Public Health shall supervise compliance with Sections 468.3 through 468.5 and shall enforce those sections. Notwithstanding, any other person legally permitted under federal law, under state law, under Sections 468.3 through 468.5, or under other provisions of this Code to enforce a provision of these sections may enforce that provision. Such persons may include, for example: peace officers; code enforcement officials; and City officials, employees, and agents.

(g) **Fees.** In order to implement the requirements set forth in this ordinance, the Department of Public Health is hereby authorized to impose a surcharge of $350.00 for the permit issued to Chain Restaurants pursuant to Sections 451 et seq. of this Code. (Added by Ord. 347-86, App. 8/15/86; Ord. 40-08, File No. 071661, App. 3/24/2008)

SEC. 468.7. SEVERABILITY.

It is the intent of the Board of Supervisors to supplement applicable State and Federal law and not to duplicate or contradict such law and this ordinance shall be construed consistently with that intention. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this ordinance, or its application to any other person or circumstance. The Board of Supervisors hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable. (Added by Ord. 347-86, App. 8/15/86; Ord. 40-08, File No. 071661, App. 3/24/2008)

SEC. 468.8. OPERATIVE DATE.

The disclosure requirements set forth in Sections 468.3(b) (Menus), 468.3(d) (Food Tags), and 468.4(c) (Posters), shall become operative ninety (90) days after the effective date of this ordinance. The disclosure requirements set forth in Section 468.3(c) (Menu Boards) shall become operative one hundred and fifty (150) days after its effective date. (Added by Ord. 347-86, App. 8/15/86; Ord. 40-08, File No. 071661, App. 3/24/2008)

Secs. 469—469.10. Reserved.

Editor's note:

Ordinance 295-06, File No. 060944, Approved November 29, 2006, repealed sections 469 through 469.10, which pertained to: Chlorofluorocarbon Processed Food Packaging—Findings; Definitions; Prohibition on Use of Chlorofluorocarbon Processed Food Packaging; Food Packaging—Proof of Compliance; Exceptions; Food Packaging—Existing Contracts; Penalties and Enforcement; City and County Purchases Prohibited; Conflict With Other Laws; Promoting Purposes of Legislation; and Severability. The user's attention is directed to the Environmental Code, Sections 1601—1611.

SEC. 470.1. ESTABLISHMENT AND MEMBERSHIP OF FOOD SECURITY TASK FORCE.

(a) **Food Security Task Force.** There is hereby established a Food Security Task Force of the City and County of San Francisco. Food security, for purposes of this ordinance, shall mean the state in which all persons obtain a nutritionally adequate, culturally acceptable diet at all times through local non-emergency sources.

(b) **Membership.** The Task Force shall consist of up to 12 members as provided below. Voting members, other than department representatives and the School District representative, shall serve at the pleasure of the Board of Supervisors.

(1) **Voting Members.** The Board of Supervisors shall appoint one voting member from the Department of Human Services of the Human Service Agency, the Department of Aging and Adult Services of the Human Services Agency, the Department of Public Health, the Depart-

ment of Children, Youth and their Families, the Mayor's Office on Community Development, and the Recreation and Park Department. The Clerk of the Board of Supervisors shall invite the San Francisco Unified School District to submit a representative for appointment by the Board as a voting member of the Task Force.

In addition, the Board may appoint as voting members of the Task Force up to four representatives of community-based organizations that provide nutritional support and increase the food security of San Francisco residents. Such community members may include but are not limited to representatives from the San Francisco Food Bank or St. Anthony's Foundation. No organization shall have more than one representative on the Task Force.

Members other than department representatives shall serve at the pleasure of the Board of Supervisors.

(2) **Non-Voting Members.** The Task Force shall invite federal agencies, such as the United States Department of Agriculture, Food and Nutrition Services, to send a representative to sit as a non-voting member of the Task Force.

(c) **Staffing.** The Department of Public Health, Nutrition Services, shall provide clerical assistance and logistical support to the Task Force and its committees.

(d) **Purposes of Task Force; Strategic Plan.** The Food Security Task Force shall recommend to the Board of Supervisors legislative action and city-wide strategies that would increase participation in federally funded programs such as the Food Stamp program, Summer Food Service, the Child and Adult Care Food Program, the Homeless Children Nutrition Program, the Special Supplemental Nutrition Program for Women, Infants and Children (WIC), the National School Lunch Program and the National School Breakfast Program. The Task Force shall also provide general advice and assistance to the Board of Supervisors with regard to funding priorities, legislative action, and city policies on addressing hunger and enhancing the food security of San Francisco residents in addition to any other issues within the Task Force's expertise.

To accomplish these goals, the Food Security Task Force shall prepare a written, comprehensive, and coordinated strategic plan setting forth its recommendations and suggestions on implementation. The Task Force shall submit the plan to the Board of Supervisors within twelve months after the first meeting of the Task Force. The Board of Supervisors may adopt legislation to support the plan.

Thereafter, the Task Force shall submit status reports on progress toward implementing the plan and meeting the plan's goals to the Board bi-annually. (Added by Ord. 206-05, File No. 050741, App. 8/12/2005; Ord. 19-08, File No. 071668, App. 2/15/2008)

SEC. 470.2. SUNSET PROVISION.

One year after the passage of this ordinance, the Food Security Task Force shall submit a recommendation to the Board of Supervisors on whether the Task Force should continue in operation. Unless the measure creating the Task Force is reauthorized and extended by the Board by resolution prior to January 31, 2009, Sections 470.1 and 470.2 shall expire by operation of law and the City Attorney shall cause those sections to be removed from future editions of the Code. (Added by Ord. 206-05, File No. 050741, App. 8/12/2005; Ord. 19-08, File No. 071668, App. 2/15/2008)

ARTICLE 9: DAIRY AND MILK CODE

SEC. 481. STANDARDS AND REQUIREMENTS.

Market milk for sale and distribution for human consumption in San Francisco shall be the product of healthy animals as determined by an Approved Milk Inspection Service, and except for certified milk shall be pasteurized before delivery to the ultimate consumer, shall contain no pathogenic organisms and shall conform to the minimum requirements and standards established by the Agricultural Code of California. (Amended by Ord. 366187, App. 9/2/87)

SEC. 483.5. RAW MILK WARNINGS.

No person, partnership, firm or corporation acting directly or through their agents, servants or employees shall offer or expose for sale or sell any raw milk products without first posting a warning sign as provided for in this section. The warning sign shall be posted immediately adjacent to any raw milk product offered or exposed for sale and shall be clearly visible to the patron at the point of sale. Such sign shall be not less than eight inches by 11 inches in size and shall be printed on a contrasting background and in a legible manner, conveying the following warning:

"WARNING: Raw milk products are not pasteurized and may contain organisms that cause human disease. They therefore should not be consumed by the very young; the very old; persons with illnesses which alter, or who take drugs which affect, the immune systems; and persons with severe chronic medical problems."

The word "WARNING" shall be in a print of 84 point height and Helvetica type and the remainder of the text in a print of 24 point height and in Helvetica medium face, Futura medium face or Universe 65 type. (Added by Ord. 375184, App. 8/31/84)

SEC. 486. RIGHT OF ENTRY AND INSPECTION.

In order to carry out purposes and provisions of this Article, the said Director of Public Health and all his authorized officers, agents and employees shall have the right at any time and at all times to enter upon or into the premises of any producer, processor, vendor or distributor of milk, cream or milk food products and imitations thereof authorized under the provisions of this Article, and any refusal upon the part of such producer, processor, vendor or distributor to allow such entry and such inspection as may be required and directed by the said Director of Public Health may be punished by the revocation of the permit of such producer, processor, distributor or vendor by the said Director of Public Health.

The Director of Public Health and all his officers, agents and employees shall have the right and it shall be their duty to enter and have full access, egress and ingress to all places where milk, cream and milk food products and imitations thereof are stored and kept for sale, and to all automobiles, motor trucks or other vehicles, railroad cars, streamboats, or conveyances of every kind used for the conveyance or transportation or delivery of milk, cream or milk food products and imitations thereof for the purpose of consumption in the City and County of San Francisco.

It shall be unlawful for any person, or persons, firm or corporation to obstruct or interfere with the said Director of Public Health or any officer, agent or employee of said Director of Public Health in the performance of any of the duties required by this Article.

SEC. 487. RIGHT TO TAKE SAMPLES.

The Director of Public Health and all his authorized officers, agents and employees shall have the right at any time to take samples of milk, cream or milk food products and imitations thereof from any person storing, selling, exposing for sale, exchanging, transporting, delivering, or distributing in the City and County of San Francisco, or shipping into said City and County milk, cream or milk food products and imitations thereof, provided that such samples shall not exceed in quantity one quart of milk and one quart of cream or milk food product or imitation thereof at any one time.

SEC. 490. PENALTY.

Any person, firm or corporation who shall violate any of the provisions of this Article shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than $25 and not more than $500 or by imprisonment in the County Jail for not more than 100 days, or by both such fine and imprisonment.

[The next page is 315]

ARTICLE 10: MEAT AND MEAT PRODUCTS

SEC. 535. DEFINITIONS.

"Department" as used in this Article shall mean the Department of Public Health of the City and County of San Francisco.

"The Director" as used in this Article shall mean the Director of Public Health of the City and County of San Francisco.

The term "meat" as used in this Article shall mean the edible part of the carcass of any cattle, calf, sheep, lamb, goat or swine which is not manufactured, cured, smoked, processed or otherwise treated.

"Meat food products" as used in this Article shall mean any article of food, or any article which enters into the composition of food for human consumption which is derived or prepared in whole or in part from any portion of the carcass of any of the animals mentioned in Section 536 of this Article, if such portion is all, or a considerable or definite portion of the article, except such articles as meat juices or meat extracts which are only for medical purposes and are advertised only for medical purposes and are advertised only to the medical profession.

"Federal inspection" as used in this Article shall mean any service for the inspection of meat and meat food products maintained by the government of the United States.

"State inspection" as used in this Article shall mean any service for the inspection of meat and meat food products maintained by the State of California.

"Local inspection" as used in this Article shall mean any service for the inspection of meat and meat food products maintained by the City and County of San Francisco under approval of the Department of Agriculture of the State of California.

"Other approved inspection services" as used in this Article shall mean any meat and meat food products inspection service maintained by any city or county, which said service has been approved and continues to be approved by the Department of Agriculture of the State of California.

SEC. 536. MEAT INSPECTION BRANDS.

No person, firm or corporation shall expose for sale or offer for sale, or sell or otherwise dispose of, or have in his possession, in the City and County of San Francisco, any meat of any cattle, calf, sheep, lamb, goat or swine or any meat food products thereof, which does not have thereon the inspection mark or brand and stamp of approval of either the federal inspection, state inspection, local inspection or other approved inspection service. If any carcass of any animal heretofore named or meat food products are kept, or offered for sale, or exposed within the City and County of San Francisco which does not bear one of the aforesaid stamps or brands, said Department shall take possession of and destroy said meat or meat food products.

(a) **No Meat Without Inspection to be Shipped.** No person, firm or corporation shall ship, send, bring or cause to be brought into the

City and County of San Francisco, the meat of any cattle, sheep, lamb, goat or swine, or any meat food products thereof, which does not bear the meat inspection brand or other mark of identification recognized by the Department, and/or the Department of Agriculture of the State of California.

(b) **Calves.** The carcasses of calves in good healthy condition and weighing more than 55 pounds for smaller breeds or 65 pounds for larger breeds, exclusive of head, heart, lungs and liver, may be brought into the City and County of San Francisco, and each of said carcasses of such calves must be inspected and stamped and marked by the Department at the point of arrival of said carcasses of such calves in the City and County of San Francisco, or at their first place of rest.

(c) **Unsound, Unhealthful, Etc., Meats.** All meats or meat food products which are unsound, unhealthful, unwholesome or otherwise unfit for food, shall be stamped or otherwise marked by the Department "San Francisco Department of Public Health and Condemned" and shall be destroyed or otherwise disposed of as provided by rule of the Department.

(d) **Reinspection.** All meats or meat food products sold or offered for sale in the City and County of San Francisco shall be subject to reinspection and condemnation by the Department.

(e) **Unlawful to Forge, Alter, Etc., Brands.** It shall be unlawful for any person, firm or corporation to forge, counterfeit, simulate or falsely represent, or without proper authority to use or detach or wrongfully alter, deface or destroy any of the stamps or marks or brands recognized by the Department, on any cattle, calf, sheep, lamb, goat or swine, or any meat food products thereof, or any carcass, or any part of parts of any carcass or carcasses named in Section 536 of this Article, except that the processor thereof may remove or destroy any stamp or mark before said carcass or portion thereof is processed, or any retail butcher may destroy and stamp or mark before any portion of said carcass is delivered to the ultimate consumer thereof.

(f) **Authority to Make Regulations.** The Department is authorized to adopt, promulgate and enforce such rules and regulations regarding the slaughterhouses and places where meat food products are manufactured, as well as such rules and regulations relative to the inspection of meats and meat food products, as will enable the Department to enforce and carry out the meaning and intent of this Article, and to maintain the standard of meat inspection of the Department of Agriculture of the State of California.

SEC. 537. STATE LAWS.

All of the provisions of the Agricultural Code of the State of California, as well as the rules and regulations made under authority of said Code, regarding the inspection and examination of any of the animals mentioned in Section 536 of this Article, as well as regarding the killing of said animals and the inspection, keeping and handling of the meat of said animals, and meatfood products thereof, except in so far as the same are changed or modified by this or other ordinances of the City and County of San Francisco, or by rules made under authority of said ordinances, shall apply to the inspection and examination and killing of said animals mentioned in said Section 536, and to the inspection, keeping and handling of the meat of said animals.

SEC. 539. SALE FROM VEHICLES, ETC.

All persons, firms or corporations selling, or offering for sale, any meat, or meat food products from any vehicle, wagon, truck, cart or automobile, shall keep said vehicle, wagon, truck, car or automobile in a clean and sanitary condition, and the same shall be subject to inspection by the Department.

Any person, firm or corporation, without a fixed or established place of business within the City and County of San Francisco engaged in the business of selling, or offering for sale, any meat or meat food products from any vehicle, wagon, truck, cart or automobile, shall first obtain a permit from the Department.

Each such vehicle shall have printed conspicuously on both sides the firm name, address and Department permit number of the vehicle in

letters and figures not less than three inches in height. (Amended by Ord. 93-68, App., 4-19-68).

SEC. 540. PENALTY.

Any person, firm or corporation, or their agents, violating any of the provisions of Sections 535 to 539, inclusive, of this Article, or failing to comply with any direction or order of the Director of Public Health of the City and County of San Francisco, given pursuant to the provisions of this Article, or any agent of said Director, shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine not less than $50, nor more than $500, or by imprisonment in the County Jail for a period of not less than 10 days nor more than three months, or by both such fine and imprisonment; and any violation of the provisions of this Article shall subject the violator thereof to revocation of any and all permits held.

SEC. 541. EXEMPTIONS.

Any person, firm or corporation paying the fees provided in this Article shall be exempt from the payment of the fees provided for in Section 228, Part III of this Municipal Code.

SEC. 546. USE OF DYES, CHEMICALS, ETC., IN MEAT OR MEAT PRODUCTS.

It shall be unlawful for any person, firm or corporation to sell, prepare for sale, offer for sale or have on hand for sale any meat or meat-food product which shall contain any substance which lessens its wholesomeness, or any drug, chemical, dye or preservative, other than common salt, sugar, wood smoke, vinegar, pure spices or saltpeter.

Whenever any conviction is sought under this section upon any alleged sample of meat or meat food product, it must clearly appear that the sample of meat or meat food product, it must clearly appear that the sample was taken in duplicate and one of said samples left with the accused or with his agent, servant or employee.

SEC. 547. PENALTY.

Any person, firm or corporation violating the provisions of Section 546 of this Article shall be guilty of a misdemeanor and upon conviction thereof, shall be punishable by a fine of not less than $25 nor more than $500 or by imprisonment in the County Jail for not more than six months, or by both such fine and imprisonment.

SEC. 552. TRANSPORTATION OF UNCOVERED CARCASSES FOR FOOD USE.

It shall be unlawful for any person to transport any beef, mutton, veal, pork, or the carcass of any animal used for food, along any public street, unless it be so covered, or unless the vehicle in which it is transported be so constructed, as to entirely protect the meat from dust and dirt, and so that the same may not be exposed to view.

SEC. 553. SALE OF HORSE OR MULE MEAT PROHIBITED.

It shall be unlawful to transport for sale, sell, offer for sale, or expose for sale, any horse meat or mule meat for human consumption within the City and County of San Francisco.

SEC. 563. KEEPING OF SWINE.

It shall be unlawful for any person, firm or corporation to keep or cause to be kept any swine in the City and County of San Francisco except as follows:

For the sole purpose of loading, unloading, feeding and slaughtering of swine, the provisions of this section shall not apply to that part of the city and county bounded and described as follows:

Starting at the point of intersection of the southwesterly line of Arthur Avenue with the southeasterly line of Third Street or Railroad Avenue; then continuing along Arthur Avenue to the intersection with the northwesterly line of Keith Street; thence southeasterly along Keith Street to the northeasterly line of Fairfax Avenue; thence northwesterly along the northeasterly line of Fairfax Avenue to the southeasterly line of Third Street, also called Railroad Avenue; and thence northeasterly to Arthur Avenue and point of commencement; provided, that all buildings and structures shall be built and main-

tained in accordance with the building laws applicable thereto; and provided, further, that a certificate of sanitation shall be obtained from the Director of Public Health for the maintenance or operation of said business or premises, and further provided that no swine shall be kept upon said premises or within the City and County of San Francisco for a period longer than 30 days.

SEC. 568. MEAT DEFINED.

As used in this Article, "meat" shall mean the edible part of the carcass of any cattle, calf, sheep, lamb, goat or swine.

SEC. 569. MEAT MUST BE AS ADVERTISED.

Any class or cut of meat which is defined in Sections 568 to 572 inclusive, of this Article, must conform to such definition if advertised as such or offered for retail as such.

SEC. 570. FALSE ADVERTISING PROHIBITED.

It shall be unlawful for any person, firm, co-partnership, association or corporation, or any agent or employee thereof, selling or delivering or offering for sale or delivery meat at retail to misrepresent classes or "cuts" of meat as defined in Sections 568 to 572, inclusive, of this Article in their advertising or placards, or in any other manner whatsoever.

SEC. 574. PENALTY.

Any person violating any provisions of Sections 568 to 574, inclusive, of this Article shall be guilty of a misdemeanor.

ARTICLE 11: NUISANCES

SEC. 580. DEFINITIONS.

Unless otherwise specified, for the purposes of this Article, the following terms shall have the following meanings:

(a) "Department" shall mean the San Francisco Department of Public Health.

(b) "Director" shall mean the Director of Public Health or his or her designee.

(c) "Manager" shall mean the authorized agent for the Owner of a building, structure or property, who is responsible for the day-to-day operation of said building, structure or property.

(d) "Owner" shall mean any Person who possesses, has title to or an interest in, harbors or has control, custody or possession of any building, property, real estate, personalty or chattel, and the verb forms of "to own" shall include all those shades of meaning.

(e) "Person" shall mean and include corporations, estates, associations, partnerships and trusts, one or more individual human beings, any department, Board or Commission of the City and County of San Francisco, and any agencies or instrumentalities of the State of California or the United States to the extent allowable by law.

(f) "Responsible Party" shall include the Owner and/or Manager and/or any Person that created a condition that constitutes a nuisance as defined by this Article. (Added by Ord. 125-01, File No. 010269, App. 6/15/2001)

SEC. 581. NUISANCE PROHIBITED.

(a) No Person shall have upon any premises or real property owned, occupied or controlled by him, or her, or it any public nuisance.

(b) The following conditions are hereby declared to be a public nuisance:

(1) Any accumulation of filth, garbage, unsanitary debris or waste material or decaying animal or vegetable matter unless such materials are set out for collection in compliance with Section 283 of this Code;

(2) Any accumulation of hay, grass, straw, weeds, or vegetation overgrowth;

(3) Any accumulation of waste paper, litter or combustible trash unless such materials are set out for collection in compliance with Section 283 of this Code;

(4) Any buildings, structures, or portion thereof found to be unsanitary

(5) Any matter or material which constitutes, or is contaminated by, animal or human excrement, urine or other biological fluids;

(6) Any visible or otherwise demonstrable growth of mold or mildew in the interiors of any buildings or facilities;

(7) Any pest harborage or infestation including but not limited to pigeons, skunks, raccoons, opossums, and snakes, except for pigeon harborages that comply with Section 37(e) of this Code;

(8) Any noxious insect harborage or infestation including, but not limited to cockroaches, fleas, scabies, lice, spiders or other arachnids, houseflies, wasps and mosquitoes, except for harborages for honey-producing bees of the genus Apis regulated by the California Food and Agriculture Code Sections 29000 et seq. which are not otherwise determined to be a nuisance under State law.

(9) Any article of food or drink in the possession or under the control of any person which is tainted, decayed, spoiled or otherwise unwholesome or unfit to be eaten or drunk. The term "food" as used in this subparagraph includes all articles used for food and drink by humans, whether simple, mixed or compound.

(10) Any lead hazards which are within the control of the Owner or Manager of the building, structure or property. Unless otherwise stated in this Article, the term "lead hazards" as used in this subparagraph shall have the same meaning as that set forth in Section 1603 of this Code. For the purposes of this subparagraph, the term "children" as used in Section 1603 of this Code shall mean any person who is up to 72 months of age. For the purposes of this subparagraph, any paint, both interior and exterior, found on buildings and other structures built before 1979 is presumed to be lead-based paint, such presumption may be rebutted by competent evidence demonstrating that such paint is not lead-based paint;

(11) Any vacant lots, open spaces, and other properties in the City and County of San Francisco, which become infested with poison oak (Toxicodendron diversilobum) or poison ivy shrub (Rhus toxicodendron) hereafter referred to as poisonous growth;

(12) Any violation of Section 37 of this Code;

(13) Any violation of Section 92 of this Code;

(14) Any violation of Section 590 of this Article;

(15) Anything else that the Director deems to be a threat to public health and safety. (Added by Ord. 125-01, File No. 010269, App. 6/15/2001)

SEC. 585. ENFORCEMENT—SPOILED FOOD.

In addition to any other enforcement authorities provided for in this Article, the Department is hereby authorized to seize, confiscate, condemn, and destroy any article of food or drink that is a nuisance as set forth in Section 581(b)(9) of this Article. (Amended by Ord. 125-01, File No. 010269, App. 6/15/2001)

SEC. 590. DISCHARGE OF SOOT, SMOKE, ETC.

It shall be unlawful for any person, firm, association or corporation to operate or maintain within any residential or commercial district of the City and County of San Francisco, as defined in and by zoning ordinances from time to time in force, any permanently located furnace, fire-box or other device whereby petroleum, coal or other substance is consumed by fire which emits or causes to be emitted dense smoke as hereinafter defined; provided, however, that dense smoke may be emitted for a period of one minute to afford the operator time to locate the cause of such smoke, and provided, further, that dense smoke may be emitted during a period or periods aggregating not more than 10 minutes in any one hour during which the fireboxes, flues or furnaces are being cleaned, a new fire is being started or fires are being increased or decreased in intensity; provided, further, that portable boilers shall have screen bonnet on smoke-stack which shall prevent the escape of unreasonable quantities of oil or soot. Smoke shall be considered dense within the meaning of this section when its density shall exceed the density desig-

nated as Diagram No. 3 upon the Ringelmann Smoke Chart published and used by the United States Bureau of Mines, a copy of which is on file in the office of the Clerk of the Board of Supervisors of the City and County of San Francisco.

It shall be unlawful for any person, firm, association or corporation within any residential or commercial district aforesaid to cause, permit or allow solid particles of soot, ashes or cinders to issue or be discharged from any flue, chimney or smokestack or from any other structure or appliance for such a period of time or in such quantities as to become a nuisance by reason of depositing such particles upon surrounding property.

It shall be unlawful for any person, firm, association or corporation within the City and County of San Francisco to cause, permit or allow objectionable fumes to issue or be discharged from any flue, chimney or smokestack from any other structure or appliance for such period of time or in such quantities as to become a nuisance on account of causing obnoxious odors in any residential or commercial district aforesaid.

It shall be unlawful for any person, firm, association or corporation within any commercial district aforesaid to erect, construct or maintain, or to cause or permit to be erected, constructed or maintained, any permanently located stationary flue, chimney, or smokestack within 50 feet of any window of any adjacent building unless the top of such flue, chimney or smokestack shall be higher than each portion of such window; provided, however, that this section shall not apply in any case where the persons owning and operating such adjacent building shall refuse to grant permission to brace or support such flue, chimney or smokestack by means of wire or struts attached to such building.

Representatives of the Department of Public Health of the City and County of San Francisco are hereby authorized to enter during reasonable hours upon any premises upon which is located any flue, chimney or smokestack or any other structure or appliance from which smoke, soot, ashes, cinders or fumes are discharged in violation of this section, for the purpose of making an examination as to the cause of the excessive discharge of such smoke, soot, ashes, cinders or fumes and the manner of using the same and any other fact or facts showing compliance with or violation of this section. Such representatives shall make report to the Department of Public Health of such examination within 10 days after receiving a complaint of violation of this Section.

SEC. 591. PENALTY.

Any person, firm, association or corporation who shall violate any of the provisions of Section 590 of this Article shall be punishable by a fine not exceeding $50 or by imprisonment in the County Jail for not exceeding five days, or by both such fine and imprisonment.

SEC. 594. CERTIFICATE OF SANITATION REQUIRED.

Every person, firm, partnership or corporation operating a hotel shall obtain from the Department of Public Health a Certificate of Sanitation within one year following approval of this Ordinance. Said Certificate shall be valid for a period of one year from date of issuance, and shall be renewed following satisfactory reinspection by the Department of Public Health on an annual basis, and shall be nontransferable and deemed revoked upon sale, transfer or assignment of the use for which the certificate was issued. (Added by Ord. 49-84, App. 1/31/84)

SEC. 594.1. HOTEL DEFINED.

Hotel is any building containing six or more guest rooms intended or designated to be used, or which are used, rented or hired out to be occupied or which are occupied for sleeping purposes by guests, whether rent is paid in money, goods, or services. (Added by Ord. 49-84, App. 1/31/84)

SEC. 594.2. VIOLATION A MISDEMEANOR.

Any person who shall violate the provisions of Section 594 of this Article, shall be guilty of a misdemeanor, and each day's continuing offense shall constitute a separate and distinct violation.

Upon conviction thereof, said person shall be punished by imprisonment in the County Jail not exceeding one year or a fine not exceeding $1,000. (Added by Ord. 49-84, App. 1/31/84)

SEC. 595. INSPECTION OF PREMISES.

It shall be the duty of the Department of Public Health upon application from any person, firm, or corporation operating a hotel, before issuing the certificate specified in Section 594, to cause the premises to be inspected for purpose of ascertaining whether said premises are free of nuisances and are in a sanitary condition for human habitation. (Added by Ord. 49-84, App. 1/31/84)

SEC. 596. ENFORCEMENT.

(a) **Complaints.** Whenever a written or oral complaint is made to the Department that a nuisance as defined by Section 581 exists in a building or structure or on a property, the Director shall inspect the building, structure or property to verify the existence of a nuisance thereon.

(b) **Notice to Abate.** Whenever the Director determines that a nuisance, as defined by Section 581 of this Article, exists in a building or structure or on a property, the Director shall cause a Notice to Abate to be served either personally or by first class mailing to the Responsible Parties. If the Notice to Abate is served on the Owner by mail, it shall be mailed to the address that appears on the last assessment rolls of the City and County of San Francisco. If the Notice to Abate is served on the Manager by mail, it shall be mailed to the Manager's principal place of business or to the address of the building, structure or property. If the Notice to Abate is served on any other Person who created a condition that constitutes a nuisance, it shall be mailed to the Person's last known address at which such Person receives mail if ascertainable. Thereafter, the Director may cause a copy thereof to be posted in a conspicuous place on the building, structure or property. The failure of the Responsible Parties to receive such notice when sent in the manner set forth in this Subsection shall not affect in any manner the validity of any proceeding against that party under this Article.

(c) **Order to Vacate.** The Director may order a premises vacated if she or her determines that relocation is warranted upon discovery of a nuisance, as defined by Section 581(b)(10) of the Health Code, or at the discretion of the Director, to protect the health of occupants. The order shall be to the affected tenant(s) and owner. A copy of the order shall be served upon the Owner and the affected tenant(s) and posted in conspicuous places at the affected premises. The order shall specify the time within which the premises is to be vacated and advise the tenants that they may be eligible for assistance pursuant to Chapter 72 of the San Francisco Administrative Code. The order shall further advise that the premise vacated hereunder shall not be reoccupied without written permission of the Director. Such permission shall be granted when the nuisance, as defined by Section 581(b)(10) of the Health Code, is abated.

(d) **Notice to Pay Relocation Benefits.** Whenever the Director determines that a nuisance, as defined by Section 581(b)(10) of this Article, exists in a building or structure or on a property, and issues a Notice to Abate, pursuant to subsection (b) of this section, and an Order to Vacate, pursuant to subsection (c) of this Section, the Director shall issue to the Responsible Party a Notice to Pay Relocation Benefits to the affected tenant(s) pursuant to Chapter 72 of the San Francisco Administrative Code. The Director shall cause a Notice to Pay Relocation Benefits to be served either on the Responsible Party or sent by first class mailing to the Responsible Parties. If the Notice to Pay Relocation Benefits is served on the Owner by mail, it shall be mailed to the address that appears on the last assessment rolls of the City and County of San Francisco. If the Notice to Pay Relocation Benefits is served on the Manager by mail, it shall be mailed to the Manager's principal place of business or to the address of the building, structure or property. Thereafter, the Director may cause a copy thereof to be posted in a conspicuous place on the building, structure or property. The failure of Responsible Parties to receive such notice when sent in the manner set forth in this Subsection

shall not affect in any manner the validity of any proceeding against that party under this Article.

(e) **Contents of Notice to Abate or Notice to Pay Relocation Benefits.**

(1) The Notice to abate shall state with reasonable specificity a description of the nuisance such that the Responsible Parties can reasonably understand the nature of the nuisance to be abated. The Notice to abate shall direct the Responsible Parties to abolish, abate, and remove the nuisance within a reasonable period of time set by the Director given the nature and severity of the nuisance and any other circumstances of which the Director is aware. Such time period shall not exceed 30 days.

(2) The Notice to Pay Relocation Benefits shall state the Director has determined that the affected tenant(s) are eligible for relocation benefits as described in San Francisco Administrative Code Chapter 72 such that the Responsible Parties can reasonably understand the nature of their obligations under Chapter 72. The Notice to Pay Relocation Benefits shall direct the Responsible Parties to commence making the required relocation payments to the affected tenant(s) at least 12 hours prior to the date that the affected tenant(s) must vacate the unit.

(3) The notices shall further advise the Responsible Parties that if they fail to comply with the notice, the Director may: (A) hold a Director's Hearing to be held to consider whether it would be appropriate to issue a Director's Order to abate the nuisance and other appropriate orders as provided for in this Article or (B) cause the abatement and removal of the nuisance and the Owner shall be indebted to the City and County of San Francisco for the costs, charges, and fees incurred by the City and County of San Francisco by reason of the abatement and removal of such nuisance or (C) offer relocation services to the affected tenant(s) and the Owner shall be indebted to the City and County of San Francisco for the costs, charges, and fees incurred by the City and County of San Francisco by reason of the provision of the relocation services.

(4) The notices shall inform the Responsible Party that they may be liable for other charges, costs, including administrative costs, expenses incurred by the Department, fines, and penalties as provided for in this Article.

(5) The notices shall state the name, business address and telephone number of the Department staff who may be contacted regarding the building, structure or property in question.

(6) At the discretion of the Director and to assure lawful disposal of any items constituting a nuisance in whole or in part, the notice may contain a requirement that the Responsible Party abating the nuisance or making the relocation payments provide to the Director proof of lawful disposal of such items or the payment of such relocations benefits, and the form of such proof acceptable to the Director.

(f) **Action by the Director.** If the nuisance is not abated and removed within the time period set forth in the notice, or the relocation benefits are not made within the time period set forth in the notice, the Director shall either: (1) hold a Director's Hearing in accordance with this Section or (2) abate and remove the nuisance as soon as practicable or (3) offer relocation services to the affected tenant(s). The Owner shall be assessed a re-inspection fee as provided in Section 609 of this Code to cover the Department's costs incurred to verify the abatement of the nuisance.

(g) **Notice of Hearing.**

(1) If the Responsible Parties failed to comply with the Notice to Abate or the Notice to Pay Relocation Benefits, the Director may hold a hearing by serving a copy of the Notice to Abate or the Notice to Pay Relocation Benefits, together with a notice of the time and place set for the hearing thereof, by personal service or by certified mail upon the Responsible Parties. The Director shall post a copy of the Notice to Abate or the Notice to Pay Relocation Benefits, together with the Notice of Hearing in conspicuous places throughout the building, structure or property. The time fixed for the hearing shall not be less than 30 days after service and posting of the copy of the Notice of Hearing; except in those

circumstances where the Director has issued a written determination that the nuisance constitutes a severe and immediate hazard to life, health or safety, in which case the time fixed for the hearing shall not be less than 12 hours after personal service and posting the Notice of Hearing. The Notice of Hearing shall inform all persons interested to appear at the hearing to show cause, if any, why the building, structure, or property should not be declared a nuisance or in the case where the Department has abated and removed the nuisance, why a lien should not be placed against the property for the costs incurred by the Department. In the case of unsanitary buildings, said notice shall also state that the hearing may result in the revocation of the certificate of sanitation, if any, and the mandatory vacation of occupants from the building.

(2) If the Notice of Hearing is served by certified mail on the Owner, the Director shall mail the Notice of Hearing to the address as it appears on the last assessment rolls of the City and County of San Francisco. If the Notice is served by certified mail on the Manager, the Director shall mail the Notice of Hearing to the Manager's principal place of business, if any, or to the address of the building, structure or property in question. If the Notice of Hearing is served by certified mail on any Person who created the condition that constitutes a nuisance, the Director shall mail the Notice of Hearing to the last known address of such Person at which it receives mail, if ascertainable. The failure of the Responsible Parties to receive such notice when sent in the manner set forth in this Subsection shall not affect in any manner the validity of any proceeding under this Article.

(h) **Director's Hearing.** A public hearing shall be held at the time and place designated in the Notice of Hearing. Subject to the procedures prescribed by the Director for the orderly conduct of the hearing, all persons having an interest in the building, structure or property in question or having knowledge of facts material to the Notice to Abate or the Notice to Pay Relocation Benefits may present evidence for consideration by the Director. Any hearing conducted pursuant to this Section shall be electronically recorded.

(i) **Director's Order.**

(1) Within 30 days after the conclusion of the hearing, the Director shall issue a written order setting forth finding of facts and a determination based upon the facts found in the record whether or not a nuisance, as defined by Section 581, exists or had existed in the building or structure or on the property and if the Department abated and removed the nuisance, the costs of abatement and removal of the nuisance by the Department, or a written order setting forth finding of facts and determination based upon the facts found in the record whether or not the relocation benefits have been paid and if the Department arranged for the relocation of the affected tenant(s), the costs of that relocation to the Department. The order shall be served on the Responsible Parties in the same manner as set forth in Subsection (e) of this Section and shall be served on all other parties who provided testimony at the hearing by first class mail if such parties request at or before the hearing that the order be sent to them.

(2) Upon a finding that a nuisance exists in the building or structure or on the property, or a finding that appropriate relocation benefits have not been paid, the Director shall require in the order the abatement of the nuisance or the payment of the benefits within a specified time period not to exceed 30 days. The time period shall be determined based on the nature and severity of the nuisance and any other circumstances of which the Director is aware. The order shall state either that, failure to abate and remove the nuisance will result in the abatement of the nuisance by the Department and that the Owner shall become indebted to the City and County of San Francisco for the costs, charges, and fees incurred by reason of the abatement and removal of such nuisance upon demand, or that failure to make the relocation benefit payments will result in the offering of relocation services to the affected tenant(s) by the Department and that the Owner shall become indebted

to the City and County of San Francisco for the costs, charges, and fees incurred by reason of the making such relocation services available upon demand. The order shall inform the Responsible Parties that it shall be indebted to the City and County of San Francisco for all administrative costs incurred by the Department in the prosecution of the abatement action or the prosecution of the relocation benefit payment action and that such costs are due upon demand. The order shall further state that failure to pay such costs, charges, and fees may result in a lien against the property. The order shall require the Responsible Parties to abate and remove the nuisance in compliance with all applicable federal, State, and local laws and regulations or shall require the Responsible Parties to make the relocation benefit payments in compliance with all applicable local laws.

(3) In the case where Director determines that a nuisance had existed and that the Department had abated and removed the nuisance, or where the Director determines that the relocation benefits were owed to the affected tenant(s) and the Director provided relocation services to the affected tenant(s), the order shall itemize the costs of abatement and removal or provision of relocation services and all administrative costs incurred by the Department. The order shall notify the Owner that a lien will be assessed against the property for any outstanding costs if the Owner fails to reimburse the Department for the costs incurred by the Department as a result of the abatement and removal of the nuisance or the provision of relocation services within ten (10) days of the service of the order and that the lien shall also include additional charges for administrative expenses of $1,000 or 10 percent of the costs of abatement and removal, whichever is higher, and interest at a rate of 1½ percent per full month compounded monthly from the date of recordation of the lien on all fees and charges due as aforesaid.

(4) The order shall advise the Responsible Parties that the order issued is final and of the Owner's right to petition the Superior Court of San Francisco for appropriate relief pursuant to Section 1094.6 of the California Code of Civil Procedures. The order shall notify the Owner that the filing of a petition with the Superior Court shall not automatically stay the effectiveness of the order or extend the time period in which the Responsible Parties have to abate the nuisance.

(5) In case of an unsanitary building, the Director shall revoke the certification of sanitation, if the building is a hotel and may order the vacation of any unsanitary building for all purposes, and shall cause a copy of said order to be posted in conspicuous places throughout the aforesaid structure, building or part thereof determined by the Director to be a nuisance, and a copy thereof is to be personally served upon the Owner thereof or his agent, or the lessee or the occupant thereof. The order shall specify the time within which said structure, building or part thereof determined by the Director to be a nuisance shall be vacated. The order shall further advise that structure, building or part thereof vacated hereunder shall not be reoccupied without the written permission of the Director. Such permission shall be granted when the nuisance cited is abated within the time set forth in the order.

(j) **Regulations.** The Director is hereby empowered to promulgate administrative regulations to implement the provisions of this Article and applicable provisions of State law. (Amended by Ord. 510-84, App. 12/21/84; Ord. 125-01, File No. 010269, App. 6/15/2001; Ord. 99-04, File No. 031992, App. 6/4/2004)

SEC. 597. NOTICE TO POLICE DEPARTMENT.

The Director of Public Health shall give written notification thereof to the Chief of Police, who shall thereupon, through the officers of the Police Department, execute and enforce the said order of vacation.

SEC. 598. PENALTY FOR RESISTING ORDER TO VACATE.

Any Owner, or the agent of such Owner, or the lessee, or the occupant of any building, structure, property or part thereof ordered vacated hereunder who shall herself or himself or

through others forcibly resist or prevent the enforcement of such order shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than $100, and not more than $1,000, or by imprisonment in the County Jail for a period of not less than 10 days nor more than three months, or by both such fine and imprisonment. (Amended by Ord. 125-01, File No. 010269, App. 6/15/2001)

SEC. 599. COLLECTION.

(a) **Notice of Cost and Claim of Lien.**

(1) Upon satisfactory compliance of the Director's order, the Director shall ascertain the administrative costs incurred by the Department and the Owner of such real property shall thereupon be obligated to the City and County of San Francisco in the amount of such administrative costs. The City and County of San Francisco shall thereupon have a lien for such costs upon such real property until payment thereof, which lien shall also include additional charges for administrative expenses of $1,000, or 10 percent of the costs of abatement and removal, whichever is higher, and interest at a rate of 1½ percent per full month compounded monthly from the date of recordation of the lien on all fees and charges due as aforesaid. The Director shall cause a notice itemizing the administrative costs to be mailed in the manner herein provided for mailing Notice of Hearing, which notice shall demand payment thereof to the Department, and shall give notice of claim of such lien and of the recording of the same, in the event such amount is not paid, as hereinafter set forth.

(2) Upon the Responsible Parties' failure to comply with the Director's order and the completion of the abatement and removal of the nuisance by the Department, the Director shall, in addition to ascertaining the administrative costs as set forth in subparagraph (1) of this Section, ascertain the costs of abatement and removal incurred by the City and the Owner of such real property shall thereupon be obligated to the City and County of San Francisco in the amount of such costs of abatement and removal. In addition to the lien provided for in subparagraph (1) of this Section, the City and County of San Francisco shall have a lien for such costs of abatement and removal upon such real property until payment thereof, which lien shall also include additional charges for administrative expenses of $1,000, or 10 percent of the costs of abatement and removal, whichever is higher, and interest at a rate of 1½ percent per full month compounded monthly from the date of recordation of the lien on all fees and charges due as aforesaid. The Director shall cause a notice itemizing the cost of abatement and removal to be mailed in the manner herein provided for mailing Notice of Hearing, which notice shall demand payment thereof to the Department, and shall give notice of claim of such lien and of the recording of the same, in the event such amount is not paid, as hereinafter set forth.

(b) **Recording of Lien.** If the costs as provided for in subsection (a) of this Section are not paid to the Department within 45 days after mailing of notice thereof, the Director shall file in the Office of the Recorder of the City and County a verified claim containing a particular description of the property subject to such lien, the place and general nature of the administrative costs and of the abatement and removal for which the lien is claimed, the date of posting of said property, the date of the service of Notice to Abate and the Director's order, and the date of the removal of the nuisance, the name of the Owner of the property as aforesaid and the amount of the lien claimed, which shall include the cost of verification and filing thereof.

(c) **Collection by Bureau of Delinquent Revenue.** The Director shall also transmit to the Bureau of Delinquent Revenue, on the expiration of such 45-day period, a statement of each such unpaid costs, together with the cost of verification and filing and claim therefor. The bureau shall endeavor diligently to collect the same on behalf of the City and County by foreclosure of the lien therefor or otherwise. Any and all amounts paid or collected shall replenish the revolving fund hereinafter provided.

(d) **Release of Lien.** On payment of any such claim of lien, the Director shall give a release thereof.

(e) **Continuing Appropriation Account.** There is hereby created a Special Revenue Fund for a continuing appropriation account entitled "Payment of Property Owner's Delinquencies for Abatement and Removal of Nuisances."

The account shall be credited with such sums as may be appropriate by the Board of Supervisors, amounts collected by the Department and sums received in consideration of release of liens and payment of special assessments. Expenditures from said sums shall be made to pay for the abatement and removal of nuisances as provided in this Article. In the event that the unexpended balance in said account shall exceed $200,000 such excess shall be transferred to the unappropriated balance of the general fund.

(f) **Collection of Expenses as a Special Assessment.** The Director may initiate proceedings to make unpaid expenses for the administration of the abatement action and for the abatement and removal of nuisances a special assessment against the parcels of property from which the nuisance was abated and removed by the Department.

(g) **Report of Delinquencies Transmitted to Board of Supervisors.** A report of delinquent charges shall be transmitted to the Board of Supervisors by the Director as necessary, but in no event less often than once each year, commencing with the first anniversary of the date of enactment of this ordinance. Upon receipt by the Board of Supervisors of the report, it shall fix a time, date and place for hearing the report and any protests or objections thereto.

(h) **Notice of Hearing.** The Board of Supervisors shall cause notice of the hearing to be mailed to the Owner of the real property and any person or entity with a recorded interest in the property to which the service was rendered not less than 10 days prior to the date of hearing.

(i) **Hearing.** At the time for consideration of the report, the Board of Supervisors shall hear it with any objections of the Owners liable to be assessed for all administrative costs incurred and the costs of abatement and removal by the Director, if any. The Board of Supervisors may make such revisions, corrections or modifications of the report as it may deem just and, in the event that the Board of Supervisors is satisfied with the correctness of the report (as submitted or as revised, corrected or modified), it shall be confirmed or rejected by resolution. The decision of the Board of Supervisors on the report and on all protests or objections thereto shall be final and conclusive.

(j) **Collection of Assessment.** Upon confirmation of the report by the Board of Supervisors, the delinquent charges contained therein shall constitute a special assessment against the property to which the services were rendered. At the time the special assessment is imposed, the Director shall give notice to the Owner and other parties with an interest in the property by certified mail, and shall inform them that the property may be sold by the Tax Collector for unpaid delinquent assessments after three years. Thereafter, said assessment may be collected at the same time and in the same manner as ordinary municipal taxes are collected and shall be subject to the same penalties and same procedure of sale as provided for delinquent, ordinary municipal taxes.

The assessments shall be subordinate to all existing special assessment liens previously imposed upon the property and paramount to all other liens except those for State, county and municipal taxes with which it shall be on parity. Such assessment lien shall continue until the assessment and all interest and penalties due and payable thereon are paid. All laws applicable to the levy, collection and enforcement of municipal taxes shall be applicable to said special assessments. However, if any real property to which the costs of abatement and removal relates has been transferred or conveyed to a *bona fide* purchaser for value or if a lien of a *bona fide* encumbrancer for value has been created and attaches thereon, prior to the date on which the first installment of taxes would become delinquent, then the costs of abatement and removal shall not result in a lien against the real property but instead shall be transferred to the unsecured roll for collection.

(k) **Severability.** If any part or provision of this Article or application thereof, to any person or circumstance is held invalid, the remainder of the ordinance, including the application of such part or provision to other persons or circumstances shall not be affected thereby and shall continue in full force and effect. To this end the provisions of this ordinance are severable. (Amended by Ord. 432-81, App. 8/21/81; Ord. 125-01, File No. 010269, App. 6/15/2001)

SEC. 600. PENALTY.

In addition to any other penalties provided in this Article, any person, or their agents, violating any of the provisions of this Article, or failing to comply with any direction or order of the Director given pursuant to the provisions of this Article, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than $100 and not more than $1000, or by imprisonment if the County Jail for a period of not less than 10 days nor more than three months, or by both such fine and imprisonment.

As an alternative to any other fines and penalties applicable to a violation of subparagraphs (b)(1), (b)(2) or (b)(3) of Section 581, any person or their agents who are in violation of one or more of those subparagraphs shall be subject to an administrative penalty not to exceed $1,000 for each violation. The administrative penalty shall be assessed, enforced and collected in accordance with Section 39-1 of the Police Code. (Amended by Ord. 125-01, File No. 010269, App. 6/15/2001; Ord. 87-03, File No. 030482, App. 5/9/2003; Ord. 292-04, File No. 040561, App. 12/24/2004)

SEC. 605. POISON IVY AND POISON OAK, REMOVAL ON NOTICE.

Any Owner permitting poisonous growth as defined in Section 581(b)(11) is required to cause the removal and destruction of such poisonous growth when ordered by the Director pursuant to this Article. (Amended by Ord. 125-01, File No. 010269, App. 6/15/2001)

Sec. 606.

(Repealed by Ord. 125-01, File No. 010269, App. 6/15/2001)

SEC. 607. ENFORCEMENT.

The Department is hereby charged with the proper enforcement of Section 605 of this Article. (Amended by Ord. 125-01, File No. 010269, App. 6/15/2001)

SEC. 608. PENALTY.

Any person, firm, association or corporation, neglecting or refusing to remove and destroy such poisonous growth within the time period set by the Director under this Article shall be guilty of a misdemeanor and upon conviction thereof shall be subject to a fine of not more than $1,000 or by imprisonment in the County Jail for a period of not less than 15 days, or by both such fine and imprisonment. (Amended by Ord. 125-01, File No. 010269, App. 6/15/2001)

SEC. 609. REINSPECTION FEE AUTHORIZED.

If an inspection by a representative of the Department of Public Health discloses a violation of any provision of this Code or of any State law for which the Department is responsible for enforcement, the Department shall determine a period of time that is reasonable to correct the violation and shall thereafter reinspect the property to verify such correction. The Department shall collect a fee from the legal owner of the property in the amount of $63 to compensate the Department for its costs in performing the reinspection. Reinspections which require more than one hour to complete shall be subject to an additional fee at the rate of $15 for each quarter-hour or part thereof beyond the first 60 minutes. If more than one reinspection is necessary to secure correction of the violation, the Department shall collect a fee in the amount set forth herein for each reinspection. (Added by Ord. 299-91, App. 7/29/91; amended by Ord. 121-97, App. 4/9/97)

SEC. 609.1. NOTICE UPON NONPAYMENT.

The Department shall send a written notice to the legal owner of the property requesting

payment of the reinspection fees levied pursuant to Section 609. The notice shall request that the fees be paid within 30 days of the date of notice and shall warn the owner of possible penalties and interest fees if payment is not made within that time. If payment is not received, the Department shall send a second request stating that the legal owner is liable for payment of the cost indicated on the notice and that if the Department does not receive payment within 30 days of the date of the second request, a penalty of $40 or 10 percent of the amount due, whichever is greater, plus interest at the rate of one and ½ percent per month on the outstanding balance, shall be added to the amount otherwise due.

Interest fees, if imposed, shall accrue beginning on the date of the second notice. The second request shall also notify the owner of the property that the City is authorized by the provisions of this Section to enforce payment of reinspection fees and penalty and interest payments by the imposition of a lien on the property. (Added by Ord. 299-91, App. 7/29/91)

SEC. 609.2. HEARING UPON NONPAYMENT.

If the Department does not receive payment of the amount due within 30 days of the date of the second request for payment, the Department shall conduct a hearing to consider any protests or objections to the imposition of the fees authorized by Section 609. The Department shall fix a time, date and place for the hearing and shall mail notice of the hearing to each owner of the property not less than 10 days prior to the date of the hearing. The notice shall state the name of each legal owner of the property, the amount due, and a description of each parcel of property which is the subject of the reinspection fee. The descriptions of parcels shall be those used for the same parcels on the Assessor's map books for the current year. Following the hearing, the Director of Public Health or a designee shall determine whether the reinspection costs and any penalty and interest payments imposed pursuant to Section 609 should be affirmed, modified or vacated. The Director shall send written notice of the decision to the owner of the property. The notice shall state that the owner has 10 days in which to pay any amount determined due and that failure to pay within the time set forth will result in the imposition of a lien upon the property. The Director of Health may adopt rules and regulations regarding the hearing procedure and other matters relating to imposition and collection of reinspection fees, including penalty and interest payments. (Added by Ord. 299-91, App. 7/29/91)

SEC. 609.3. LIEN PROCEDURES INITIATED UPON NONPAYMENT.

If the property owner fails to pay any amount determined due following a hearing within the time required by Section 609.2, the Director of Public Health or a designee shall initiate a special assessment lien proceeding pursuant to the provisions of Article XX of Chapter 10 (beginning with Section 10.230) of the San Francisco Administrative Code. Notwithstanding anything to the contrary in Article XX of Chapter 10, pursuant to Section 38773.5 of the California Government Code, the Board may order that the amount of the lien be specially assessed against the parcel. Upon such an order, the entire unpaid balance of the costs, including any penalty and interest payments on the unpaid balance to the date that the Department reports to the Board shall be included in the special assessment lien against the property. The Department shall report charges against delinquent accounts to the Board of Supervisors at least once each year. At the time the special assessment is imposed, the Director shall give notice to the property owner by certified mail, and shall inform the property owner that the property may be sold by the Tax Collector for unpaid delinquent assessments after three years. The assessment may be collected at the same time and in the same manner as ordinary municipal taxes are collected, and shall be subject to the same penalties and procedure and sale in case of delinquency as provided for ordinary municipal taxes. All tax laws applicable to the levy, collection and enforcement of ordinary municipal taxes shall be applicable to the special assessment. However, if any real property to which a cost of abatement relates has been transferred or conveyed to a *bona fide*

purchaser for value, or if a lien of a bona fide encumbrancer for value has been created and attaches thereon, prior to the date on which the first installment of taxes would become delinquent, then the cost of abatement shall not result in a lien against the real property but instead shall be transferred to the unsecured roll for collection. (Added by Ord. 299-91, App. 7/29/91; amended by Ord. 322-00, File No. 001917, App. 12/28/2000)

SEC. 613. OPERATION OF GAS WORKS REGULATED.

It shall be unlawful for any person, firm or corporation engaged in the business of manufacturing illuminating gas to cause or permit any gas, tar, or refuse to be deposited in any public waters or sewer, or public street or place; or to permit any gas, dangerous or prejudicial to health, to escape from any gas works or pipes; or to manufacture illuminating gas of such ingredients or quality that in the process of burning such gas or anything escaping therefrom shall be dangerous or prejudicial to life or health.

Every person, firm or corporation engaged in the manufacture of illuminating gas must use the most approved methods to prevent the escape of odors.

SEC. 614. VACANT LOT DEDICATION.

The Director is hereby authorized to give notice to every Owner of a vacant lot in the City and County of San Francisco advising the Owners to contact the Director should the Owners wish to dedicate their properties to alternative uses, including but not limited to urban gardens and park space. (Added by Ord. 125-01, File No. 010269, App. 6/15/2001)

SEC 615. DISCRETIONARY DUTIES.

Subject to the limitations of due process and applicable requirements of State and federal law, and notwithstanding any other provision of this Code, whenever the words "shall" or "must" are used in establishing a responsibility or duty of the City, its elected or appointed officers, employees, or agents, it is the legislative intent that such words establish a discretionary responsibility or duty requiring the exercise of judgment and discretion. (Added by Ord. 125-01, File No. 010269, App. 6/15/2001)

SEC. 616. DISCLAIMER OF LIABILITY.

(a) The degree of protection required by this Article is considered reasonable for regulatory purposes. This Article shall not create liability on the part of the City, or any of its officers or employees for any damages that result from reliance on this Article or any administrative decision lawfully made pursuant to this Article.

(b) In undertaking the implementation of this Article, the City and County of San Francisco is assuming an undertaking only to promote the public health, safety, and general welfare. It is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury.

(c) Except as otherwise required by State or federal law, all inspection specified or authorized by this Article shall be at the discretion of the City and nothing in this Article shall be construed as requiring the City to conduct any such inspection nor shall any actual inspection made imply a duty to conduct any other inspection. (Added by Ord. 125-01, File No. 010269, App. 6/15/2001)

[The next page is 375]

ARTICLE 12: SANITATION—GENERAL

SEC. 635. CIGAR FACTORIES.

(a) **Establishment, Etc.** It shall be unlawful for any person or persons to establish, maintain or carry on the business of a cigar factory, where cigars or other articles of tobacco are made, within the limits of the City and County of San Francisco, without having first complied with the conditions hereinafter specified.

(b) **Requirements for Certificate, Etc.** It shall be unlawful for any person or persons to conduct or maintain a cigar factory within the City and County of San Francisco without having first obtained a certificate signed by the Director of Public Health of said city and county that the premises are properly and sufficiently ventilated, and that all proper arrangements for carrying on the business without injury to the sanitary condition of the neighborhood have been complied with and particularly that all ordinances of the Board of Supervisors have been complied with.

It shall be the duty of the Director of Public Health, upon application from any person or persons proposing to open or conduct the business of a cigar factory within the limits of the City and County of San Francisco, to inspect the premises on which it is proposed to carry on such business, or in which said business is being carried on, with a view of ascertaining whether the said premises are provided with proper drainage and sanitary appliances; also, whether the provisions of all ordinances of the Board of

Supervisors relating thereto have been complied with, and, if found in all respects satisfactory, then to issue to said applicants the certificate provided for in this section.

(c) **Use of Premises, Etc.** No person or persons engaged in the cigar business within the limits of the City and County of San Francisco shall permit any person suffering from any contagious or infectious disease to work, sleep, lodge or remain within or upon the premises used by him, her or them, for the purpose of a cigar factory.

(d) **Prohibitions.** (1) No person or persons engaged in the cigar business within the limits of the City and County of San Francisco shall permit the introduction of or the smoking of opium within or upon the premises used by him, her or them, for the purpose of a cigar factory.

(2) It shall be unlawful for any person or persons owning or employed in any cigar factory in the City and County of San Francisco to sleep or cook in the rooms wherein cigars are manufactured or prepared for use.

(3) It shall be unlawful for any person or persons owning or employed in any cigar factory in the City and County of San Francisco to place between the lips or in the mouth the ends of cigars or other parts thereof for the purpose of moistening or biting the same, or for the purpose of otherwise improving their appearance.

(4) It shall be unlawful for any person or persons owning or employed in any cigar factory in the City and County of San Francisco to spray tobacco or otherwise moisten it by means of water emitted from the mouth or by appliances whereby the water is expelled by means of the mouth.

(5) It shall be unlawful for any person or persons owning or employed in any cigar factory the City and County of San Francisco to expectorate upon the floors of such rooms wherein cigars are manufactured or prepared for use.

(6) It shall be unlawful for any person or persons owning or employed in the cigar manufacturing business within the limits of the City and County of San Francisco to dry tobacco previously moistened upon floors or upon stands possessing a tendency to contaminate or injuriously affect the condition thereof, but upon clean cloths provided for the purpose and stretched over wooden frames, or upon such other contrivances previously approved by the Director of Public Health.

SEC. 636. DISPLAY OF CERTIFICATE.

The certificate from the Director of Public Health, as required by Section 635, shall be exhibited in some conspicuous place on the premises, and same shall be produced on the demand of any officer of the City and County of San Francisco.

SEC. 637. ENFORCEMENT.

The Director of Public Health is hereby directed to have the provisions of Sections 635 and 636 of this Article strictly enforced.

SEC. 638. PENALTY.

Any person or persons establishing, maintaining or carrying on the business of a cigar manufactory wherein cigars are manufactured or prepared for use, within the limits of the City and County of San Francisco, without having complied with the provisions of Sections 635 and 636 of this Article, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not more than $100 or by imprisonment of not more than six months, or by both such fine and imprisonment.

SEC. 642. SHODDY—DISINFECTION, ETC.

It shall be unlawful for any person, firm or corporation to use any material in the manufacture of shoddy or cause the same to be used unless such material shall first be disinfected by formaldehyde gas under pressure of at least 50 pounds or steam of at least 320° Fahrenheit, in an air-tight room or chamber.

All machinery used in the manufacture of shoddy and all factories, warehouses, stores or other buildings or enclosures wherein shoddy is manufactured, produced or stored, or sold or exposed for sale, and every factory, warehouse, store or other building or enclosure wherein the

raw materials used in the manufacture of shoddy are collected, stored, sold or exposed for sale, shall be at all times subject to the inspection of the Department of Public Health or the officers thereof.

No person, firm or corporation shall hereafter establish or maintain any factory, store or warehouse for the manufacture, sale or storing of shoddy without first applying to and obtaining from the Director of Public Health a permit to establish and maintain the same.

All shoddy manufactured without the City and County of San Francisco and brought within the said City and County shall, before being sold or exposed for sale or stored in any factory, warehouse, storeroom or enclosure in this city and county, be disinfected by formaldehyde gas, under pressure of at least 50 pounds, or steam of at least 320° Fahrenheit, in an air-tight room or chamber.

SEC. 643. PENALTY.

Every person, firm or corporation violating the provisions of Section 642 of this Article, or neglecting or refusing to comply with the same, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than $25 and not exceeding $500, or by imprisonment in the County Jail for a period of not less than five days or not more than six months or by both such fine and imprisonment.

SEC. 648. DELIVERY AND DEPOSIT OF DRUGS, ETC., ON DOOR STEPS.

No person, firm or corporation, by him or themselves, his or their servant, or agent, or as the servant or agent of any person, firm or corporation, shall leave, throw or deposit upon the doorstep or premises owned or occupied by another, or deliver to any child under 14 years of age, any patent or proprietary medicine, or any preparation, pill, tablet, powder, cosmetic, disinfectant or antiseptic, or any drug or medicine that contains poison, or any ingredient that is deleterious to health, as a sample, or in any quantity whatever for the purpose of advertising.

The term drug, medicine, patent or proprietary medicine, pill, tablet, powder, cosmetic, disinfectant or antiseptic used in this Section shall include all remedies for internal or external use, either in package or bulk, simple, mixed or compounded.

SEC. 649. PENALTY.

Any person, firm or corporation violating any of the provisions of Section 648 of this Article, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined a sum not exceeding $100 nor less than $25 or by imprisonment in the County Jail for a term not exceeding 100 days nor less than 30 days, or by both such fine and imprisonment.

SEC. 654. POLLUTION OF WATER IN PUBLIC WATER WORKS.

It shall be unlawful for any person to put or place in or on or to allow to run into or on any public reservoir, or the bank, border or margin thereof, or into any water pipe, aqueduct, canal, stream or excavation therewith connected, any animal, vegetable or mineral substance; or to do, perform or commit any act or thing which will pollute the purity and wholesomeness of any water intended for human consumption.

Sec. 659.
(Amended by Ord. 450-77, App. 10/6/77; Ord. 303-04, File No. 041541, App. 12/24/2004; repealed by Ord. 113-05, File No. 050547, App. 6/10/2005)

SEC. 664. CLEANING AND DISINFECTION OF STREET CARS, ETC.

Every person, company or corporation operating street railway passenger cars within the limits of the City and County of San Francisco in which passengers are carried shall thoroughly wash each car, when so operated, at least once a week, and shall also carefully sweep and clean each of said cars daily.

Whenever required in writing by the Department of Public Health, all persons, companies or corporations operating street railway passenger cars within the limits of said city and county

shall thoroughly disinfect each street railway passenger car so operated by spraying said cars with an efficient disinfectant.

SEC. 669. MATTRESSES, MAKING, REMAKING AND SALE.

It shall be unlawful for any person, firm or corporation to engage in the making, remaking and sale of mattresses, or the buying or sale of used mattresses except in compliance with the conditions specified in Sections 670 to 677, inclusive, of this Article.

SEC. 670. PERMITS REQUIRED.

It shall be unlawful for any person, firm or corporation, or its servants or employees, to maintain or operate within the City and County of San Francisco the business of making or remaking, and sale of mattresses within any building, room, apartment, dwelling, basement or cellar, without having first obtained a permit, issued by the Department of Public Health and signed by the Director of Public Health of said City and County, that first the premises are in a sanitary condition and that all arrangements for carrying on the business without injury to public health have been complied with, in accordance with the ordinances of the City and County of San Francisco, and second, that the provisions of all regulations made in accord with Section 673 hereof for the conducted of such establishments have been complied with. Said permit when issued shall be kept displayed in a prominent place on the premises. (Amended by Ord. 43-68, App. 4/19/68).

SEC. 671. INSPECTION OF PREMISES.

It shall be the duty of the Department of Public Health, upon application from any person, firm, or corporation desiring to open, conduct or continue any place of business connected with the making, remaking and sale of mattresses, within the limits of the City and County of San Francisco, before issuing the certificate specified in Section 670, to cause the premises on which it is proposed to carry on such business, or in which said business is being carried on or conducted, to be inspected with a view of ascertaining whether said premises are in a sanitary condition for the conduct of said business and comply with the ordinances of the City and County of San Francisco.

SEC. 672. PERMIT CONDITIONS.

The permit provided in Section 670 shall set forth the commercial uses permitted and shall be valid until suspended or revoked. Said permit shall not be transferable and shall be deemed revoked upon sale, transfer or assignment of the commercial use for which the permit was issued.

A permit may at any time be suspended or revoked for cause after a hearing by the Department of Public Health. Upon suspension or revocation the premises for which the permit was issued shall be posted with the order of the Department. (Amended by Ord. 93-68, App. 4/19/68)

SEC. 673. DEPARTMENT OF PUBLIC HEALTH TO MAKE REGULATIONS.

The Department of Public Health shall from time to time adopt such rules and regulations governing sanitation, disinfection or sterilization as it may deem necessary and proper to give effect to Sections 669 to 677, inclusive, of this Article.

SEC. 674. DEFINITION OF TERMS.

(a) The term "mattress" as used in Sections 669 to 670, inclusive, of this Article, shall be construed to mean any quilted pad, comforter, mattress pad, bunk quilt or cushion, stuffed or filled with wool, hair or other soft material to be used on a couch or other bed for sleeping or reclining purposes.

(b) The term "person" as used in Sections 669 to 677, inclusive of this Article shall be construed to include all individuals and all firms or copartnerships.

(c) The term "corporation" as used in Sections 669 to 677, inclusive, of this Article, shall be construed to include all corporations, companies, associations and joint stock associations or companies.

(d) Whenever the singular is used in Sections 669 to 677, inclusive, of this Article it shall be construed to include the plural; whenever the masculine is used in Sections 669 to 677, inclusive, of this Article, it shall include the feminine and neuter genders.

SEC. 675. RENOVATED OR REMADE MATTRESSES.

(a) **Material From Hospitals, Shoddy, Etc., to be Sterilized.** No person or corporation, by himself or by his agents, servants or employees, shall employ or use in the making, remaking or renovating of any mattress, any material of any kind that has been used in, or has formed a part of, any mattress used in or about any public or private hospital, or institution for the treatment of persons suffering from disease or for or about any person having any infectious or contagious disease; any material known as "shoddy" and made in whole or in part from old or worn clothing, carpets or other fabric or material previously used, or any other fabric or material from which shoddy is constructed; and material not otherwise prohibited of which prior use has been made; unless any and all of said material has been thoroughly sterilized and disinfected by a reasonable process, approved by the Department of Public Health of the City and County of San Francisco.

(b) **Used or Second-Hand Mattress—Disinfection Tag Required.** No person or corporation by himself or by his agents, servants or employees, shall cause to be renovated, or remade, or buy, sell, offer for sale, or have in his possession with intent to sell, any renovated, or remade, or used or secondhand mattress unless the same has been sterilized and has thereto attached a muslin or linen tag not smaller than three inches square, securely sewed to the covering thereof with a statement in the English language setting forth the following facts in type not smaller than 20 point:

"This is a (renovated) (used) mattress and has been sterilized with _____ (material used) on (day) _____ (month) _____ (year) _____ by (firm's name) _____ Department of Public Health Certificate No. _____."

(c) **Prohibition.** No person or corporation by himself or by his agents, servants or employees, shall sell, offer to sell, deliver or consign, or have in his possession with intent to sell, deliver or consign any mattress made, remade or renovated in violation of subsections ((a) and (b) of this section.

(d) **Material, Etc., Tag Required.** No person or corporation, by himself or his agents, servants or employees, shall, directly or indirectly, at wholesale or retail, or by public auction, or otherwise, sell, offer for sale, deliver or consign or auction, or have in his possession with intent to sell, deliver or consign, any mattress that shall not have plainly and indelibly stamped or printed thereon, or upon a muslin or linen tag not smaller than three inches square securely sewed to the covering thereof, a statement in the English language setting forth the kind or kinds of materials used in filling the said mattress, and whether the same are in whole or in part, new or old, or second-hand or shoddy, and the name and address of the manufacturer or vendor thereof, or both together with the tag required in subsection (b) of Section 675.

(e) **Regulating Sale in Bulk by Junk Dealers or Others.** It shall be unlawful for junk dealers or any person or corporation by himself or his agents, servants or employees, to sell or offer for sale, deliver or consign, or have in his possession with intent to sell, deliver or consign, any material which has been previously used or formed a part of any mattress unless the same has been sterilized in a manner satisfactory to the Department of Public Health.

(1) **Use of Terms.** Whenever the word "felt" as applied to cotton is used in the said statement concerning any mattress it shall be designated in said statement whether said felt is "felted cotton" or "felted linters."

It shall be unlawful to use in the said statement concerning any mattress the word "floss" or

words of like import, if there has been used in filling said mattress any materials which are not termed as "Kapok."

It shall be unlawful to use in said statement concerning any mattress the Word "hair" unless said mattress is entirely manufactured of animals' hair.

It shall be unlawful to use in the description in the said statement any misleading term or designation, or term or designation likely to mislead.

(2) **Materials Used.** Any mattress made from more than one new material shall have stamped upon the tab attached thereto the percentage of each material so used.

Any mattress made from any material of which prior use has been made shall have stamped or printed upon the tag attached thereto in type not smaller than 20 point the words "second-hand material."

Any mattress made from material known as "shoddy" shall have stamped or printed upon the tag attached thereto in type not smaller than 20 point the words "shoddy material."

(3) **Form of Statement.** The statement required under Section 675 of this Article shall be in the following form:

"Materials Used in Filing

_____

_____

Vendor _____

Address _____"

This Article is made in compliance with Sections 669 to 677, inclusive, of Article 12 of Chapter V of the San Francisco Municipal Code.

(4) **Removal, Etc., of Tags.** Any person who shall remove, deface, alter, or in any manner attempt the same, or shall cause to be removed, defaced, or altered, any mark or statement placed upon any mattress under the provisions of this Section and Section 676 of this Article shall be guilty of a violation of said sections.

SEC. 676. UNIT FOR SEPARATE OFFENSE.

The unit for a separate and distinct offense in violation of Sections 669 to 676, inclusive, of this Article shall be each and every mattress made, remade, renovated, sold, offered for sale, delivered, consigned, or possessed with intent to sell, deliver or consign, contrary to the provisions hereof.

SEC. 677. PENALTY.

Any person or corporation violating the provisions of Sections 669 to 677, inclusive, of this Article, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than $20 and not to exceed $100 for each offense, or by imprisonment for not less than three months and not exceeding six months or by both such fine and imprisonment.

SEC. 682. RETURN OF CERTAIN MERCHANDISE PROHIBITED.

It is unlawful for any person, firm or corporation engaged in the sale at retail of the following articles of merchandise, to wit —

(a) Mattresses, blankets, sheets, comforters, pillows and other bedding.

(b) Heating pads and metal hot water bottles, stockings made of rubber, reducing rollers, water bags and other rubber goods.

(c) Combs, hair brushes, tooth brushes, barrettes, bath brushes, powder puffs, lipsticks, compacts, broken packages of powder, creams, rouges.

(d) Corsets, brassieres, underwear, union suits, bloomers, bathing suits.

(e) Articles made of hair, and veils —

to accept from the purchaser any of the above articles once delivery is effected, provided that this Section shall not be construed to prohibit the return of articles misfitting or defective in their construction, which shall be disinfected before being offered for resale.

SEC. 683. PENALTY.

Any person, firm or corporation violating any of the provisions of Section 682 of this Article

shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than $100 or by imprisonment in the County Jail for a period not exceeding 30 days, or by both such fine and imprisonment.

SEC. 688. USE OF COMMON CIGAR CUTTER PROHIBITED.

The use of the common cigar cutter on any stand or in any cigar store or other place where cigars are sold or offered for sale, or the furnishing of such common cutter for use of patrons or the public, is hereby prohibited.

SEC. 689. PENALTY.

Any person, firm or corporation, violating the provisions of Section 688 of this Article, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than $10 and not to exceed $25 or by imprisonment in the County Jail for not more than 25 days or by both such fine and imprisonment.

SEC. 694. WIPING RAGS.

(a) **Materials and Cleaning Thereof.** It shall be unlawful for any person, firm or corporation to sell or offer for sale, soiled clothes or rags, or soiled or disused or cast-off underclothing, garments, bedding, bedclothes or parts thereof for use as wiping rags unless the same have been cleansed and sterilized by a process of boiling continuously for a period of 40 minutes in a solution containing at least five percent of caustic soda.

It shall be unlawful for any person, firm or corporation employing mechanics, workmen or laborers to furnish or supply such employees for use as wiping rags, soiled clothes or rags, or soiled or disused or cast-off underclothing, garments, bedclothes, bedding or parts thereof unless the same have been cleansed and sterilized in the manner herein prescribed.

(b) **Definition.** Wiping rags within the meaning of this Section are cloths and rags used for wiping and cleaning the surfaces of machinery, machines, tools, locomotives, engines, motorcars, automobiles, cars, carriages, windows, furniture and surfaces of articles, in factories, shops, steamships and steamboats, and generally in industrial employments; and also used by mechanics and workmen for wiping from their hands and bodies soil incident to their employment.

(c) **Sterilization.** All soiled cloths and rags and soiled and disused and cast-off underclothing, garments, bedclothes, bedding and parts thereof, before being offered for sale, or sold or furnished for use as wiping rags must be subjected to a process of sterilizing approved by the Director of Public Health of the City and County of San Francisco, including the process of boiling for a period of 40 minutes in a solution of caustic soda mentioned in this section. Before washing, all sleeves, legs and bodies of garments must be ripped and opened and all garments made into flat pieces.

(d) **Use of Premises.** It shall be unlawful for any person, firm or corporation to wash, cleanse, sterilize, or dry, disused or cast-off clothing, garments, underclothing, bedclothes, bedding or parts thereof, or soiled cloths or rags in the same building or by the same machines or appliances by which clothing, bedding, or other articles for personal or household use are laundered.

(e) **Labels.** Each package or parcel of wiping rags before being sold must be plainly marked "Sterilized Wiping Rags," with the number and date of the certificate given by the Director of Public Health of the said city and county for the conducting of a laundry in which the rags contained in such package or parcel were cleansed and sterilized or with the name and location of the laundry in which said rags were cleansed and sterilized.

(f) **Imported Wiping Rags.** Wiping rags imported into this city and county from other cities, counties or states, shall not be used, sold or offered for sale, unless they have been cleansed and sterilized as herein required or unless such imported rags are inspected by the Director of Public Health, and a certificate given by him that such rags have been inspected and cleansed and sterilized as required by this Section.

(g) **Inspection, Etc.** The Director of Public Health shall inspect all wiping rags and give a certificate to that effect when the rags inspected have been cleansed and sterilized as required by this Section. Such certificate shall also state the date of inspection, the quantity and number of parcels inspected, the name of the owner and the place where the wiping rags were cleansed and sterilized.

All persons having wiping rags in their possession for sale or for use shall, upon demand of any officer of the Department of Public Health or any police officer, exhibit such wiping rags for inspection and give all information as to where and from whom said wiping rags were obtained.

SEC. 695. PERMIT REQUIRED—ENFORCEMENT.

It shall be unlawful for any person, firm or corporation to establish or maintain a laundry for cleaning or sterilizing wiping rags or soiled clothes or rags or soiled and disused or cast-off clothing, garments, underclothing, bedclothes, bedding or parts thereof, within the limits of the City and County of San Francisco, without having first complied with Section 354 of Article 7 hereof, regulating the conducting of public laundries and obtain a permit therefor as required by Section 695 of this Article. No person, firm or corporation shall engage in the business of laundering, cleaning or sterilizing cloths or material for wiping rags, or selling wiping rags without a permit therefor from the Department of Public Health. Such permit shall be granted as a matter of course on the first application, and may be revoked by the Department of Public Health for violation by the holder of any of the provisions of Section 694 of this Article. Subsequent permits to a person, firm or corporation in place of a permit revoked may be granted or refused at the discretion of the Department. The Department of Public Health shall keep a register of all persons engaged in laundering, cleaning, sterilizing or selling wiping rags, and shall enter therein the place of business, the date of issue and the revocation of permit.

The police authorities are hereby directed to enforce the provisions of Sections 694 and 695 of this Article.

SEC. 700. USE OF HYDROCYANIC GAS, ETC.

No person, firm or corporation shall use within the City and County of San Francisco, hydrocyanic gas, cyanogen or chloropicrin, or any other poisonous, noxious or dangerous gases or fumes which are dangerous to the life or health of human beings, for the purpose of fumigating, without first obtaining a permit from the Director of Public Health so to do.

Provided, however, that nothing in this Section or Section 701 of this Article shall be construed to apply to any fumigations on property of the State of California, or to mandatory fumigations under the supervision of any department of the State of California, or U.S. government.

Provided, further, that fumigations with poisonous gases conducted in warehouses on property other than that of the State of California shall be so conducted as to comply with the safety measures approved by the Department of Public Health, and the person, firm or corporation responsible for such fumigation shall notify the Bureau of Fire Prevention and Public Safety of the San Francisco Fire Department as to the exact location of said fumigation, and the time that said fumigation is to take place.

SEC. 701. PERMITS.

(a) **Application, etc.** Application for such permit shall be upon blanks provided by the Director of Public Health and shall state the name of the applicant, the particular character of gas to be used, the purposes and place where the same is to be used, the probable amount thereof which will be used during the existence of said permit, and the name of the person who will have direct charge of the use of said gas. Before issuing a permit for the use of said gas, the Director of Public Health shall inquire into the training, experience, character and reputation of the applicant for said permit and of the person who is to have direct charge of the use of said gas, and may cause said applicant or said

person to appear before him for the purpose of ascertaining the qualifications of said applicant or of said person in regard to the use of said gas and the regulations governing said use. The Director of Public Health shall have full power and authority to refuse to grant any permit for the use of said gas should he determine that the manner in which said gas is to be used, or the place where it is to be used, is dangerous to life or health, or the person under whose direction it is to be used has not sufficient qualifications to use it safely.

Every permit issued under authority of this Section shall state the place where said gas is to be used, the character thereof, the probable amount thereof to be used, the name of the person, firm or corporation authorized to use the same, and the name of the person in direct charge of said use; provided, however, that when a permit is issued to any person, firm, or corporation engaged in the general business of fumigation at places other than a fixed place of business, said permit need not specify the various places where said gas is to be used.

The permit provided in Section 700 shall set forth the commercial uses permitted and shall be valid until suspended or revoked. Said permit shall not be transferable and shall be deemed revoked upon sale, transfer or assignment of the commercial use for which the permit was issued.

A permit may at any time be suspended or revoked for cause after a hearing by the Department of Public Health. Upon suspension or revocation, the premises for which the permit was issued, shall be posted with the order of the Department.

(b) **Special Permits.** Any person, firm or corporation engaged in the business of fumigation at places other than a fixed place of business shall, at least 24 hours before generating or releasing any of the gases mentioned in Sections 700 and 701 of this Article, make application to the Director of Public Health for a special permit so to do. Said application shall state the location of the building or enclosed space to be fumigated, the day and hour when such fumigation shall take place and the name of the person who will be in direct charge of said fumigation. The Director of Public Health shall have full power and authority to refuse to grant any special permit for the use of said gas should he determine that the manner in which said gas is to be used, or the place where it is to be used is dangerous to life of health or the person under whose direction it is to be used has not sufficient qualifications to use it safely. Upon approval by the Director of Public Health, a special permit to generate or release said gas for fumigation purposes at the place indicated in said application shall be issued. Such special permit shall be posted on the premises to be fumigated, and should the applicant therefor be unable to do the work on the day and hour set forth in said special permit, he shall notify the Director of Public Health at least six hours prior to said time, and thereupon the Director of Public Health shall specify a new time for the fumigation of the premises or space specified in said special permit. The inspection fee for inspecting the work actually done shall be computed as follows: at the rate per hour based on total cost to the City and County of San Francisco or fraction thereof incident to each inspection. Upon completion of the work for which a special permit has been issued the permittee shall be billed for all inspection costs. If any inspection fees herein provided shall not be paid within 30 days after billing by the Health Department, 25 percent of the amount thereof shall be added thereto as a penalty for nonpayment. Failure to pay fees and penalties within 60 days after billing shall be deemed cause for denial of any future special permits to the delinquent permittee.

(c) **Rules and Regulations.** The Director of Public Health shall have power to make and enforce all reasonable rules and regulations for carrying out the purpose of this Section which are not in conflict therewith. (Amended by Ord. 278-72, App. 9/28/72)

SEC. 706. SALVAGED GOODS AND MERCHANDISE—DEFINITIONS.

For the purposes of this Section and Sections 707 to 709, inclusive, of this Article, the term "salvaged goods and merchandise" is hereby defined as follows:

"Any article of food or any article which may be used for food by human beings or by animals, or any chemical or other substance which may be added to food or to foodstuffs, alcoholic beverages, or any drug or compounded drugs, medicines, toilet articles, cosmetics, lotions, liniments or similar articles, or any commodity, powder, liquid or solid compound or mixture used or to be used in and about any home, household, hotel, apartment house, or dwelling for cleaning, disinfecting or deodorizing purposes, including insecticides and similar articles, or tobacco or tobacco products, when the packages, cans, cartons or other containers in which the individual containers of said articles are packed for shipment or sale are damaged, torn, broken, swollen, wet, burned or rusted, or where the individual containers of said articles are damaged, torn, broken, swollen, wet, burned or rusted, or where the labels on the individual containers of any such articles are defaced so that the name of the manufacturer or packer originally appearing on said label cannot be ascertained, such damage or distress of merchandise being caused by reason of shipment of same by rail, plane, motor transport or ship, or by smoke, fire or water."

The term "person" as used in this Section and in Sections 707 to 709, inclusive, of this Article, shall mean any individual, association of individuals, copartnership or corporation.

A "dealer" in salvaged goods and merchandise is hereby defined to be a person who, either exclusively or in connection with any other business, buys, sells, distributes or deals in salvaged goods and merchandise, and/or who labels or relabels, bulks from smaller packages, packages from bulk, or in any manner reconditions salvaged goods or merchandise; provided, however, that persons merely selling salvaged goods or merchandise to salvage "dealers" as well as those who purchase from salvage "dealers" salvaged goods or merchandise which has been inspected and is in compliance with all rules and regulations pertaining to labeling, re-labeling, bulking and reconditioning, and sell same directly to the retail trade, shall not be considered "dealers" in salvaged goods and merchandise.

A "licensed dealer" is a "dealer" who holds a current and valid dealer's permit from the Directors of Public Health.

SEC. 707. PERMITS, ETC.

No person shall engage in the business of selling or distributing salvaged goods or merchandise, as defined in Section 706 of this Article, in the City and County of San Francisco, nor shall any person sell or distribute, or offer for sale or distribution, any salvaged goods or merchandise in said City and County without first obtaining a permit to do so from the Director of Public Health.

(a) **Applications.** Applications for such permits shall be upon blanks provided by the Department of Public Health and shall state the name of the person applying for same, the general character of salvaged goods or merchandise which will be dealt in, sold or distributed, and the place where said business is to be carried on, and if said applicant is not regularly engaged in the business of dealing in salvaged goods and merchandise, then the place where the sale or distribution of said salvaged goods and merchandise shall take place, as well as the place where the said salvaged goods and merchandise are stored and the general character thereof. Nothing contained in this Section or in Sections 706, 708 and 709 of this Article shall prevent a person who is not a salvage "dealer" as defined in Section 706 of this Article and who is the owner or custodian of any salvaged goods or merchandise from selling or distributing the same if said salvaged goods or merchandise are inspected by the Department of Public Health and a permit for the sale and distribution thereof is issued by said Department; the cost of said inspection to be paid for by the person requesting said permit before the same is issued at the rate of $7.50 per hour.

The permit provided in Section 707 shall set forth the commercial uses permitted and shall be valid until suspended or revoked. Said permit shall not be transferable and shall be deemed revoked upon sale, transfer or assignment of the commercial use for which the permit was issued.

A permit may at any time be suspended or revoked for cause after a hearing by the Department of Public Health. Upon suspension or revocation the premises for which the permit was issued shall be posted with the order of the Department.

(b) **Investigation of Applicants.** The Director of Public Health, before issuing any permit to any person to engage in the business of selling or distributing salvaged goods or merchandise, shall make an investigation of the character of the applicant, his methods of storing, handling and receiving said salvaged goods and merchandise, and shall exercise his sound discretion in granting or refusing to grant said permit, and if said permit is requested by a person not regularly engaged in the business of dealing in salvaged goods or merchandise, the said Director of Public Health shall investigate the condition of said salvaged goods or merchandise to be sold or distributed by said person, and if he finds that said salvaged goods or merchandise are in such condition that the same may be used for the purpose for which they were manufactured or packed, he may issue a permit for the sale and distribution of the same.

Any person not regularly engaged in the business of selling or disposing of salvaged goods or merchandise and who is the owner of, or has under his control any such goods or merchandise may sell or dispose of the same to a licensed "dealer" as defined in Section 706 of this Article, and any person who shall receive salvaged goods or merchandise from any licensed "dealer" or from any person having a permit to sell the same, need not obtain any additional permit for the purpose of selling or distributing the same to the general public; provided, that said salvaged goods or merchandise have been inspected by the Department of Public Health and approved for sale to the public. (Amended by Ord. 93-68, App. 4/19/68)

SEC. 708. DUTY OF DIRECTOR.

(a) **Inspection and Cost Thereof.** It shall be the duty of the Director of Public Health, through his duly authorized representative, to inspect from time to time all places where salvaged goods and merchandise are sold, kept or distributed, and whenever it shall be found that said salvaged goods and merchandise, or any part thereof are unfit for the purpose for which they were manufactured or packed, or for which they are being offered for sale, to cause the same to be destroyed as constituting a public nuisance, and the cost of such destruction shall be a charge against the person in whose possession said unfit salvaged goods or merchandise may be found and the amount of said cost shall be payable to the Director of Public Health for the City and County upon demand.

(b) **Examination of Goods and Payment of Cost Thereof.** All inspections made by the Director of Public Health pursuant to the provisions of this Section shall consist in such examination of any salvaged goods and merchandise as will determine their fitness for any of the purposes for which they are sold, offered for sale, or to be sold, and when in the opinion of the Director of Public Health it is necessary to analyze any sample of any salvaged goods or merchandise, said Director of Public Health or his agents may take such article or such portion thereof as may be necessary to determine said fitness, and said determination may be made by laboratory or such other tests as the Director of Public Health shall deem proper. Pending the determination of said tests, the Director of Public Health may prohibit the sale or distribution or removal of any part of said salvaged goods or merchandise which are subject to said examination. The cost of all inspections and examinations shall be paid by the owner or custodian of said salvaged goods or merchandise, and the failure to pay such sum upon demand shall be sufficient ground to revoke said owner's or custodian's permit to deal in such goods and merchandise, and if said owner or custodian be not a licensed "dealer" the Director of Public Health shall not issue a permit for the sale or

distribution of said goods or merchandise until the fee covering such inspection, examination or analysis has been paid.

(c) **Exception.** Salvaged goods and merchandise which have been inspected pursuant to the provisions of Sections 706 to 709, inclusive, of this Article, and approved for sale to the public, or purchased from a licensed "dealer" and, without being labeled or relabeled, bulked, packaged or reconditioned, resold by the purchaser thereof directly to the public, shall not be subject to reinspection, nor shall the purchases of such articles be required to obtain a permit to resell the same except in so far as said goods may be subject to inspection of license to sell the same by any other law or ordinance.

(d) **Economic Poisons.** Where economic poisons form a part of any salvaged goods or merchandise, such economic poisons shall be disposed of only in accordance with the provisions of Sections 1065 and 1066 of the Agricultural Code of the State of California. (Amended by Ord. 93-68, App. 4/19/68)

SEC. 709. AUTHORITY TO MAKE RULES, ETC.

The Director of Public Health shall make such rules and regulations regarding the sale, distribution, storing, handling and possession of any salvaged goods or merchandise as he shall deem proper to carry into effect and to accomplish the purposes of Sections 706 to 709, inclusive, of this Article and to prevent the contamination of said goods and merchandise, or to prevent the same being sold or distributed in such a manner as might be dangerous or injurious to the health or safety of any person, and when said rules are so made they shall be as effective as if the same were a part of Sections 706 to 709, inclusive, of this Article.

Any permit granted pursuant to the provisions of Section 707 of this Article may be suspended by the Director of Public Health and after notice to the holders thereof may be revoked by said Director for any violation of Section 706 to 709, inclusive, of this Article, or for the violation of any rules or regulations of said Director made under authority of Section 708 of this Article, or for the violation of any law, rule or regulation of the State of California or of the City and County of San Francisco, relative to the sale, keeping or distribution of any article coming within the definition of salvaged goods or merchandise.

SEC. 714. PERMIT REQUIRED.

Every person, firm, partnership or corporation maintaining, conducting, or operating a kennel, pet shop, pet hospital, refuse collection truck, swill truck or peddler wagon, except those peddler wagons used for peddling as defined in Sections 132, 132.2 and 132.5 of Part III of the San Francisco Municipal Code, shall obtain prior to the commencement of operation a permit from the Department of Public Health. Every person, firm, partnership or corporation subject to a license fee provided for in Sections 132, 132.2 and 132.5 of Part III of the San Francisco Municipal Code shall obtain from the Department of Public Health a Certificate of Sanitation for each cart or vehicle used therefor.

Permit Conditions. The permit provided in this Section (714) shall set forth the commercial uses permitted and shall be valid until suspended or revoked. Said permit shall not be transferable and shall be deemed revoked upon sale, transfer or assignment of the commercial use for which the permit was issued.

A permit may at any time be suspended or revoked for cause after a hearing by the Director of Public Health. Upon suspension or revocation the premises for which the permit was issued shall be posted with the order of the Department. (Amended by Ord. 467-74, App. 10/10/74)

SEC. 717. BURIAL PERMITS.

For the permit required to be issued for the removal of dead human bodies or disinterred human remains, the Department of Public Health shall collect in advance of the issuance thereof the sum of $1; provided, however, that no fee shall be collected for the removals from legally closed cemeteries.

SEC. 719. DEPOSIT IN ADVANCE.

In any case the Department of Public Health may require a deposit in advance of any inspection in such sum as said Department of Public Health may estimate to be sufficient to cover the amount of the fee liable to be imposed therefor, which deposit or sum remaining thereof shall be returned to the depositor upon the failure to issue a permit or upon the expiration of the permit and the payment of all fees therefor.

SEC. 722. FEES FOR ABSTRACT OF MEDICAL HISTORY, PROOF OF DEATH, TRAVEL CERTIFICATES AND VACCINATION OR REVACCINATION.

(a) The Director of Public Health of the City and County of San Francisco is hereby authorized to charge the following fees to defray the cost of issuance of the following mentioned documents and any person requesting said documents shall pay the fees herein specified, to wit:

(1) Abstract or Brief Statement of Medical History or date for insurance or legal purposes.. $2.00
(But not less than $.45 per folio)

(2) Proof of Death for insurance purposes..... $2.00

(3) Certificate of Vaccination for Travel
(Over 18 years of age).... $2.00
(Under 18 years of age) .. $1.00

(4) Vaccination or Revaccination for purposes of Travel $3.00

(b) All fees received by the Director of Public Health in payment of the issuance of documents or performance of service mentioned in Subsection (a) hereof shall be deposited with the Treasurer of the City and County of San Francisco, to the credit of the general fund.

(c) City and County officials and departments shall not be subject to the provisions of this Section when any of the aforesaid records or documents are for the official use of their respective departments. (Amended by Ord. 212-76, App. 6/25/76)

SEC. 725. GASOLINE STATIONS.

It shall be unlawful for any person or persons to operate an attendant service station, a marine service station, a partial self-service station or a self-service gasoline station, pursuant to Section 8.12, et seq., of the San Francisco Fire Code, without providing at all times a clean and sanitary toilet and washroom for the use of its patrons. There shall be one separate toilet facility for men and one separate toilet facility for women. At the request of the Fire Department, the Department of Public Health shall inspect a proposed attendant service, marine service, partial self-service, or self-service gasoline station and certify to the Fire Department that said station is in compliance with the provisions of this section. (Amended by Ord. 34-86, App. 2/7/86)

[The next page is 401]

ARTICLE 12A: BACKFLOW PREVENTION

SEC. 750. PURPOSE AND FINDINGS.

The purpose of this Article is to establish requirements for backflow prevention to supplement those imposed by the State pursuant to Title 17, Sections 7583 et seq. of the California Administrative Code. California Administrative Code Section 7583 expressly authorizes local governments to establish more stringent requirements where local conditions so warrant. The Board of Supervisors finds and declares that the dangers to public health and safety posed by the existing and potential contamination of the drinking water supply in San Francisco warrant the imposition of local standards in excess of those required under State law. (Added by Ord. 356-84, App. 8/24/84)

SEC. 751. DEFINITIONS.

The following definitions shall apply to this Article.

1. "Backflow" shall mean the flow, from any source or sources, of water which is of unknown or questionable safety for human consumption or other liquids, gases, mixtures or other substances into the potable water distribution system.

2. "Backflow prevention device" shall mean any effective device, means, method, or construction used to prevent the backflow of substances into the potable water distribution system, which has been previously approved for use by the Cross-Connection Control Committee, as that body is defined in this Article, and shall pass all initial testing procedures at the time of installation.

3. "Certified tester" shall mean any person, whether privately employed or in the employ of the City and County, who holds a valid Department of Public Health certificate to test backflow prevention devices.

4. "Cross-connection" shall mean any actual or potential connection between any part of a water system used or intended to supply water for drinking purposes and any source or system containing water which is not or cannot be approved as safe, wholesome and potable for human consumption or any other substance. Temporary or permanent devices through which, or because of which, backflow could occur are also considered to be cross-connections.

5. "Cross-connection control device" shall mean an approved backflow prevention device.

6. "Department of Public Health" shall mean the San Francisco Department of Public Health.

7. "Department of Public Works" shall mean the San Francisco Department of Public Works.

8. "In-house hazard" shall mean a cross-connection within a water consumer's premises.

9. "Water Department" shall mean the San Francisco Water Department. (Added by Ord. 356-84, App. 8/24/84)

SEC. 752. CROSS-CONNECTION CONTROL COMMITTEE— ESTABLISHMENT OF.

There is hereby created a Cross-Connection Control Committee of the City and County of San Francisco, which shall be comprised of the Manager of Water Quality of the Water Department, the Superintendent of Building Inspection of the Department of Public Works, and the Director of Environmental Health Services of the Department of Public Health, or their respective designees. The Committee's duties shall include, but are not limited to, the review of operations of the City's Cross-Connection Control Program, the establishment of a program within the Department of Public Health to provide for certification of qualified testers, and the development of a schedule to assure annual inspection of all backflow prevention devices within the City and County as well as those on property owned by the City and County but located outside the boundaries of the City and County. (Added by Ord. 356- 84, App. 8/24/84)

SEC. 753. DEPARTMENTAL RESPONSIBILITIES.

The Water Department shall have primary responsibility for the prevention of any unauthorized substances or water from unapproved sources from entering the public water supply system. The Department of Public Health shall have the overall and ultimate responsibility under this Article for preventing water from unapproved sources or other unauthorized substances from entering the potable water system. The Department of Public Health shall promulgate any rules or regulations necessary to effectuate this Article. Said rules and regulations shall, at a minimum, be consistent with and meet all requirements imposed by State law. (Added by Ord. 356-84, App. 8- 24-84)

SEC. 754. UNPROTECTED CROSS-CONNECTIONS PROHIBITED; IDENTIFICATION OF IN-HOUSE HAZARDS.

It shall be unlawful for any water consumer or property owner to have, keep, maintain, install or permit the existence of a cross-connection which is unprotected from actual or potential backflow due to the absence of approved and properly functioning backflow prevention devices.

The Department of Public Health, through its Bureau of Environmental Health Services, the Department of Public Works, through its Bureau of Plumbing Inspection, and the Water Department shall, in their normal course of enforcement activity, identify the locations of in-house hazards and shall jointly maintain a continuously updated list of such in-house hazards for enforcement action under this Article. (Added by Ord. 356-84, App., 8/24/84)

SEC. 755. ENFORCEMENT POWERS.

Upon notification by the Department of Public Health, the Department of Public Works or the Water Department, it shall be the responsibility of each water consumer to eliminate any existing or potential unprotected cross-connections on the subject property within 30 to 90 calendar days of said notification. The specific deadline for achieving compliance shall be established by the appropriate department based upon the type and magnitude of the work required to eliminate the cross-connection. The appropriate department shall monitor the progress of the work required to achieve compliance.

If a water consumer refuses or fails to eliminate a cross-connection after the deadline has expired as set forth in the notification, or if the progress of the work being monitored by the appropriate department indicates that the work cannot be completed within the time limit established in the notification, the Water Department, acting alone or in coordination with the Departments of Public Health or Public Works, shall immediately issue a final notification to the owner of the subject property to eliminate the cross-connection. If the property owner refuses to or does not comply with the requirements set forth in the final notification within ten calendar days of its date of issuance, the Water Department shall thereafter disconnect the water services to the customer directly responsible for noncompliance until the cross-connection has

been eliminated and necessary payments have been made for turn-on services in the same manner as specified under the San Francisco Public Utilities Commission Rules and Regulations Section C Rule 4 (or any successor regulations) governing water service to customers. If the property owner and the water consumer are one and the same person, only one notification shall be required prior to disconnecting the water services in the event of noncompliance. The Water Department shall not disconnect the water services until any appeal which may be taken under Section 756 of this Article has become final, except as specified in Section 760 of this Article. (Added by Ord. 356-84, App. 8/24/84)

SEC. 756. REVIEW OF APPEALS BY DEPARTMENT OF PUBLIC HEALTH.

Appeals against the final notice for disconnection of water services may be made to the Department of Public Health by the subject property owner, within five calendar days of the date of said final notice, and shall include current data obtained from a certified tester employed by the property owner or his representative which disapproves the existence of a cross-connection or the adequacy of the time limit set for compliance. The Director of the Bureau of Environmental Health Services, or his designee, shall hold a hearing on the appeal within fifteen calendar days of receipt of said appeal, and shall thereafter issue a decision which shall state whether or not the alleged defect or deficiency constitutes a cross-connection as defined in this Article. The Director shall affirm the Water Department's action if he or she finds that a cross-connection exists. The Director's decision shall issue within two calendar days of the completion of the hearing, and shall be final. (Added by Ord. 356-84, App. 8/24/84)

SEC. 757. CROSS-CONNECTION CONTROL PROGRAM.

Annual inspections of all existing backflow prevention devices shall be conducted under the direction of the Water Department. The Water Department shall make available for public inspection the current listing of all certified testers required under Section 758 of this Article. The Water Department shall annually notify all water consumers who have cross-connection control devices of the requirements of this Article for annual maintenance and testing and shall annually promulgate a schedule of charges for the cost to the water consumer of the inspections and testing to be done under this Article. Water consumers who fail to comply with the action required by the Water Department's annual notifications shall be subject to the same enforcement procedures as set forth in Sections 755 and 756 of this Article.

When a backflow prevention device is inspected and has passed the testing procedure, the certified tester shall immediately affix a seal or tag to the device. Such seals or tags shall be purchased by the certified tester from the Department of Public Health. Seals or tags may be issued free of charge to testers employed by the City and County for use when testing backflow prevention devices installed on City and County property. Each certified tester shall maintain a continuous record of the dates and locations of each inspection performed, any tests made, and the results thereof. A copy of such record shall be sent by each certified tester to the Water Department within five calendar days of each inspection or test. Appropriate testing and inspection records for potable water systems, including but not limited to the information to be supplied by all certified testers, shall be maintained by the Water Department and shall be made available upon request to the Department of Public Works and the Department of Public Health. (Added by Ord. 356-84, App. 8/24/84)

SEC. 758. CERTIFICATION OF BACKFLOW PREVENTION SERVICE TESTERS.

Procedures for the establishment of a program for the certification of qualified backflow prevention device testers shall be developed and implemented by the Department of Public Health within thirty working days of the effective date of this Article. Independent testers and testers who are City employees shall receive training in backflow prevention device testing. All testers

shall thereafter take and pass an examination administered by the Department of Public Health in order to qualify for a valid tester's certificate to be issued by that Department. Testers whose names appear on the Water Department's approved list of backflow prevention testers as of the effective date of this Article shall be exempt from the initial training and examination requirement.

Each tester's certificate issued by the Department of Public Health shall be valid for a period of one year from the date of issuance. Tester's certificates may be renewed upon additional training, re-examination, other demonstration of competency, or any combination thereof, as may be deemed necessary by the Department of Public Health. A tester's certificate may be suspended or revoked at any time for cause by the Department of Public Health. The Department of Public Health shall maintain a current list of the names and business addresses of all certified testers and of all tester's certificates which have been suspended or revoked. The list shall be forwarded to the Water Quality Control Division of the Water Department and the Bureau of Plumbing Inspection of the Department of Public Works, and shall be made available for public inspection by all three departments. (Added by Ord. 356-84, App. 8/24/84)

SEC. 759. INSURANCE REQUIREMENTS FOR TESTERS.

Each certified tester who is not a City employee shall maintain general liability insurance in full force and effect, at his or her expense, for all cross-connections control and backflow device testing activities. Such insurance shall include coverage for bodily injury, personal injury, including death resulting therefrom, and property damage insurance, with limits not less than $100,000 each occurrence combined single limit. The City and County of San Francisco, its officers and employees shall be named as additional insureds under the policy and a cross-liability clause shall be attached. Such insurance shall provide 10 days prior written notice of cancellation, nonrenewal or material change to the Department of Public Health. A certificate of insurance, in form and with insurers acceptable to City, shall be required prior to the issuance of any tester's certificate or any renewal thereof. (Added by Ord. 356-84, App. 8/24/84)

SEC. 760. SPECIAL CASES EXEMPTED FROM APPEALS.

Whenever the Department of Public Health, the Department of Public Works or the Water Department identify any existing or potential unprotected cross-connection as posing a high risk of hazard to the public health and safety which requires immediate abatement, the Water Department shall, in coordination if necessary with the Department of Public Health or the Department of Public Works, immediately shut off the water services to the customer directly responsible for the hazard in order to prevent such cross-connection from causing any backflow into the potable water distribution system. Water services shall be restored upon elimination of the cross- connection and payment for turn-on services as specified under the San Francisco Public Utilities Commission Rules and Regulations Section C Rule 4 (or any successor regulations) governing water service to customers. All action taken under this section shall be exempt from the appeals procedures specified in Section 765 of this Article. (Added by Ord. 356-84, App. 8/24/84)

SEC. 761. DOUBLE CHECK VALVES ON HIGHRISES WITH ROOF TANKS.

Any building with a roof tank shall have an approved double check valve assembly installed on the building water supply line. The check valve shall be located as near as possible to the water meter and in any case before the first fitting or branch line. For buildings with roof tanks existing prior to enactment of this section where an air gap has been previously accepted by the enforcing agency, a double check valve shall not be required provided the enforcing agency can easily determine that there are no lateral lines or outlets between the meter and the air gap. If at any time buildings with roof tanks which were previously accepted as having approved air gaps in lieu of double check valves

have or are believed to have installed lateral lines or outlets between the meter and the air gap, then a double check valve shall be installed as near as possible to the water meter. (Added by Ord. 85-86, App. 3/21/86)

[The next page is 417]

ARTICLE 12B: SOIL BORING AND WELL REGULATIONS

DIVISION I—GENERAL PROVISIONS

SEC. 800. PURPOSE AND FINDINGS.

The Board of Supervisors finds and declares the following:

(a) There are seven (7) distinct groundwater basins in the City and County of San Francisco. The San Francisco Public Utilities Commission identified the existing and potential uses of some of these aquifers, including but not limited to supply of water for domestic purposes

in San Francisco; use of groundwater for irrigation of City parks; landscaping and maintaining natural water features; use of groundwater for emergency purposes; conjunctive surface and groundwater to improve reliability of San Francisco's water system; and industrial use of non-potable groundwater to offset demands for potable water.

(b) Perforations of aquifers beneath the City, such as wells and soil borings, may serve as conduits for chemicals to contaminate the groundwater if the wells and soil borings are not constructed properly.

(c) Because San Francisco is situated at the end of a peninsula surrounded on three sides by salt water, and due to the potential for earthquakes and other natural disasters to interrupt the supply of imported water to San Francisco from Hetch Hetchy and other sources, available groundwater supplies in San Francisco constitute an important resource held in trust for the benefit of the People of San Francisco.

(d) The People of San Francisco have a primary interest in the location, construction, maintenance, abandonment and destruction of wells, such as monitoring wells and cathodic protection wells, and soil borings which activities directly affect the quality and purity of groundwater.

(e) The purpose of this Article is to protect the health, safety and general welfare of the People of the City and County of San Francisco by ensuring that local groundwater resources designated for beneficial uses will not be polluted or contaminated. To these ends, this Article sets forth minimum requirements for (1) construction, modification and destruction of wells and other perforations of the water table, and (2) operation of such wells.

(f) Unmanaged use of groundwater in San Francisco creates a risk of harm to a common resource shared by all San Franciscans as part of the City's historic Pueblo water right to all water, surface and underground, within the historic Pueblo of San Francisco. Potential risks include, but are not limited to, land subsidence; contamination of aquifer(s) through improper well construction and closure; seawater intrusion into coastal aquifers as a result of pumping in excess of the aquifer's safe yield; and adverse environmental impacts on San Francisco's few remaining natural streams and lakes.

(g) It shall be the policy of the City and County of San Francisco to make beneficial use of groundwater where economically and environmentally feasible, and to prevent the use of groundwater when necessary to protect the health, safety and welfare of the People of the City and County. (Added by Ord. 113-05, File No. 050547, App. 6/10/2005)

SEC. 801. DEFINITIONS.

Except as otherwise specified in this Article, whenever used in this Article, the following terms shall have the meanings set forth below:

(a) "Abandoned Well," means a well that has not been used for one year or more, unless the owner demonstrates an intention to use the well again. "Abandoned well" shall not include standby emergency potable water wells constructed and maintained by the San Francisco Public Utilities Commission in accordance with the requirements of this Article. Evidence of intention for future use shall include all of the following:

(1) The well does not impair the quality of water within the well and the groundwater encountered by the well.

(2) The top of the well or well casing shall be provided with a cover, that is secured by a lock or by other means to prevent its removal without the use of equipment or tools, to prevent unauthorized access, to prevent a safety hazard to humans and animals, and to prevent illegal disposal of wastes in the well. The cover shall be watertight where the top of the well casing or other surface openings to the well are below ground level, such as in a vault or below known levels of flooding. The cover shall be watertight if the well is inactive for more than five consecutive years.

(3) The well shall be marked so as to be easily visible and located, and labeled so as to be easily identified as a well.

(4) The area surrounding the well shall be kept clear of brush, debris, and waste materials.

(5) The owner has a valid permit for the well.

(b) "Annular Seal" shall mean the material placed in the space between the well casing and the wall of the drilled hole (the annular space), in accordance to the requirements of this Article.

(c) "Beneficial Uses" shall mean the use of groundwater for domestic, municipal, agricultural, industrial, aesthetic, habitat, recreational and environmental purposes.

(d) "Cathodic Protection Well" shall mean any well in excess of fifty (50) feet constructed by any method for the purpose of installing equipment or facilities for the electrical protection of metallic equipment in contact with ground, commonly referred to as cathodic protection.

(e) "CEQA" shall mean the California Environmental Quality Act, Division 13 of the California Public Resources Code, commencing at Section 21000.

(f) "City" shall mean the City and County of San Francisco.

(g) "Commission" shall mean the San Francisco Health Commission established in accordance with Section 4.110 of the San Francisco Charter.

(h) "Contamination" shall mean an impairment of the quality of the groundwater by waste to a degree that creates a hazard to the public health through poisoning or through the spread of disease.

(i) "Department" shall mean the San Francisco Department of Public Health.

(j) "Dewatering Well" shall mean a well used for the purpose of dewatering excavation during construction or stabilizing hillside or earth embankments.

(k) "Director" shall mean the Director of the Department or his or her designee.

(l) "Inactive well" shall mean a well not routinely operated but capable of being made an operating well with a minimum of effort.

(m) "Modification" shall mean any work done on an existing well to restore or modify its function, replace any casing, seal off certain strata or surface water, or similar work. Modification shall not include the activities that do not violate the integrity of the annular space or the well casing or that does not have the potential of causing groundwater contamination to migrate or disperse.

(n) "Monitoring Well" shall mean a well constructed for the purpose of observing, monitoring, or supplying information regarding the quality of groundwater, or the concentration of contaminants in groundwater.

(o) "Operator" shall mean any person who has daily responsibility for and daily operational control over a well or soil boring.

(p) "Owner" shall mean any person who owns a property with a well or soil boring thereon.

(q) "Person" shall mean any natural person, trust, firm, joint stock association, corporation, including a government corporation, partnership, association, city, county, city and county, district, the State, any agency, department, office, board, commission, or bureau of State government, including but not limited to, the campuses of the California Community Colleges, the California State University, and the University of California, and the United States, to the extent authorized by law. For the purposes of this Article, "person" shall include any department, Board or Commission of the City and County of San Francisco.

(r) "Pollution" shall mean an alteration of the quality of the groundwater by waste to a degree that unreasonably affects the beneficial uses of the groundwater.

(s) "San Francisco Planning Commission" shall mean the commission and the department established in accordance with Section 4.105 of the San Francisco Charter or any successor agency, department or commission designated by the City as the lead agency for complying with the CEQA requirements.

(t) "SFPUC" shall mean the San Francisco Public Utilities Commission as established in accordance with Sections 4.112 and 8B.121 of the San Francisco Charter and its associated departments.

(u) "Soil Boring" shall mean an uncased artificial excavation constructed for the purpose of obtaining information on subsurface conditions to determine the nature of subsurface earth materials, the presence or extent of contamination in subsurface soil or groundwater and/or seismic information. Soil Boring shall include, but is not limited to, environmental and geotechnical borings and test holes.

(v) "Soil Vapor Extraction Well" shall mean any well used for on-site remediation to reduce the concentration of volatile constituents in petroleum products absorbed or adsorbed to soils in the unsaturated (vadose) zone.

(w) "Waste" shall mean sewage and other substances, liquid, solid, gaseous, or radioactive, associated with human habitation, or of human or animal origin, or from any producing, manufacturing, or process operation, including waste placed within containers of whatever nature prior to, and for the purposes of disposal.

(x) "Water well" shall mean any artificial excavation constructed by any method for the purpose of extracting groundwater for beneficial uses. For the purposes of this Article, the term "water well" shall not include: (1) oil and gas wells, or geothermal wells constructed under the jurisdiction of the California Department of Conservation, except those wells converted for use as a water well; or (2) potholes, drainage trenches or canals, waste water ponds, shallow root zone piezometers, stockponds, or similar excavations.

(y) "Well" shall include, but is not limited to, wells installed for the purposes of extracting groundwater for beneficial uses, cathodic protection, dewatering, monitoring purposes and soil vapor extraction. (Added by Ord. 113-05, File No. 050547, App. 6/10/2005)

SEC. 802. CONTAMINATION OF GROUNDWATER PROHIBITED.

It shall be unlawful for any person to construct, modify, operate or maintain a well or soil boring which presents a substantial risk of groundwater contamination due to the current or past presence of pollution from any source, even if the well or soil boring may be properly constructed, operated or maintained, except in the case of

(a) Monitoring wells used for the purposes of observing or monitoring groundwater conditions.

(b) Extraction wells used for the purpose of extracting and treating water or soil from a contaminated aquifer. (Added by Ord. 113-05, File No. 050547, App. 6/10/2005)

DIVISION II—WELL AND SOIL BORING CONSTRUCTION, MODIFICATION, OPERATION AND MAINTENANCE

SEC. 803. PERMIT REQUIRED.

Except as otherwise provided by law, no person shall construct, modify, operate or maintain a well, whether active or inactive, or soil boring without a permit issued in accordance to this Article. (Added by Ord. 113-05, File No. 050547, App. 6/10/2005)

SEC. 804. APPLICATION.

Any person proposing to construct, modify, operate and/or maintain a well or soil boring shall file with the Department a completed written application on forms approved by the Department and submit the appropriate application fees thirty (30) days prior to the proposed commencement of such activities. For well permits in Hunters Point Shipyard Parcel A, such permit application shall not be deemed complete until the department receives written notification from the Director that the applicant has complied with all provisions of Article 31 that are required to be met prior to permit issuance. The completed application shall include, without limitation, all of the following, when applicable:

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

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

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

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

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

(1) Property lines, including ownership;

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

(3) The approximate drainage pattern of the property;

(4) Other wells, including abandoned wells;

(5) Access road to the well site;

(6) Any structures; and

(7) Any aboveground or below ground utilities.

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

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

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

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

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

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

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

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

(3) Depth and the type of perforation; and

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

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

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

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

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

(p) Any other information deemed necessary by the Department to ensure adequate protection of groundwater resources. (Added by Ord. 113-05, File No. 050547, App. 6/10/2005)

SEC. 805. ADDITIONAL SUBMISSION FOR APPLICATION FOR WATER WELLS.

In addition to the information specified in Section 804 of this Article, an applicant for a water well permit shall submit information on the proposed operating parameters of the water well, including the maximum and average rate of withdrawal of groundwater proposed to meet the applicant's beneficial uses. Upon receipt of an application for a water well permit, the Department shall refer the application to the Depart-

ment of City Planning for an environmental determination under CEQA as required by chapter 31 of the San Francisco Administrative Code. Following completion of CEQA review, the applicant shall be required to obtain the approval of the SFPUC authorizing the withdrawal of groundwater and to comply with any conditions or restrictions on use of the water well imposed as mitigation measures by the Department of City Planning or by the SFPUC for purposes of managing groundwater resources in San Francisco. Failure to reach agreement with the SFPUC for the operation of a proposed water well shall result in denial of a water well permit application by the Department. (Added by Ord. 113-05, File No. 050547, App. 6/10/2005)

SEC. 806. PERMIT ISSUANCE AND MANDATORY PROVISIONS.

Upon satisfactory compliance with the requirements of Sections 804 and 805 of this Article, the Department shall issue to the applicant a permit for the construction, modification, maintain and operation of the well. The Department may include such terms in the permit, as necessary, to ensure compliance with the requirements of this Article. In addition, the permit shall be issued with the following terms and conditions whether explicitly stated or not, when applicable:

(a) The construction or modification of the well or soil boring on the property shall be comply with the standards set forth in the "Water Well Standards: State of California, California Department of Water Resources Bulletin 74," 1968, including all subsequent modifications and with this Article;

(b) The permittee shall complete any authorized work related to the construction and modification of the well or soil boring within six (6) months of the date of issuance of the permit;

(1) Upon a showing of good cause by the applicant, the Department may grant the applicant a one-time extension not to exceed six (6) months. Applicant shall make the request for an extension in writing to the Department at least thirty (30) days prior to the expiration of the construction authorization set forth in the permit.

(c) Upon the expiration of the construction authorization of the permit, no further work shall be performed unless and until the applicant receives an extension or a new authorization;

(d) The permittee shall post a copy of the permit at well or soil boring site at all times;

(e) The permittee shall use construction practices that would prevent the contamination or pollution of groundwater during the construction or modification of the well or soil boring;

(f) The permittee shall comply with the approved plan for the safe and appropriate handling, labeling, storage and disposal of drilling fluids and other drilling materials used in connection with the permitted work;

(g) All construction or modification work shall be performed by a person who possesses a valid C-57 contractor's license issued by the California Stale Contractor Licensing Board and is identified in the application submitted in accordance with Section 804 of this Article;

(h) All work shall be performed in accordance with the approved work schedules and methods, as set forth in the application submitted in accordance with Section 804 of this Article. If changes are made to the work schedule, applicant shall inform the Department in writing within five (5) days after such changes are deemed necessary;

(i) The permittee shall not operate the well unless the Department has inspected the well in accordance with Section 826 of this Article to ensure compliance with the requirements of this Article or unless such inspections have been waived by the Department;

(j) For a soil boring, the soil boring shall be destroyed in accordance with the requirements of this Article within 24 hours from the time that the testing work is completed and the owner and/or operator shall provide to the Department documentation showing such destruction within 24 hours of the destruction of the soil boring.

(k) For the construction or modification of a well that penetrates more than one groundwater aquifer in areas designated by the San Francisco Public Utilities Commission with known groundwater quality problems, the permittee shall submit:

(1) A report prepared by a geologist registered pursuant to Business & Professions Code § 7850 or a civil engineer that is licensed pursuant to Business & Professions Code § 6762 that identifies all strata containing poor quality groundwater and recommends the location and specification of the seal(s) needed to prevent the entrance of poor quality groundwater or its migration into the other aquifers; and

(2) Special annular seals to prevent mixing of groundwater from the several aquifers.

(l) The permit shall be renewed in accordance with Section 808 of this Article.

(m) The permittee shall comply with all applicable provisions of local, state and federal laws. (Added by Ord. 113-05, File No. 050547, App. 6/10/2005)

SEC. 807. ADDITIONAL TERMS FOR WATER WELL PERMITS.

In addition to the provisions set forth in Section 806 of this Article, a permit for a water well shall be issued with the following terms and conditions whether explicitly stated or not.

(a) The issuance of a permit by the Department, shall not be construed as vesting overlying or appropriative groundwater rights on the permittee to withdraw water from the water well. Any water well construction and operation authority granted by the Department to the permittee shall be subject to the terms of the approval from the SFPUC to the permittee for the extraction of groundwater required under section 805 of this Article.

(b) A record of the operation of the water well shall be kept at the water well site or at another location upon prior approval of the Department for a period of three (3) years and shall be available for inspection by the Department or the SFPUC upon request. The record shall include, information as required by the agreement between the permittee and SFPUC.

(c) The permit shall automatically expire upon the termination of the agreement or approval for the withdrawal of groundwater from the permitted well, unless (1) the withdrawal of groundwater from the permitted well was extended by mutual agreement between the permittee and the SFPUC, (2) within 15 days before the termination of the agreement, the permittee notifies the Department that the permit will be transferred to the SFPUC at the termination of the agreement, or (3) the permittee receives an approval from the Department allowing for the maintenance of an inactive well. (Added by Ord. 113-05, File No. 050547, App. 6/10/2005)

SEC. 808. TRANSFER OF PERMIT.

Except as provided for in this Section, permits issued under this Article shall not be transferred to another person, address or physical location within the same address.

(a) A permit issued under this Article may be transferred to another person, provided that, the Department is notified within thirty (30) days of the change in owner and/or operator of the well and receives the appropriate fees.

(b) A permit issued under this Article may be transferred to the SFPUC upon the termination of the agreement or approval from the SFPUC to withdraw groundwater. Such transfer shall only occur upon an agreement from the SFPUC to accept such transfer. (Added by Ord. 113-05, File No. 050547, App. 6/10/2005)

SEC. 809. GENERAL WELL CONSTRUCTION STANDARDS.

(a) Except as otherwise provided, the standards for construction and modification of wells shall be those as set forth in the "Water Well Standards: State of California, California Department of Water Resources Bulletin 74," 1968, including all subsequent modifications.

(b) The construction of monitoring wells shall conform to the applicable California Department of Water Resources, California Department of

Toxic Substance Control, the Regional Water Quality Control Board, and the United States Environmental Protection Agency standards and guidelines for the construction of monitoring wells.

(c) For the construction or modification of a well that penetrates more than one groundwater aquifer in areas designated by the City with known groundwater quality problems, the Department may require:

(1) A report prepared by a geologist registered pursuant to Business & Professions Code § 7850 or a civil engineer that is licensed pursuant to Business & Professions Code § 6762 that identifies all strata containing poor quality groundwater and recommends the location and specification of the seal(s) needed to prevent the entrance of poor quality groundwater or its migration into the other aquifers, and

(2) Special annular seals to prevent mixing of groundwater from the several aquifers.

(d) Drilling fluids and other drilling materials used in connection with the construction of wells or soil borings shall not be allowed to discharge onto streets or into sanitary sewer or waterways, or to the adjacent property unless:

(1) the San Francisco Public Utilities Commission, Industrial Waste Division gave prior approval to the discharge of drilling fluid into the sanitary sewer;

(2) the discharge is carried out in compliance with a lawful order from the Regional Water Quality Control Board for the San Francisco Bay Area; or

(3) the discharge onto adjacent property is in accordance with a prior written agreement with the owner(s) of the adjacent property; such fluids and materials shall be cleaned up and removed within thirty (30) days after completion of the well drilling; and there is no violation of waste discharge regulations set forth in Article 4.1 of the San Francisco Public Works Code. (Added by Ord. 113-05, File No. 050547, App. 6/10/2005)

SEC. 810. ADDITIONAL CONSTRUCTION STANDARDS FOR WATER WELLS.

In addition to the standards .specified in Section 809 of this Article, the construction or modification of water wells shall comply with the following:

(a) Water wells shall be located an adequate distance from all potential sources of contamination and pollution. Such minimum distances shall be as follows:

(1) Sewer—50 feet.

(2) Watertight septic tank—100 feet.

(3) Subsurface sewage leach line or leach field—100 feet.

(4) Cesspool or seepage pit—150 feet.

(5) Animal or fowl enclosures—100 feet.

(6) Any surface sewage disposal system—200 feet.

(b) Minimum distances of the water well from sources of pollution or contamination may be increased when the Department determines that particularly adverse or special hazards exist, the foregoing distances may be increased. Alternatively, the Department may require specially approved means to protect the quality of groundwater extracted for beneficial uses and in the underlying aquifer(s).

(c) A sounding pipe or other access to well casing.

(d) A check valve shall be provided on the pump discharge line adjacent to the pump.

(e) An unthreaded spigot shall be provided on the pump discharge line of any well adjacent to the pump and on the upstream side of the check valve.

(f) A flow meter or other suitable measuring device shall be located at each water well and shall accurately register the quantity of water being withdrawn from the water well.

(g) An air-relief vent, if installed, shall be directed downward, be screened, and otherwise be protected from the entrance of contaminants.

(h) All pump discharge pipes not discharging or open to the atmosphere shall be equipped with an automatic device to prevent backflow

and/or back siphonage into a water well. Specific backflow prevention measures are required for drinking water supply wells, as prescribed in Sections 7583—7585 and 7601—7605 of Title 17 of the California Code of Regulations.

(i) After completion of the construction or modification activity, the water well shall be thoroughly cleaned of all foreign substances. The well gravel used in packed wells, pipes, pump, pump column, and all well water contact equipment surface shall be disinfected by a Department-approved method. The disinfectant shall remain in the water well and upon all relevant surfaces for at least twenty-four (24) hours. Disinfection procedures shall be repeated until microbiologically safe water can be produced, as set forth in the California Code of Regulations, Title 22, Domestic Water Quality Monitoring. At the discretion of the Department, for the purpose of protecting public health and safety, any new or modified water well shall be tested for all water quality standards as set forth in Title 22 of the California Code of Regulations. (Added by Ord. 113-05, File No. 050547, App. 6/10/2005)

SEC. 811. VARIANCES.

The Director shall have the discretion to grant variances from the construction standards for water wells set forth in Section 810, provided that the applicant demonstrates that strict interpretation of a standard would cause practical difficulties or unnecessary hardship due to special circumstances and that the requested variances do not pose a threat to the public health and the City's groundwater resources. A request for a variance shall be in writing and submitted to the Department as a part of the application for a permit. No variance shall be granted unless: (a) it has been evaluated by the San Francisco Planning Department during its environmental review process in accordance with San Francisco Administrative Code Chapter 31 and (b) the Department finds, after an administrative hearing held in accordance with Section 833 of this Article, that the requested variance is consistent with the purposes of this Article. (Added by Ord. 113-05, File No. 050547, App. 6/10/2005)

SEC. 812. MODIFICATION OF A WELL PERMIT.

(a) The Department may order the modification of any permit issued under this Division upon (1) a written application from the permittee or (2) a showing that the operation may (A) violate any provisions of this Article or (B) endanger the public health.

(b) If the Department determines that a permit issued under this Division is required to be modified in accordance with Clause (a)(2) of this Section, the Department may issue an order modifying the permit to protect the public health and safety. The Department shall be served such order on the permittee, either by personal service or by certified mail return receipt requested, and shall be effective and final thirty (30) days after the service of such order unless appealed by the permittee. Within thirty (30) days from the service of the order, the permittee may appeal the modification order to the Director. The Director shall conduct an administrative hearing upon the filing of an appeal by the permittee in accordance to Section 833 of this Article;

(c) A permittee proposing to modify the operation of a water well by increasing the rate of water withdrawal shall be referred by Department to the Department of City Planning for CEQA review under Chapter 31 of the San Francisco Administrative Code. Following said determination, the permittee shall submit to Department a copy of the agreement with the SFPUC authorizing increased water withdrawals;

(d) Except as provided for in Subsection (b) of this Section, prior to ordering any requested modification, the Department shall hold an administrative hearing pursuant to Section 833 of this Article. (Added by Ord. 113-05, File No. 050547, App. 6/10/2005)

SEC. 813. PERMIT RENEWAL.

Every permittee shall renew his or her permit, at the beginning of each calendar year, by paying to the Tax Collector the annual permit fee set forth in Section 249.13 of the San Francisco Business and Tax Regulation Code. Upon the

failure of the permittee to pay such fees, the permit shall be considered null and void until the permittee pays the fees and any penalties that might be assessed by the Director. (Added by Ord. 113-05, File No. 050547, App. 6/10/2005)

SEC. 814. SUSPENSION AND REVOCATION.

The Department shall have the authority to suspend or revoke any permit issued under this Article upon a showing that the permittee has violated any provisions of the permit or this Article, has misrepresented any material fact in an application or any supporting documents for a permit, or failed to comply with any final non-appeal Director's order. Prior to ordering such suspension or revocation, the Department shall hold an administrative hearing pursuant to Section 833 of this Article. (Added by Ord. 113-05, File No. 050547, App. 6/10/2005)

DIVISION III—WELL INACTIVATION AND DESTRUCTION

SEC. 815. DISCONTINUATION OF WELL OPERATION.

Not later than fifteen (15) days before discontinuing a well operation, the owner or operator shall:

(a) notify the Department that the operation of the well will be terminated; and

(b) take one of the following action:

(1) apply for approval to destroy the well,

(2) notify the Department that the permit for the water well will be transferred to the SFPUC upon the discontinuation of the water well operation, or

(3) submits a plan for Department approval allowing the well to remain in an inactive state.

Upon the discontinuation of the operation of a well, the owner or operator shall make all reasonable efforts to prevent the contamination or pollution of the well and to minimize the safety hazards caused by the presence of the well until the well is destroyed, the permit is transferred to the SFPUC, or the department approves the plan to maintain an inactive well submitted in accordance with this Article. (Added by Ord. 113-05, File No. 050547, App. 6/10/2005)

SEC. 816. WELL INACTIVATION.

An owner or operator of a well may seek approval from the Department to maintain an inactive well by submitting the appropriate application fee and a plan including, without limitation, the following information:

(a) The owner of the property on which the well is located.

(b) The address of the owner of the property.

(c) The manner in which the well will be maintained to prevent the contamination of the groundwater and to minimize the safety hazard of having an inactive well on the property. (Added by Ord. 113-05, File No. 050547, App. 6/10/2005)

SEC. 817. APPROVAL FOR WELL INACTIVATION.

Upon the submission of a plan to inactivate a well, the Department shall review such plan to ensure that the inactive well will be maintained in a manner such that the inactive well will not become a safety hazard to humans and animals or a conduit for the contamination of the groundwater. The Department shall issue an approval for the owner/operator to maintain the well in an inactive state in accordance with the approved plan. Within five (5) days of the issuance of such approval, the Department shall inspect the inactive well to verify the implementation of approved plan. The Department shall notify the SFPUC of any approval for a water well inactivation issued under this Section.

(a) If the Department determines that the submitted plan does not comply with the requirements of this Article, the Department shall reject the plan and specify deficiencies found in the plan. Within fifteen (15) days of the receipt of such rejection the owner/operator shall (1) request an administrative hearing held in accordance with Section 833 of this Code; (2) submit an application for the destruction of the well in accordance with Section 819 of this Code; or (3)

submit a modified plan correcting the deficiencies cited by the Department in its rejection. (Added by Ord. 113-05, File No. 050547, App. 6/10/2005)

SEC. 818. WELL DESTRUCTION.

(a) Except as otherwise provided by law, no person shall destroy a well without prior approval from the Department.

(b) A person may commence the destruction of any wells without prior approval provided that such work is urgently needed and that any delay would result in an immediate and imminent threat to the public health and safety or the environment. Any person commencing work under this Subsection shall ensure that the destruction activities comply with the standards set forth in this Article and shall submit an application for approval with a statement setting forth the situation justifying the commencement of the work without prior authorization from the Department along with any appropriate fees within 24 hours from the commencement of any work. In the case where the work commenced on a holiday or weekend, the application shall be submitted to the Department by the close of business on the following business day.

(1) Failure to submit an adequate statement justifying the commencement of the work without prior authorization from the Department is a violation of this Article. (Added by Ord. 113-05, File No. 050547, App. 6/10/2005)

SEC. 819. APPLICATION FOR APPROVAL.

Except as provided for in Section 818(b), any person proposing to destroy a well shall file with the Department a completed written application on forms approved by the Department and submit the appropriate application fees fifteen (15) days prior to the proposed commencement of such activities. The completed application shall include, without limitation, all of the following:

(a) The owner of the property on which the well is located.

(b) The name and state license number of the general contractor, if applicable, and the C-57 license number of the person responsible for the destruction of the well.

(c) The work plan for the destruction of the well that complies with the standards set forth in the "Water Well Standards: State of California, California Department of Water Resources Bulletin 74," 1968, including all subsequent modifications.

(d) Any other information deemed necessary by the Department to ensure adequate protection of groundwater resources. (Added by Ord. 113-05, File No. 050547, App. 6/10/2005)

SEC. 820. ISSUANCE OF APPROVAL.

Upon the submission of an application for the destruction of a well, the Department shall review such application to ensure that the destruction of the well will be carried out in compliance with the requirements set forth in the "Water Well Standards: State of California, California Department of Water Resources Bulletin 74," 1968, including all subsequent modifications and may modify the work plan to ensure compliance. In reviewing the application, the Department may inspect the well site. The Department shall issue an approval to destroy the well upon a satisfactory showing that the proposed or modified work plan complies with legal requirements and shall required the completion of the well destruction within 90 days of the issuance of the approval. (Added by Ord. 113-05, File No. 050547, App. 6/10/2005)

SEC. 821. NUISANCE DECLARED AND ABATEMENT AUTHORITY.

The Board of Supervisors finds and declares wells that are: (1) abandoned; (2) constructed or operated in violation of state and local standards, permits or orders; or (3) providing conduits for the spread of contamination from the surface to groundwater, to connected aquifers and to other wells/ soil borings and soil borings that are unused to be public nuisances. The

Department shall have the authority to abate such nuisance pursuant to Article 11 of this Code.

(a) The Department may order the owner of such wells to submit an application for the destruction of such wells within 30 days of the service of the order and destroy the well in accordance with this Article. (Added by Ord. 113-05, File No. 050547, App. 6/10/2005)

SEC. 822. UNUSED WELL DISCOVERED.

Upon receipt of information by the Department of the existence of any unused well, the Department may order the owner to submit an application for the destruction or approval to maintain of such wells in an inactive state within 30 days for the service of the order and destroy the well or maintain the well as inactive in accordance with this Article. (Added by Ord. 113-05, File No. 050547, App. 6/10/2005)

SEC. 823. CONTENT AND SERVICE OF THE DESTRUCTION ORDER.

(a) The order shall advise the owner of his or her right to seek an administrative review by requesting an administrative hearing within fifteen (15) days from the service of the order.

(b) The Department shall serve the destruction order issued in accordance with Section 821(a) of this Article by certified mail return receipt requested. (Added by Ord. 113-05, File No. 050547, App. 6/10/2005)

SEC. 824. ADMINISTRATIVE REVIEW OF DESTRUCTION ORDER.

Upon a timely request for an administrative review, the Director shall conduct an administrative hearing in accordance with Section 833 of this Article. The Director shall affirm the destruction order if evidence in the administrative record or produced at the hearing demonstrating that the well in question: (1) is an abandoned well, (2) is constructed or operated in violation of state and local standards, permits or orders or (3) presents a potential for contamination or pollution of groundwater. (Added by Ord. 113-05, File No. 050547, App. 6/10/2005)

DIVISION IV—ENFORCEMENT

SEC. 825. RIGHT OF ENTRY AND INSPECTION.

The Department shall have the right to enter any premises, as authorized by this Article, to verify, by inspection and/or testing, compliance with the requirements of this Article. This right of entry shall be exercised only at reasonable hours, and entry shall be made to any premises only with the consent of the owner or occupant thereof, or with a proper inspection warrant. If the owner and/or occupant thereof refuses to give consent, the Department may request the City Attorney to seek an inspection warrant from the Superior Court for the County of San Francisco pursuant to Title 13 of the California Code of Civil Procedure (Section 1822.50 et seq.). (Added by Ord. 113-05, File No. 050547, App. 6/10/2005)

SEC. 826. SPECIFIC INSPECTION AUTHORIZED.

In addition to the inspections set forth below, the Department may inspect the drilling or excavation site at such other times as it deems necessary to carry out the purposes of the Article. The Department is authorized to obtain water samples, as needed.

(a) **Annual Inspection.** The Department shall annually inspect each permitted well to ensure that such well is being operated or maintained in compliance with the requirements of this Article and the terms of the permit.

(b) **Initial Inspection.** Upon the receipt of an application for a permit, the Department may inspect the drilling or excavation site before the issuance of the permit. If the Department determines that the site conditions require additional protective measures than those proposed in the permit application, the Department may require the relocation of the drilling or excavation site, or impose additional conditions in the permit that is needed to protect groundwater quality and the public health.

(c) **Well Seal Inspection.** The Department may inspect the annular space grout depth prior to sealing. Permittee shall notify the Depart-

ment the commencement of any construction activities at least ten (10) days prior to the commencement of drilling and provide the anticipated time to commence the sealing of the annular space. Permittee shall notify the Department at least forty-eight (48) hours prior to the sealing the annular space. No seal of the annular space shall be tremied unless authorized by the Department. All wells shall be sealed in accordance with the standards set forth in this Article and any applicable permit provisions.

(d) **Final Inspection.** The applicant shall notify the Department within seven (7) days of the completion of its work at each drilling site. The Department may make a final inspection after the completion of the work to determine whether the well was completed in accordance to the requirements of this Article.

(e) **Well Destruction Inspection.** The applicant shall notify the Department the commencement of any well destruction activities at least ten (10) days before the commencement of such activities.

(f) **Waiver of Inspection.** The Department may waive the inspection set forth in this Section if any of the following conditions exists:

(1) The work will be inspected by the California Regional Water Quality Control Board or the California Department of Health Services or the California Department of Toxic Substances Control and these designated agencies will provide a report to the Department regarding all drilling features.

(2) Drilling site is well known to the Department and it is known that no significant threat to groundwater quality exists in the area.

(g) **Failure to Notify.**

(1) Upon an applicant's failure to notify the Department of the filling of the annular space, the well owner/operator may not operate the well until he/she submits results from approved geophysical testing, including Sonic Log and Gamma Ray Log, demonstrating that the annular space has been properly installed.

(2) Upon an applicant's failure to notify the Department of the destruction of a well, the Department may require the well owner/operator to submit a report from the contractor who destroyed the well describing the work performed during the destruction of the well. (Added by Ord. 113-05, File No. 050547, App. 6/10/2005)

SEC. 827. REPORT OF COMPLETION.

Within thirty (30) days of the construction, modification, or destruction of any well, the well owner/operator or his/her contractor shall submit to the Department a copy of the "Report of Completion" (Water Well Drillers Report, Department of Water Resources Form 188) in accordance with California Water Code § 13571. Such submission shall not be deemed to relieve the well owner/operator or his/her contractor of their obligation to file such report with the State Department of Water Resources.

(a) Confidentiality of Report. Pursuant to California Water Code § 13572, the Report of Completion shall be kept confidential unless the release of the report is authorized by that section. (Added by Ord. 113-05, File No. 050547, App. 6/10/2005)

SEC. 828. SUSPENSION AND REVOCATION.

The Department shall have the authority to suspend or revoke any permit issued under this Article upon a showing that the permittee has violated any provisions of the permit or this Article, has misrepresented any material act in an application or any supporting documents for a permit, or failed to comply with any final non-appeal Directors order. Prior to ordering such suspension or revocation, the Department shall hold an administrative hearing pursuant to Section 833 of this Article. (Added by Ord. 113-05, File No. 050547, App. 6/10/2005)

SEC. 829. ENFORCEMENT.

(a) **Cease and Desist Orders.** Whenever the Department finds that a person in violation of any requirements of this Article, permit or any order issued under this Article, by the Director may:

(1) Issue an order directing the person to cease and desist such violation and directing the person to achieve compliance with a detailed

time schedule of various actions the person must take to correct or prevent violations of this Article.

(2) Issue an order revoking or suspending any permit.

(b) Any order issued under this Subsection may require the person to provide such information as the Department deems necessary to explain the nature of the violation. The order issued may require the person to pay the City the costs of any extraordinary inspection or monitoring deemed necessary by the Department because of the violation.

(c) **Administrative Complaints.** The Department may issue an administrative complaint, approved as to form by the City Attorney to any person who is in violation of this Article, any provisions of the permit or a final and non-appealable Director's order issued under this Article. The complaint shall allege the acts or omissions that constitute the basis for liability and the amount of the proposed administrative penalty. The Department shall serve the complaint by personal service or certified mail, return receipt requested, and shall inform the party so served that an administrative hearing provided for in Section 833 shall be conducted within 60 days after the party has been served, unless the party waives its right to the hearing. If the party waives the right to the hearing, the Director shall issue an order setting liability in the amount proposed in the complaint unless the Department and the party have entered into a settlement agreement, in which case, such agreement shall be construed as an order issued by the Director. The settlement agreement shall be approved as to form by the City Attorney. Where the party has waived its right to a hearing or where there is a settlement agreement, the order shall not be subject to review by any court or agency.

(d) **Referral to the District Attorney.** Upon the failure of any person to comply with any requirement of this Article, the Department may refer the matter to the District Attorney for criminal prosecution.

(e) **Injunctive Relief.**

(1) Upon the failure of any person to comply with any requirement of this Article, permit, any regulation or any order issued by the Director, the City Attorney, upon request by the Director, may petition the proper court for injunctive relief, payment of civil penalties and any other appropriate remedy, including restraining such person from continuing any prohibited activity and compelling compliance with lawful requirements.

(2) In any civil action brought under this Subsection in which a temporary restraining order, preliminary injunction or permanent injunction is sought, it is not necessary to allege or prove at any stage of the proceeding any of the following:

(A) Irreparable damage will occur should the temporary restraining order, preliminary injunction or permanent injunction not be issued;

(B) The remedy at law is inadequate

The court shall issue a temporary restraining order, preliminary injunction or permanent injunction in a civil action brought under this Article without the allegations and without the proof specified herein.

(f) **Notice of Violation.** Upon a determination of violations of this Article, the Department may issue a notice of violation setting forth all violations found and a time period to correct such violation. The owner and operator of the well/soil boring and the owner of the property on which the well/soil boring is situated shall be provided with a copy of the notice of violation. (Added by Ord. 113-05, File No. 050547, App. 6/10/2005)

SEC. 830. PENALTIES.

(a) **Criminal Penalties.** Any person who knowingly and willfully violates the requirements of this Article, or any final and non-appealable order issued by the Department is guilty of a misdemeanor and upon conviction thereof is punishable by a fine of not less than fifty dollars ($50) and not more than five hundred ($500) for each day per violation, or by

imprisonment in the County Jail for a period not to exceed six (6) months, or by both such fine and imprisonment.

(b) **Civil Penalties.** Any person in violation of this Article or any final and non-appealable order issued by the Department shall be liable to the City and County of San Francisco for a civil penalty in an amount not to exceed one thousand dollars ($1,000) per day per violation. Each day in which the violation continues shall constitute a separate and distinct violation.

(c) **Administrative Penalties.** The Department may issue to any person an administrative complaint, approved as to form by the City Attorney, for violating this Article or any final and non-appealable order issued by the Department. The administrative complaint shall allege acts or omissions that constitute a violation and the amount of the proposed administration penalty sought. Such administrative penalty shall be in an amount not to exceed one thousand ($1,000) per day per violation. Each day in which the violation continues shall constitute a separate and distinct violation.

(d) **Non-Duplication of Penalty Assessment.** Civil penalties shall not be assessed pursuant to Subsection (b) for same violations for which the Department assessed an administrative penalty pursuant to Subsection (c).

(e) **Factors Considered.** In determine the appropriate penalties, the court, the Director shall consider the extent of harm caused by the violation, the nature and persistence of the violation, the frequency of past violations, any action taken to mitigate the violation, and the financial burden to the violator. (Added by Ord. 113-05, File No. 050547, App. 6/10/2005)

SEC. 831. LIABILITY FOR DAMAGES.

In addition to any penalties provided for in this Article, any person who destroys or causes the destruction of a well in violation of the standards set forth in the "Water Well Standards: State of California, California Department of Water Resources Bulletin 74," 1968, including all subsequent modifications, shall be liable for any damages caused by the improperly destroyed well including, without limitation, the contamination or pollution of the groundwater. (Added by Ord. 113-05, File No. 050547, App. 6/10/2005)

SEC. 832. LIENS.

(a) Costs and charges incurred by the City as a result of enforcement activities including, without limitations, monitoring and inspection costs, delinquency in the payment of a bill for fees applicable under this Article in excess of thirty (30) days, and any final administrative penalties assessed against a person for violations of this Article shall be an obligation owed to the City by the owner of the property where the well and/or soil boring is located, provided that the owner was given notice and opportunity to contest the assessment of such fees, charges or penalties. Such obligation may be collected by means of the imposition of a lien against such property. The City shall mail to property owner a notice of the amount due and a warning that lien proceedings will be initiated against the property if the amounts are not paid within thirty (30) days after mailing of the notice.

(b) Liens shall be created and assessed in accordance with the requirements of Article XX of Chapter 10 of the San Francisco Administrative Code (commencing with Section 10.230). (Added by Ord. 113-05, File No. 050547, App. 6/10/2005)

SEC. 833. ADMINISTRATIVE HEARING.

(a) The Director shall hold an administrative hearing for the following purposes:

(1) To issue or deny a permit application when requested by a person pursuant to this Article;

(2) To modify, revoke or suspend a permit that has been issued pursuant to this Article, except as otherwise provided in this Article;

(3) To issue an order imposing administrative penalty against a person unless such person waived her or his right to a hearing.

(b) Notice of hearing pursuant to this Section shall be given by publication in a newspaper of general circulation in the City and County of

San Francisco for at least two (2) days and not less than ten (10) days prior to the date of such hearing. Written notice shall be sent to any interested person, including without limitation the applicant or permittee by certified mail, return receipt requested, at least ten (10) days in advance of the hearing. The notice shall state the nature and purpose of the hearing and the hearing date and location.

(c) In any hearing held in accordance with this Article, any party shall have the right to offer testimonial, documentary, and tangible evidence bearing on the issues, to see and copy all documents and other information the City relies on in the proceeding, to be represented by counsel, and to confront and cross-examine any witnesses against them. The hearing may be continued for a reasonable time once upon a showing of good cause by the party requesting such continuance. The request for continuance shall be in writing setting forth the basis for the request and shall be submitted to the Director at least one business day before the hearing.

(d) In a hearing to issue an order setting liability for administrative penalties, the Director shall designate a certified court reporter to report all testimonies, the objections made, and the rulings of the objections made by the Director. Fees for the transcripts of the proceeding shall be at the expense of the party requesting the transcript as prescribed by the California Government Code § 69950, and the original transcript shall filed with the Director at the expense of the party ordering the transcript. In all other hearings, the proceedings shall be electronically recorded.

(e) The Director shall issue his or her decision and order within thirty (30) days from the conclusion of the hearing. The decision and order shall be in writing and shall contain a statement of reasons in support of the decision. The decision and order shall be sent by certified mail, return receipt requested, to the owner and operator and by first class mail to all other interested parties.

(f) An administrative order imposing an administrative penalty shall be final. Such decision shall advise interested parties of their right to seek a judicial review of the decision pursuant to California Code of Civil Procedures § 1094.6.

(g) The Director's order to issue, deny, modify, revoke, suspend, or renew a permit may be appealed to the Board of Appeals in the manner prescribed in Article 1, Part III of the San Francisco Municipal Code. Because of the potential threat to the public health and safety of a well that is operating in violation of this Article, the Director's decision to modify, revoke or suspend a permit shall not be automatically stayed upon the filing of an appeal to the Board of Appeal.

(h) The Director may designate a hearing officer to preside over any hearing and to act on behalf of the Director in accordance with this Section. The Director may not designate a person to preside over any hearings if such person:

(1) has served as investigator, prosecutor, or advocate in the proceeding or its preadjudicative stage; or

(2) is subject to the authority, direction or discretion of a person who has served as investigator, prosecutor, or advocate in the proceeding or its preadjudicative stage.

(i) Notwithstanding Subsection (h), the Director may designate a person to preside over the hearing if such person participated only as a decision maker or as an advisor to a decision maker in a determination of probable cause or other equivalent preliminary determination in an adjudicative proceeding or preadjudicative stage.

(j) The person designated as the hearing officer shall not receive any additional compensation solely for her or his service as the hearing officer. (Added by Ord. 113-05, File No. 050547, App. 6/10/2005)

SEC. 834. DISQUALIFICATION.

The hearing officer is subject to disqualification for bias, prejudice, or interest in the proceed-

ing. It is not alone or in itself grounds for disqualification, without further evidence of bias, prejudice or interest, that the hearing officer:

(a) is or is not a member of a racial, ethnic, religious, gender, or similar group and the proceeding involves the rights of that group;

(b) has experience, technical competence or specialized knowledge of, or has in any capacity expressed a view on, a legal, factual, or policy issue presented in the proceeding; or

(c) has as a public official participated in the drafting of laws or regulations or in the effort to pass or defeat laws or regulations, the meaning, effect or application of which is in issue in the proceeding. (Added by Ord. 113-05, File No. 050547, App. 6/10/2005)

DIVISION V—MISCELLANEOUS PROVISIONS

SEC. 835. REGULATIONS.

(a) The Director may adopt and, from time to time, may amend reasonable regulations implementing the provisions and intent of this Article. The regulations shall be approved by the Commission at a public hearing. In addition to any notices required by law, before the Commission approves the issuance or amendment of any rule or regulation, the Director shall provide a 30-day public comment period by providing published notice in an official newspaper of general circulation in the City of the intent to issue or amend the rule or regulation.

(b) Regulations promulgated by the Director and approved by the Commission shall be maintained in the Office of the Clerk of the Board of Supervisors. (Added by Ord. 113-05, File No. 050547, App. 6/10/2005)

SEC. 836. REMEDIES NOT EXCLUSIVE.

Remedies provided for in this Article are in addition to and do not supersede or limit any and all other remedies, civil or criminal. (Added by Ord. 113-05, File No. 050547, App. 6/10/2005)

SEC. 837. DISCLAIMER OF LIABILITY.

(a) Any degree of protection required by this Article is considered reasonable for regulatory purposes. This Article shall not create liability on the part of the City, or any of its officers or employees for any damages that result from reliance on this Article or any administrative decision, lawfully made pursuant to this Article.

(b) In undertaking the implementation of this Article, the City is assuming an undertaking only to promote the public health, safety, and general welfare. It is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury.

(c) Except as otherwise required by State or federal law, all inspection specified or authorized by this Article shall be at the discretion of the City and nothing in this Article shall be construed as requiring the City to conduct any such inspection nor shall any actual inspection made imply a duty to conduct any other inspection. (Added by Ord. 113-05, File No. 050547, App. 6/10/2005)

SEC. 838. FEES.

The Department may charge fees to recover costs incurred in regulating the construction, modification, operation, and destruction of soil borings and wells as set forth in the San Francisco Municipal Code. (Added by Ord. 113-05, File No. 050547, App. 6/10/2005)

SEC. 839. NOT EXEMPTED FROM PAYING OTHER FEES.

Payment of fees as provided in this Article does not exempt the person from payment of any other charges which may be levied pursuant to other sections of the San Francisco Municipal Code or written rules and regulations of any department related to the permit. (Added by Ord. 113-05, File No. 050547, App. 6/10/2005)

SEC. 840. NOT EXEMPTED FROM COMPLIANCE WITH OTHER LAWS.

Nothing in this Article shall be deemed to excuse any person from compliance with the

requirements of the California Water Code and any other applicable provisions of local, state or federal laws. (Added by Ord. 113-05, File No. 050547, App. 6/10/2005)

SEC. 841. DISCRETIONARY DUTY.

Subject to the limitations of due process, notwithstanding any other provision of this Article whenever the words "shall" or "must" are used in establishing a responsibility or duty of the City, its elected or appointed officers, employees, or agents, it is the legislative intent that such words establish a discretionary responsibility or duty requiring the exercise of judgment and discretion. (Added by Ord. 113-05, File No. 050547, App. 6/10/2005)

SEC. 842. SEVERABILITY.

If any section, subsection, sentence, clause, or phrase of this Article is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Article. The Board of Supervisors hereby declares that it would have passed this Article and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the Article would be subsequently declared invalid or unconstitutional. (Added by Ord. 113-05, File No. 050547, App. 6/10/2005)

ARTICLE 13: [RESERVED]

[The next page is 475]

ARTICLE 14: AMBULANCES AND ROUTINE MEDICAL TRANSPORT VEHICLES

SEC. 901. DEFINITIONS.

The following words and phrases when used in this Article have the meanings set forth herein:

(a) City means the City and County of San Francisco.

(b) Color scheme means a particular design, consisting of appliances, colors, figures and letters, or any combination thereof, assigned to a particular person for application to the ambulance or ambulances, or to routine medical transport vehicle or vehicles authorized to be operated by such person, for purposes of identification and distinction.

(c) Director means the Director of Health Care Services, or his designated agents or representatives, of City.

(d) Person means and includes an individual, a proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, association, committee, or any other legal entity.

(e) Ambulance means a vehicle specially constructed, modified, equipped, or arranged to accommodate a stretcher and operated commercially for the purpose of urgent transportation of sick, injured, convalescent, infirm, or otherwise incapacitated persons. As used herein, urgent transportation means transporting by ambulance of a person (1) requiring immediate measures to prevent loss of life or worsening of a traumatic injury or illness, or (2) having sudden need of medical attention.

(f) Routine medical transport vehicle means a vehicle specifically constructed, modified, equipped, or arranged to accommodate a stretcher and operated commercially for the purpose of transporting sick, injured, convalescent, infirm, or otherwise incapacitated persons not requiring urgent transportation.

(g) Department, unless otherwise indicated, means the Department of Public Health of the City and County of San Francisco.

(h) Certificate means a Certificate of Operation which shall be issued by the Director to a person who qualifies to operate an ambulance or routine medical transport vehicle service in the City and County of San Francisco.

(i) Permit means a permit which shall be issued by the Director for an ambulance or routine medical transport vehicle conforming to the requirements of this Article which is owned or controlled by a person holding or qualifying for a Certificate pursuant to this article.

(j) Operator means a person to whom a Certificate of Operation and permit or permits have been issued for purposes of operating an ambulance or routine medical transport vehicle service.

SEC. 902. CERTIFICATE OF OPERATION REQUIRED.

(a) No person shall operate an ambulance or routine medical transport vehicle service upon the streets of City until, after application, the Director has issued a Certificate of Operation therefor.

(b) A Certificate issued pursuant to this Article shall set forth the commercial or public uses permitted and shall be valid until suspended or revoked. Said Certificate shall not be transferable, and shall be deemed revoked upon sale, transfer or assignment of the commercial use for which the Certificate was issued.

(c) A Certificate may be suspended or revoked for violations of this Article after a hearing by the Director. Upon suspension or revocation the offices for which the Certificate was issued shall be posted with the order of the Director. The Director shall remove a suspension upon determination that violations have been remedied and compliance with this Article thereby exists.

(d) All applications for a Certificate shall be filed upon forms provided by the Department. Said application shall be verified under oath and shall furnish the following information:

(1) The name, business and residence address and status of the applicant.

(2) The financial status of the applicant, including the amounts of all unpaid judgments against the applicant and the nature of the transaction or acts giving rise to said judgments.

(3) The experience of the applicant in the transportation and care of sick or injured persons.

(4) Any facts which the applicant believes tend to warrant the issuance of a Certificate.

(5) The actual or projected number of ambulances and/or routine medical transport vehicles, the model, make and year, condition and stretcher patient capacity of each ambulance or routine medical transport vehicle proposed to be operated by the applicant and a description and address of offices which are to serve as the base of operations.

(6) The color scheme to be used to designate the ambulance or ambulances and/or routine medical transport vehicle or vehicles of the applicant.

(7) Such further information as the Director may reasonably require.

SEC. 903. PERMIT REQUIRED.

(a) No ambulance or routine medical transport vehicle owned or controlled by any person to whom a Certificate has been issued shall be operated upon the streets of City until, after application, the Director has issued a permit therefor. Prior to the issuance of a permit, the Director shall thoroughly examine and inspect the ambulance or routine medical transport vehicle for compliance with the requirements of this Article. An ambulance under valid permit may provide routine medical transport service without the necessity of an additional permit.

(b) Ambulances shall be equipped in accordance with:

(1) The requirements of the California Highway Patrol, and any revisions thereto; and

(2) The standardized drug and equipment list, and any revisions thereto, adopted by the Director, who shall consider the recommendations of the San Francisco Emergency Medical Care Committee.

(c) Routine medical transport vehicles shall be equipped in accordance with:

(1) The standard vehicle safety and equipment requirements of the California Highway Patrol for ambulances and any revisions thereto.

(2) Standard patient carrying fixtures and restraints necessary for the comfort and safety of patients.

(d) Any permit issued hereunder shall be valid for a period of one year from the date when issued and shall be renewed annually upon determination by the Director that the ambulance or routine medical transport vehicle for which the permit applies conforms to all requirements set forth in this Article. Such requirements shall include the provision that all equipment be maintained in a fresh, clean and sanitary condition at all times.

SEC. 904. EXEMPTIONS.

(a) All persons operating an ambulance or ambulances in City on the effective date of this ordinance shall be exempted from the requirements of Sections 902(a), 902(d) and 905 for a Certificate of Operation for a period of one year from the effective date of this ordinance. A Certificate shall be issued by the Director to any person who qualifies for exemption pursuant to this Section upon condition that compliance with all other sections of this Article otherwise exists.

(b) Any person operating an ambulance or ambulances in City on the effective date of this ordinance pursuant to a permit issued by the Director by authority of law existing immediately prior to that date shall be exempted from the requirements of Sections 903 and 905 for a period of one year, from the effective date of this ordinance, during which existing permits will continue to be valid unless suspended, revoked or terminated. Upon expiration of the permit, an operator shall otherwise comply with all provisions of this Article.

(c) Any person operating an ambulance or ambulances, or routine medical transport vehicle or vehicles in City on or after the effective date of this ordinance which does not involve the transporting of persons from a place of origin to a place of destination, both of which are solely within City, shall be exempted from the requirements of this Article.

SEC. 905. FINDINGS TO BE MADE BY DIRECTOR.

(a) Pursuant to the provisions of this Article relating to Certificates of Operation and permits, the Director shall not renew a Certificate of Operation or a permit or issue a new Certificate of Operation or a new permit for an ambulance or routine medical transport vehicle service until he has caused such investigation as he deems necessary to be made of the applicant and of his proposed operations.

(b) The Director shall issue hereunder a Certificate of Operation or a permit for a specified ambulance or routine medical transport vehicle service, said Certificate of Operation or permit for a specified ambulance or routine transport vehicle to be valid for one year unless earlier suspended, revoked or terminated, when he finds:

(1) That each such ambulance or routine medical transport vehicle, its required equipment and the premises designated in the application, complies with the requirements of this Article.

(2) That the applicant is a responsible and proper person to conduct or work in the proposed business.

(3) That only drivers and attendants who comply with the requirements of this Article are employed in such capacities.

(4) That all the requirements of this Article and all other applicable laws and regulations have been met.

SEC. 905.1 PERMITS TO BE ISSUED TO AUTHORIZED AMBULANCE SERVICES ONLY.

Notwithstanding Sections 902 and 905, the Director shall not issue a Certificate of Operation authorizing the operation of ALS services or any ambulance permit to any person not authorized by San Francisco's Emergency Medical Services (EMS) Plan to provide ALS or emergency ambulance services in the City and County of San Francisco, which San Francisco's EMS Plan has established as an exclusive operating area. (Added by Ord. 132-91, App. 4/5/91)

SEC. 906. LIABILITY INSURANCE FOR ROUTINE MEDICAL TRANSPORT VEHICLES.

No certificate or permit shall be issued, nor shall such certificate or permit be valid after issuance, nor shall any routine medical transport vehicle be operated unless there is at all times in full force and effect to provide adequate protection against liability for damages which may be or have been imposed for each negligent operation of each such routine medical transport vehicle, its driver or attendant, a liability insurance policy or policies approved by the Director and issued by an insurance company authorized to do business in the State of California. Satis-

factory evidence that the liability insurance required by this section is at all times in full force and effect shall be furnished to the Director by each operator required to provide such insurance. Said evidence of insurance shall be in the form of the Standard Insurance Certificate (Accord Form) and shall contain the statement that the exchange or company issuing said Certificates shall provide the Director with 30 days written notice of cancellation, nonrenewal or reductions of limits of liability coverage. (Amended by Ord. 258-86, App. 6/30/86)

SEC. 907. LIABILITY INSURANCE FOR AMBULANCE OPERATORS.

No Certificate or permit shall be issued, nor shall such certificate or permit be valid after issuance, nor shall any ambulance be operated unless there is at all times in full force and effect to provide adequate protection against liability for damages which may be or have been imposed for each negligent operation of each such ambulance, its driver or attendant, a liability insurance policy or policies approved by the Director and issued by an insurance company authorized to do business in the State of California. Satisfactory evidence that the liability insurance required by this section is at all times in full force and effect shall be furnished to the Director by each operator required to provide such insurance. Said evidence of insurance shall be in the form of the Standard Insurance Certificate (Accord Form) and shall contain the statement that the exchange or company issuing said Certificates shall provide the Director with 30 days written notice of cancellation, nonrenewal or reductions of limits of liability coverage. Operators of ambulance services shall maintain insurance in amounts at least as follows:

(1) Automobile liability insurance in the form of comprehensive automobile liability.

(a) $500,000 on account of bodily injuries or death of one person;

(b) $1,000,000 for any occurrence on account of bodily injuries to or death of more than one person;

(c) $500,000 for any one accident on account of damages to or destruction of property of others.

(2) In lieu of the separate limits stated in (1), the Certificate and permit holder may provide a policy or policies in, at least, the following amount:

(a) $1,000,000 for Combined Single Limit of Liability for each occurrence for bodily injury and/or damage to property of others.

(3) General Liability in the form of Broad Form Comprehensive General Liability Insurance.

(a) $500,000 for any occurrence on account of bodily injuries or death;

(b) $500,000 for any one occurrence on account of damages to or destruction of property of others.

(4) In lieu of the separate limits stated in (3), the Certificate and permit holder may provide a policy or policies in, at least, the following amount:

(a) $500,000 for Combined Single Limit of Liability for each occurrence for bodily injury and/or property damage, which shall include bodily injury to one or more persons and/or damage to property of others.

(5) Professional Liability in the form of Ambulance Attendants Errors and Omissions Liability Insurance.

(a) $500,000 on account of bodily injuries or death of one person;

(b) $500,000 for any occurrence on account of bodily injuries to or death of more than one person. (Added by Ord. 258-86, App. 6/30/86)

SEC. 908. DISPATCHER AND OFFICE REQUIREMENTS.

(a) Each operator shall utilize a dispatcher whose sole or primary function shall be to receive and dispatch all calls for ambulance or routine medical transport vehicle service.

(b) Each operator shall maintain an operational and manned office from which an ambulance or ambulances or routine medical transport vehicle or vehicles shall be based on a continuous 24 hour per day basis.

SEC. 910. COLOR SCHEME—ADOPTION—APPLICATION.

(a) The operator of every ambulance or routine medical transport vehicle service shall adopt a color scheme and, after approval thereof by the Director, shall apply such color scheme to each ambulance or routine medical transport vehicle authorized by a permit. The Director shall not approve or allow adoption or application of any color scheme which imitates or conflicts with any other color scheme, authorized by this Article, in such manner as is misleading and would tend to deceive the public.

No sign, letter, color, appliance or thing of decorative or distinguishing nature shall be attached or applied to any ambulance or routine medical transport vehicle other than such as have been approved by the Director in the color scheme authorized for each such ambulance.

(b) Notwithstanding Section 910(a) and in lieu thereof, an operator may adopt a color scheme consistent with specifications recommended by the National Highway Traffic Safety Administration of the United States Department of Transportation, as contained in Federal Specification Number KKK-A-1822, published January 2, 1974. At such time as the color scheme recommended in Specification Number KKK-A-1822 becomes mandatory for ambulances operated in the State of California, the requirements of Section 910(a) shall become inoperative.

SEC. 911. OPERATION REQUIREMENTS.

(a) All operations shall be required to comply with such reasonable rules and regulations regarding ambulance or routine medical transport vehicle equipment and maintenance, equipment safety, and sanitary conditions as the Director shall prescribe.

(b) Each operator shall provide a security area not on the public streets of City for purposes of maintaining all ambulances when not in service.

(c) In addition to the requirements of this Article, an operator shall comply with all State and Federal requirements pertaining to the operation of an ambulance or routine medical transport vehicle service.

(d) Every ambulance or routine medical transport vehicle and office from which it is operated shall be inspected by the Director once annually or more often as shall be determined by the Director, to insure compliance with equipment, equipment safety, sanitary, and other rules and regulations relating to ambulance service operations.

(e) Each ambulance or routine medical transport vehicle providing service shall be manned and operated at all times by a qualified driver and attendant.

(f) Each operator, driver, and attendant shall be required to prohibit and constrain the smoking of tobacco products within the confines of any ambulance or routine medical transport vehicle while engaged in the transport of a patient passenger.

(g) Each operator shall provide annually to the Director an equipment inventory, proof of state licensure, and such other information as the Director may reasonably require relating to ambulance or routine medical transport vehicle service operations.

SEC. 912. DRIVER REQUIREMENTS.

A person employed as an ambulance or routine medical transport vehicle driver shall possess a current valid ambulance driver's license issued by the Department of Motor Vehicles.

Effective six months from the date of enactment of this ordinance, all persons employed as an ambulance driver shall have successfully completed an EMT-1A course accredited by the State of California Department of Health.

SEC. 913. ATTENDANT REQUIREMENTS.

On the effective date of this ordinance, persons employed as ambulance attendants shall have successfully completed an EMT-1A course accredited by the State Department of Health; and persons employed as routine medical transport vehicle attendants shall have successfully completed a course of training equivalent to the advanced course in first aid given by the American Red Cross.

Effective 18 months from the date of enactment of this ordinance, all persons employed as ambulance attendants must qualify as mobile intensive care paramedics certified by the Director; and persons employed as routine medical transport vehicle attendants shall have successfully completed an EMT-1A course accredited by the State Department of Health.

SEC. 914. PROOF OF COMPLIANCE.

(a) An operator shall, within 48 hours after employing a driver or attendant, submit written proof to the Department and local California Highway Patrol office that the driver or attendant complies with the requirements of Section 912 and 913.

(b) Termination of employment of any driver or attendant shall require written notification by an operator to the Department and local California Highway Patrol office within 48 hours.

(c) The Director shall maintain records of data required to be submitted by this Article.

SEC. 915. PENALTY.

Any person violating any of the provisions of this Article shall be guilty of a misdemeanor and upon conviction thereof shall be punishable by a fine not in excess of $500 or by imprisonment in the County Jail for a period not to exceed six months, or by both such fine and imprisonment.

[The next page is 501]

ARTICLE 15: PUBLIC SWIMMING POOLS

SEC. 950. DEFINITIONS.

For the purposes of this Article, the following words, and phrases shall mean or include:

"Swimming Pool" and "Pool." An artificial basin, chamber, or tank constructed or impervious material and used, or intended to be used, for swimming, wading, diving or recreative bathing. It does not include baths where the main purpose is the cleaning of the body, nor individual type therapeutic tubs.

"Related appurtenances." Auxiliary structures and equipment to a swimming pool, such as locker rooms, shower, and dressing rooms, toilet facilities, filtration, pumping, piping, disinfecting and safety equipment provided and maintained in connection with such facility.

"Public Swimming Pool." Any swimming pool as defined herein and its related appurtenances, except private pools maintained by an individual for the use of his family and friends. The term includes but is not limited to all commercial pools, pools at hotels, motels, resorts, auto and trailer parks, auto courts, apartment houses, clubs, private schools and gymnasia and health establishments.

"Director." The Director of Public Health of the City and County of San Francisco.

"Person." Any individual, co-partnership, firm, association, joint stock company, corporation, club, or combination of individuals of whatsoever form and character. (Amended by Ord. 194- 61, App. 7/27/61)

SEC. 951. PERMIT CONDITIONS.

On and after October 1, 1961, no person shall operate, maintain or conduct a public swimming pool without a permit from the Department of Public Health of the City and County of San Francisco. Every applicant for such permit shall file with the Department a written application on such form and containing such information as the Department may require.

The permit shall set forth the commercial uses permitted and shall be valid until suspended or revoked. Said permit shall not be transferable and shall be deemed revoked upon sale, transfer or assignment of the commercial use for which the permit was issued.

A permit may at any time be suspended or revoked for cause after a hearing by the Department of Public Health. Upon suspension or revocation the premises for which the permit was issued shall be posted with the order of the Department. (Amended by Ord. 93-68, App. 4/19/68)

[The next page is 513]

ARTICLE 16: REGULATING THE USE OF 'ECONOMIC POISONS'

SEC. 975. RESTRICTING USE OF ECONOMIC POISON.

It shall be unlawful for any person, firm or corporation to use an "economic poison" as defined in Section 1061, of the Agricultural Code of the State of California, on any lawn, garden or other area accessible to the public, in any manner or method whereby any of the contents of the package or container of said "economic poison" is accessible to children.

SEC. 976. PENALTY.

Any person, firm or corporation who shall violate any of the provisions of this ordinance shall be guilty of a misdemeanor and upon conviction thereof shall be punishable by a fine not to exceed $100 or by imprisonment in the County Jail for not more than 10 days or by both such fine and imprisonment. (Added by Ord. 6265 [Series of 1939], App. 10/30/50)

[The next page is 519]

ARTICLE 17: DISPOSAL OF UNCLAIMED PERSONAL PROPERTY AT SAN FRANCISCO GENERAL HOSPITAL

SEC. 980. DEFINITION OF UNCLAIMED PROPERTY.

Personal property left at the San Francisco General Hospital for a period of more than 90 days after the patient has left the hospital shall be considered unclaimed personal property. (Added by Ord. 10570 [Series of 1939], App. 9/12/57)

SEC. 981. PROCEDURE FOR DISPOSAL OF UNCLAIMED PERSONAL PROPERTY.

Such unclaimed personal property shall be disposed of according to the following procedure:

(a) Notice shall be sent by registered mail to the former patient at his last known address or to the guardian, executor or administrator of his estate if such is known, or to the Public Administrator if there is no known guardian, executor or administrator, advising that such unclaimed personal property must be claimed within 30 days.

(b) Such unclaimed personal property as remains after 30 days' notice to reclaim it shall be disposed of as follows:

(1) Any sums of money which remain over and above San Francisco General Hospital charges shall be transmitted to the Controller of the City and County of San Francisco for deposit in the General Fund.

(2) Other unclaimed personal property shall be delivered to the Purchaser of Supplies for disposition as provided for in Section 88 of the Charter of the City and County of San Francisco. (Added by Ord. 10570 [Series of 1939], App. 9/12/57)

[The next page is 525]

ARTICLE 18: PROVIDING FOR ISSUANCE OF CITATIONS TO VIOLATORS

SEC. 985. CITATIONS FOR VIOLATIONS OF CERTAIN SECTIONS OF THE HEALTH CODE AND POLICE CODE.

Whenever any person is arrested for a violation of one or more of the following Sections, to wit: Sections 40, 41.11(c), 41.12(a), 280, 292, or 308 of Part II, Chapter V, (Health Code) or Sections 6, 33, 34 or 35(a) of Part II, Chapter VIII (Police Code), or Sections 215, 217 or 221 of Part III, San Francisco Municipal Code, and such person is not immediately taken before a magistrate as procedure therefor is prescribed in the Penal Code of the State of California, the arresting officer shall prepare in duplicate a written notice to appear in court. (Amended by Ord. 226-73, App. 6/22/73)

SEC. 986. CONTENTS OF CITATION.

Such notice shall contain the name and address of the person so arrested, the offense charged, and the place and time where and when such person shall appear in court. (Added by Ord. 502-60, App. 10/14/60)

SEC. 987. TIME FOR APPEARANCE.

The time specified in the notice to appear shall be not less than five days after such arrest. (Added by Ord. 502-60, App. 10/14/60)

SEC. 988. APPEARANCE BEFORE JUDGE OF MUNICIPAL COURT.

The place specified in the notice to appear shall be before the Municipal Court of the City and County of San Francisco. (Added by Ord. 502-60, App. 10/14/60)

SEC. 989. SIGNING OF PROMISE TO APPEAR.

The arresting officer shall deliver one copy of the notice to appear to the arrested persons, and, such person, in order to secure release after such arrest, must give his written promise so to appear in court by signing the duplicate notice, which shall be retained by the officer. Thereupon the arresting officer shall immediately release the person arrested from custody. (Added by Ord. 502-60, App. 10/14/60)

SEC. 990. FIXING OF BAIL BY JUDGE.

As soon as practicable thereafter the arresting officer shall file the duplicate notice with the judge specified therein. Thereupon, the judge shall fix the amount of bail which in his judgment, in accordance with the provisions of Section 1275 of the Penal Code of the State of California, will be reasonable and sufficient for the appearance of the defendant, and the judge shall indorse upon the notice a statement signed by him in the form set forth in Section 815a of said Code; provided, however, that where judges of the Municipal Court have adopted a schedule of bail, the bail shall be in the amount as set forth in the said bail schedule which is then in effect. (Added by Ord. 502-60, App. 10/14/60)

SEC. 991. DEPOSIT AND FORFEITURE OF BAIL; TERMINATION OF PROCEEDINGS; PAYMENT OF FORFEITED BAIL INTO TREASURY.

The defendant may, prior to the date upon which he promised to appear in court, deposit

with the judge the amount of bail set as provided in Section 990 above. Thereafter, at the time the case is called for arraignment, if the defendant shall not appear, either in person or by counsel, the judge may declare the bail forfeited, and may in his discretion order that no further proceedings shall be had in such case. Upon the making of such order that no further proceedings be had, all sums deposited as bail shall be paid into the treasury of the City and County of San Francisco. (Added by Ord. 502-60, App. 10/14/60)

SEC. 992. WARRANTS OF ARREST, NONISSUANCE.

No warrant shall issue on such charge for the arrest of a person who has given such written promise to appear in court, unless and until he has violated such promise or has failed to deposit bail, to appear for arraignment, trail or judgment, or to comply with the terms and provisions of the judgment, as required by law. (Added by Ord. 502- 60, App. 10/14/60)

SEC. 993. PENALTY FOR FAILURE TO APPEAR IN COURT.

Any person who wilfully violates his written promise to appear in court is guilty of a misdemeanor, regardless of the disposition of the original charge upon which he was arrested, and upon conviction of such misdemeanor, shall be punished by fine not exceeding $25 or by imprisonment in the County Jail for a period not exceeding five days, or both such fine and imprisonment. (Added by Ord. 502-60, App. 10/14/60)

SEC. 994. WARRANTS OF ARREST, ISSUANCE FOR FAILURE TO APPEAR.

Whenever a person signs a written promise to appear in court as provided in this ordinance, he must make such written appearance unless he has posted bail as provided herein. If he fails to so appear, the judge shall, within 20 days after the date set for such appearance, issue and have delivered for execution a warrant for arrest of that person. (Added by Ord. 502-60, App. 10/14/60)

ARTICLE 19: SMOKING POLLUTION CONTROL

SEC. 1000. TITLE.

This Article shall be known as the Smoking Pollution Control Ordinance. (Added by Proposition P, 11/8/83)

SEC. 1001. PURPOSE.

Because the smoking of tobacco or any other weed or plant is a danger to health and is a cause of material annoyance and discomfort to those who are present in confined places, the Board of Supervisors hereby declares that the purposes of this Article are (1) to protect the public health and welfare by regulating smoking in the office workplace and (2) to minimize the toxic effects of smoking in the office workplace by requiring an employer to adopt a policy that will accommodate, insofar as possible, the preferences of nonsmokers and smokers and, if a satisfactory accommodation cannot be reached, to prohibit smoking in the office workplace.

This ordinance is not intended to create any right to smoke or to impair or alter an employer's prerogative to prohibit smoking in the workplace. Rather, if an employer allows employees to smoke in the workplace, then this ordinance requires (1) that the employer make accommodations for the preferences of both nonsmoking and smoking employees, and (2) if a satisfactory accommodation to all affected nonsmoking employees cannot be reached, that the employer prohibit smoking in the office workplace. (Added by Proposition P, 11/8/83)

SEC. 1002. DEFINITIONS.

For the purposes of this Article:

(1) "City" means the City and County of San Francisco;

(2) "Board of Supervisors" means the Board of Supervisors of the City and County of San Francisco;

(3) "Person" means any individual person, firm, partnership, association, corporation, company, organization, or legal entity of any kind;

(4) "Employer" means any person who employs the services of an individual person;

(5) "Employee" means any person who is employed by any employer in consideration for direct or indirect monetary wages or profit;

(6) "Office Workplace" means any enclosed area of a structure or portion thereof intended for occupancy by business entities which will provide primarily clerical, professional or business services of the business entity, or which will provide primarily clerical, professional or business services to other business entities or to the public, at that location. Office workplace includes, but is not limited to, office spaces in office buildings, medical office waiting rooms, libraries, museums, hospitals and nursing homes;

(7) "Smoking" or "to smoke" means and includes inhaling, exhaling, burning or carrying any lighted smoking equipment for tobacco or any other weed or plant; and

(8) "Enclosed" means closed in by a roof and four walls with appropriate openings for ingress and egress and is not intended to mean areas commonly described as public lobbies. (Added by Proposition P, 11/8/83)

SEC. 1003. REGULATION OF SMOKING IN THE OFFICE WORKPLACE.

(1) Each employer who operates an office or offices in the city shall within three months of adoption of this ordinance, adopt, implement

and maintain a written Smoking Policy which shall contain, at a minimum, the following provisions and requirements:

(a) Any nonsmoking employee may object to his or her employer about smoke in his or her workplace. Using already available means of ventilation or separation or partition of office space, the employer shall attempt to reach a reasonable accommodation, insofar as possible, between the preferences of nonsmoking and smoking employees. However, an employer is not required by this ordinance to make any expenditures or structural changes to accommodate the preferences of nonsmoking or smoking employees.

(b) If an accommodation which is satisfactory to all affected nonsmoking employees cannot be reached in any given office workplace, the preferences of nonsmoking employees shall prevail and the employer shall prohibit smoking in that office workplace. Where the employer prohibits smoking in an office workplace, the area in which smoking is prohibited shall be clearly marked with signs.

(2) The Smoking Policy shall be announced within three weeks of adoption to all employees working in office workplaces in the city and posted conspicuously in all workplaces under the employer's jurisdiction. (Added by Proposition P, 11/8/83)

SEC. 1004. WHERE SMOKING NOT REGULATED.

This Article is not intended to regulate smoking in the following places and under the following conditions within the city:

(1) A private home which may serve as an office workplace;

(2) Any property owned or leased by state or federal government entities;

(3) Any office space leased or rented by a sole independent contractor;

(4) A private enclosed office workplace occupied exclusively by smokers, even though such an office workplace may be visited by nonsmokers, excepting places in which smoking is prohibited by the Fire Marshal or by other law, ordinance or regulation. (Added by Proposition P, 11/8/83)

SEC. 1005. PENALTIES AND ENFORCEMENT.

(1) The Director of Public Health shall enforce Section 1003 hereof against violations by either of the following actions:

(a) Serving notice requiring the correction of any violation of this Article.

(b) Calling upon the City Attorney to maintain an action for injunction to enforce the provisions of this Article, to cause the correction of any such violation, and for assessment and recovery of a civil penalty for such violation;

(2) Any employer who violates Section 1003 hereof may be liable for a civil penalty, not to exceed $500, which penalty shall be assessed and recovered in a civil action brought in the name of the People of the City and County of San Francisco in any court of competent jurisdiction. Each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such. Any penalty assessed and recovered in an action brought pursuant to this paragraph shall be paid to the Treasurer of the City and County of San Francisco.

(3) In undertaking the enforcement of this ordinance, the City and County of San Francisco is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury. (Added by Proposition P, 11/8/83)

ARTICLE 19A: REGULATING SMOKING IN EATING ESTABLISHMENTS

Per Ordinance 249-94, the provisions of this Article are suspended unless and until such time that these provisions become operative again.

SEC. 1006. PURPOSE.

The Board of Supervisors has a longstanding interest in the risks to human health of tobacco use, and disease prevention and health promotion are essential components of this health policy. Cigarette smoking is a certifiable health danger to smokers and nonsmokers alike. By smoking cigarettes, or being exposed to secondhand smoke, people inhale various chemicals including, for example, formaldehyde, ammonia, tar, nicotine, and carbon monoxide. The Surgeon General of the United States has declared that cigarette smoking causes lung cancer, heart disease, and emphysema, and that smoking by pregnant women may result in fetal injury, premature birth, and low birth weight. The Board of Supervisors desires to prevent disease and promote the health of the people of San Francisco by making it easier for residents and visitors to avoid secondhand smoke in eating establishments. For the most part, this Article simply extends the smoking prohibitions of Article 19 to include eating establishments. (Added by Ord. 244-87, App. 7/1/87)

SEC. 1006.1. DEFINITIONS.

Unless the term is specifically defined in this Article or the contrary stated or clearly appears from the context, the definitions set forth in Article 19, Section 1002 of this Code, shall govern the interpretation of this Article.

(a) "Eating establishment" shall mean every enclosed restaurant, coffee shop, cafeteria, cafe, luncheonette, sandwich stand, soda fountain, or other enclosed eating establishment serving food to the general public. The term "eating establishment" shall not include banquet rooms in use for private social functions. The term "eating establishment" shall not apply to any property owned or leased by State or federal government agencies. (Added by Ord. 244-87, App. 7/1/87)

SEC. 1006.2. REGULATION OF SMOKING IN EATING ESTABLISHMENTS.

In eating establishments smoking shall be prohibited in lobbies, waiting areas, restrooms, and dining areas designated for nonsmoking. Unless the eating establishment has been designated entirely nonsmoking, the owner, manager or operator of an eating establishment shall allocate and designate by appropriate signage an adequate amount of space in these areas to meet the demands of both smokers and nonsmokers, and shall inform all patrons that nonsmoking areas are provided. (Added by Ord. 244-87, App. 7/1/87)

SEC. 1006.3. DISCLAIMERS.

(a) By regulating smoking in eating establishments, the City and County of San Francisco is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach approximately caused injury.

(b) No owner of an eating establishment shall be required to construct or erect walls, partitions or other barriers to comply with this ordinance. (Added by Ord. 244-87, App. 7/1/87)

SEC. 1006.4. PENALTIES AND ENFORCEMENT.

The provisions of Section 1005 of Article 19 are applicable to the enforcement of violations of this Article. Any penalty assessed and recovered in an action brought pursuant to this paragraph shall be paid to the Treasurer of the City and County of San Francisco. (Added by Ord. 244-87, App. 7/1/87)

SEC. 1006.5. SEVERABILITY.

If any provision of this Article, or the application of any such provision to any person or circumstances, shall be held invalid, the remainder of this Article, to the extent it can be given effect, or the application of those provisions to persons or circumstances other than those to which it is held invalid, shall not be affected thereby, and to this end the provisions of this Article are severable. (Added by Ord. 244-87, App. 7/1/87)

ARTICLE 19B: REGULATING SMOKING IN SHARED OFFICE WORKPLACE

Per Ordinance 249-94, the provisions of this Article are suspended unless and until such time that these provisions become operative again.

SEC. 1007. FINDINGS.

The question of whether tobacco smoke is harmful to smokers was answered more than 20 years ago. U.S. Public Health Service reports on the health consequences of smoking have conclusively established cigarette smoking as the largest single preventable cause of premature death and disability in the United States. As a result many scientists began to question whether the low levels of exposure to environmental tobacco smoke (ETS) received by nonsmokers could be harmful.

The 1986 Surgeon General's Report on the Health Consequences of Involuntary Smoking clearly documents that nonsmokers are placed at increased risk for developing disease as the result of ETS exposure. The term "involuntary smoking" denotes that for many nonsmokers, exposure to ETS is the result of an unavoidable consequence of being in close proximity to smokers.

The report contains the following conclusions: (1) Involuntary smoking is a cause of disease, including lung cancer, in healthy nonsmokers. (2) Simple separation of smokers and nonsmokers within the same air space may reduce, but does not eliminate, exposure of nonsmokers to environmental tobacco smoke.

The quality of the indoor environment must be a concern of all who control and occupy that environment. Protection of individuals from exposure to environmental tobacco smoke is therefore a responsibility shared by all. As employers and employees we must ensure that the act of smoking does not expose the nonsmoker to tobacco smoke. For smokers, it is their responsibility to assure that their behavior does not jeopardize the health of others. For nonsmokers, it is their responsibility to provide a supportive environment for smokers who are attempting to stop.

The scientific case against involuntary smoking as a health risk is more than sufficient to justify this legislative measure, the goal of which must be to protect the nonsmoker from environmental tobacco smoke. (Added by Ord. 180-88, App. 4/28/88)

SEC. 1007.1. DEFINITIONS.

Unless otherwise defined herein, the definitions set forth in Article 19, Section 1002, of this Code, shall govern the interpretation of this Article.

(a) "Office workplace" shall include, in addition to the examples noted in Section 1002(6), press boxes at stadiums or other locations. (Added by Ord. 180-88, App. 4/28/88)

SEC. 1007.2. REGULATION OF SMOKING IN SHARED OFFICE WORKPLACE.

The provisions of this Article apply to office workplace shared by the employees of two or more employers.

(1) Each employer shall notify his or her employees of the following regulations regarding smoking:

(a) Any nonsmoking employee may object to his or her employer about smoke in the office workplace. If the objection concerns another employer's employee, the nonsmoker's employer shall notify the smoker's employer of the objec-

tion. Using already available means of ventilation or separation or partition of office space, the smoker's employer shall attempt to reach a reasonable accommodation, insofar as possible, between the preferences of the nonsmoking and smoking employees. However, an employer is not required by this ordinance to make any expenditures or structural changes to accommodate the preferences of nonsmoking or smoking employees.

(b) If an accommodation which is satisfactory to all affected nonsmoking employees cannot be reached, the preferences of nonsmoking employees shall prevail and the employers shall prohibit smoking in that office workplace. The employers shall clearly mark the area in which smoking is prohibited. (Added by Ord. 180- 88, App. 4/28/88)

SEC. 1007.3. DISCLAIMERS.

By regulating smoking in shared office workplace, the City and County of San Francisco is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach approximately caused injury. (Added by Ord. 180-88, App. 4/28/88)

SEC. 1007.4. PENALTIES AND ENFORCEMENT.

The provisions of Section 1005 of Article 19 are applicable to the enforcement of violations of this Article. Any penalty assessed and recovered in an action brought pursuant to this paragraph shall be paid to the Treasurer of the City and County of San Francisco. (Added by Ord. 180-88, App. 4/28/88)

SEC. 1007.5. SEVERABILITY.

If any provisions of this Article, or the application of any such provisions to any person or circumstances, shall be held invalid, the remainder of this Article, to the extent it can be given effect, or the application of those provisions to persons at circumstances other than those to which it is held invalid, shall not be affected thereby, and to this end the provisions of this Article are severable. (Added by Ord. 180-88, App. 4/28/88)

[The next page is 561]

ARTICLE 19C: REGULATING SMOKING IN PUBLIC PLACES AND IN HEALTH, EDUCATIONAL AND CHILD CARE FACILITIES

Per Ordinance 249-94, the provisions of this Article are suspended unless and until such time that these provisions become operative again.

SEC. 1008. FINDINGS.

(a) The United States Surgeon General's 1986 Report on the Health Consequences of Involuntary Smoking reports the following:

(1) Involuntary smoking is a cause of disease, including lung cancer, in healthy nonsmokers.

(2) The children of parents who smoke compared with the children of nonsmoking parents have an increased frequency of respiratory infections, increased respiratory symptoms, and slightly smaller rates of increase in lung function as the lung matures.

(3) The simple separation of smokers and nonsmokers within the same air space may reduce, but does not eliminate, the exposure of nonsmokers to environmental tobacco smoke.

(b) The Board of Supervisors finds and declares:

(1) Nonsmokers have no adequate means to protect themselves from the damage inflicted upon them when they involuntarily inhale tobacco smoke.

(2) Regulation of smoking in public places is necessary to protect the health, safety, welfare, comfort, and environment of nonsmokers.

(c) It is, therefore, the intent of the Board of Supervisors, in enacting this Article, to protect the nonsmoker from environmental tobacco smoke and to eliminate smoking, as much as possible, in public places. (Added by Ord. 300-88, App. 6/30/88)

SEC. 1008.1. DEFINITIONS.

Unless the term is specifically defined in this Article or the contrary stated or clearly appears from the context, the definitions set forth in Article 19, Section 1002, of this Code (the Smoking Pollution Control Ordinance) shall govern the interpretation of this Article. The definitions set forth in this Article shall be construed so as to make the prohibition against smoking set forth herein broadly applicable.

(a) "Bar" means an area which is devoted to the serving of alcoholic beverages for consumption by patrons on the premises and in which the serving of food is only incidental to the consumption of such beverages.

(b) "Child care facility" means a facility in which a person, at the request and consent of a parent or legal guardian, provides care during a part of any 24-hour period for compensation, whether or not such person is licensed.

(c) "Educational facility" means any school or educational institution, whether commercial or nonprofit, operated for the purpose of providing academic classroom instruction, trade, craft, computer or other technical training, or instruction in dancing, artistic, musical or other cultural skills.

(d) "Enclosed" means closed in by a roof and four walls with appropriate openings for ingress and egress. It includes areas commonly described as public lobbies or lobbies when they are in an area that is enclosed as defined herein.

(e) "Motion picture theater" means any theater engaged in the business of exhibiting motion pictures.

(f) "Nonprofit establishment" means any office, store, or other place operated by any corporation, unincorporated association or other entity created for charitable, philanthropic, educational, character building, political, social or other similar purposes, the net proceeds from the operation of which are committed to the promotion of the objects or purposes of the organization and not to private financial gain. A public agency is not a nonprofit entity.

(g) "Person" means a natural person or any legal entity, including but not limited to a corporation, firm, partnership or trust.

(h) "Public area" means any enclosed area of a building to which members of the general public have access. It shall include, by way of example only, lobbies of businesses open to the public; reception areas of businesses open to the public; department stores; one-room businesses where the room is open to the public; restrooms open to the public; stairways, hallways, escalators and elevators in buildings open to the public; and other enclosed areas open to the public as set forth herein.

(i) "Business establishment" means any business, store, office or other place where goods or services are sold or provided as part of a commercial venture. It includes but is not limited to the following: (1) automobile dealerships, furniture or other showrooms for the display of merchandise offered for sale; (2) grocery, pharmacy, specialty, department and other stores which sell goods or merchandise; (3) service stations, stores or shops for the repair or maintenance of appliances, shoes, motor vehicles or other items or products; (4) barbershops, beauty shops, cleaners, laundromats and other establishments offering services to the general public; (5) video arcade, poolhall, and other amusement centers; (6) offices providing professional services such as legal, medical, dental, engineering, and architectural services; (7) banks, savings and loan offices, and other financial establishments; (8) hotels and motels, and other places that provide accommodations to the public.

(j) "Retail tobacco store" shall mean a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.

(k) "Sports arena" means sports stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys and similar places where the public assembles either to engage in physical exercise, participate in athletic competition or witness sports events. (Added by Ord. 300-88, App. 6/30/88)

SEC. 1008.2. REGULATION OF SMOKING IN PUBLIC PLACES AND DESIGNATED FACILITIES.

Smoking shall be prohibited in those enclosed areas of the following places during those times when the general public has access to them; notwithstanding any other provision of this Article, smoking is permitted in the public areas of the following places without violating this Article if one or more designated smoking areas are established which are physically separated by walls or partitions so that smoke does not permeate into areas where smoking is prohibited and so long as such designated smoking areas do not exceed in aggregate size the area or areas devoted to non-smoking which are for the general public.

(a) Public areas of every building or portion thereof on property owned or leased by the City and County of San Francisco; within 90 days after the effective date of this ordinance, every commission, department or agency with jurisdic-

tion over such property shall adopt regulations or policies implementing the provisions of this Article;

(b) Public areas of hearing rooms, courtrooms, or places of public assembly located in buildings in which the business of any governmental body or agency is conducted;

(c) Polling places;

(d) (1) Public areas of health facilities, including but not limited to hospitals, long term care facilities, clinics, physical therapy facilities, and doctors' and dentists' offices, which public areas shall include waiting rooms and lobbies;

(2) The following private areas of hospitals, long term care facilities, clinics, physical therapy facilities, doctors' and dentists' offices, and other health facilities, even though the general public may not have access to such areas: wards, inpatient rooms, and outpatient examination and treatment rooms;

(3) Health Facility Exemptions. Notwithstanding any other provision of this Article, smoking is permitted in (i) wards and inpatient rooms if all patients currently in the ward or room request in writing to be placed in a room where smoking is permitted; and (ii) in designated areas in waiting rooms and lobbies of health facilities which may be established and which are physically separated by walls or partitions so that smoke does not permeate into areas where smoking is prohibited so long as such designated smoking areas do not exceed in aggregate size the areas in the lobbies and waiting rooms which are for the general public and designated as non- smoking; and (iii) in publicly owned long term care facilities, provided that such facilities shall adopt within 90 days of the effective date of this ordinance a written plan designed to meet the needs of patients, family and staff for a smoke-free environment;

(e) Public areas in educational facilities;

(f) Classrooms, meeting or conference rooms, and lecture halls in educational facilities; this prohibition is intended to apply even when such areas are open only to persons enrolled or otherwise formally authorized to attend;

(g) Public areas in business establishments and nonprofit establishments; provided, however, that not included are any establishments which employ three or fewer employees;

(h) Public areas of privately owned aquariums, galleries, libraries and museums when open to the public;

(i) Enclosed areas in child care facilities when children are present; provided, however, that not included are child care facilities which employ three or fewer employees. This prohibition is intended to apply even when such areas are open only to those being cared for in such facilities;

(j) Notwithstanding the provision of subsection (g) above that exempts establishments which employ three or fewer employees, all areas of all automatic laundries or launderettes intended for use by members of the general public.

Notwithstanding any other provision of this Article, any owner, operator, manager, or other person who controls any establishment or facility described in this Article may declare the entire establishment or facility as non-smoking. (Added by Ord. 300-88, App. 6/30/88; amended by Ord. 16-90, App. 1/10/90)

SEC. 1008.3. REGULATION OF SMOKING IN PLACES OF ENTERTAINMENT, SPORTS ARENAS, CONVENTION FACILITIES, AND HOTEL LOBBIES.

The owner of the following premises, or the person who has the right to possession and management of the premises, shall designate smoking and non- smoking areas in enclosed areas of the following places and shall enforce the smoking prohibition in the non- smoking areas during those times when the general public has access to the premises. The owner or person with the right to possession and management shall post the signs required by Section 1008.5. An enclosed area may be divided into smoking and non-smoking areas without a physical separation between them. The posted signs shall clearly designate where the demarcation is between the smoking and non-smoking areas.

Designated smoking areas shall not exceed in aggregate size the areas which are for the general public and which must be devoted to nonsmoking.

(a) Public areas of any building primarily used for exhibiting motion pictures, drama, dance, musical performance or other entertainment, and within any room, hall or auditorium that is occasionally used for exhibiting motion pictures, drama, dance, musical performance, lecture or other entertainment during the time that said room, hall or auditorium is open to the public for such exhibition; provided, however, that smoking is permitted on a stage when such smoking is part of a stage production;

(b) Public areas of buildings containing sports arenas;

(c) Public areas of convention facilities;

(d) Hotel lobbies. (Added by Ord. 300-88, App. 6/30/88)

SEC. 1008.4. APPLICATION AND EXCEPTIONS.

(a) The following shall not be subject to this Article:

(1) "Eating establishments" regulated by Article 19A of this Code;

(2) Bars; provided, however, that not excluded from the requirements of this Article are areas commonly known as lobbies located in hotels, convention centers, theaters, and similar establishments;

(3) Rooms rented to guests in hotels, motels and similar establishments where not designated by the proprietor of said facilities as nonsmoking;

(4) Retail tobacco stores;

(5) Discotheques, dance halls, or other establishments which are primarily devoted to entertaining people by providing music and dancing.

(b) Article 19 of this Code regulates smoking in the office workplace. In those times and places where the provisions of this Article apply, they shall govern. In all other instances, the provisions of Article 19 shall apply. Notwithstanding any other provision of this Article, no employee shall be entitled to smoke in an office workplace unless the provisions of Article 19 are complied with. (Added by Ord. 300-88, App. 6/30/88)

SEC. 1008.5. POSTING OF SIGNS.

(a) "No Smoking" signs with letters of not less than one inch in height or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) shall be conspicuously posted in every enclosed area where smoking is prohibited by this Article by the owner of such building or, if a different person has the right to possession and management of the property, by the person with such right.

(b) The owner and the manager or operator of every theater and auditorium shall be responsible for conspicuously posting signs in the lobby stating that smoking is prohibited within the theater or auditorium and the lobby, and in the case of motion picture theaters, such information shall be shown upon the screen for at least five seconds prior to the showing of each feature motion picture.

(c) "Smoking" signs may be posted where permitted by this Article. (Added by Ord. 300-88, App. 6/30/88)

SEC. 1008.6. UNLAWFUL TO PERMIT SMOKING IN OR TO SMOKE IN PROHIBITED AREAS.

(a) It shall be unlawful for the owner of any property or establishment subject to this Article, or, if a different person has the right to possession and management of such property or establishment, for that person, to fail to post or to maintain the signs required by this Article or to permit any person to smoke in any area where smoking is prohibited by this Article. The person responsible for enforcing the prohibition against smoking in designated areas shall be deemed to have complied with these Sections if he or she posts the signs required by this Article and, upon notice of a violation, promptly makes a good faith effort to notify the violator that smoking is illegal and requests the violator not to smoke, either personally or through a designee.

(b) It is unlawful for any person to smoke in an area where signs have been posted indicating that smoking is prohibited or to smoke in an area where this Article prohibits smoking. (Added by Ord. 300-88, App. 6/30/88)

SEC. 1008.7. PENALTIES AND ENFORCEMENT.

(a) The Director of Health (hereinafter "Director") may enforce the provisions of this Article against violations by serving notice requiring the correction of any violation within a reasonable time specified by the Director. Upon the violator's failure to comply with the notice within the time period specified, (1) the Director may request the City Attorney to maintain an action for injunction to enforce the provisions of this Article and for assessment and recovery of a civil penalty for such violation and (2) the owner of the premises or the person with the right to possession and management of the property may maintain an action for injunctive relief to enforce the provisions of this Article and an action for damages. Damages may be awarded up to $500 a day for each day that the violation occurs or is permitted to continue. It is necessary to specify the amount of such damages because of the extreme difficulty that the owner or other authorized person would have in establishing injury based on lost business, lost productivity due to health injuries caused by tobacco smoke, and other costs arising because of the health problems created by smoking.

(b) Any person that violates or refuses to comply with the provisions of this Article shall be liable for a civil penalty, not to exceed $500 for each day such violation is committed or permitted to continue, which penalty shall be assessed and recovered in a civil action brought in the name of the people of the City and County of San Francisco, by the City Attorney, in any court of competent jurisdiction. Any penalty assessed and recovered in a civil action brought pursuant to this Section shall be paid to the Treasurer of the City and County of San Francisco.

(c) Any person who violates or refuses to comply with the provisions of this Article shall be guilty of an infraction, and shall be deemed guilty of a separate offense for every day such violation or refusal shall continue. Every violation is punishable by (1) a fine not exceeding $100 for a first violation; (2) a fine not exceeding $200 for a second violation within one year; (3) a fine not exceeding $500 for each additional violation within one year.

(d) In undertaking the enforcement of this ordinance, the City and County of San Francisco is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury. (Added by Ord. 300-88, App. 6/30/88)

SEC. 1008.8. SEVERABILITY.

If any provision of this Article, or the application of any such provision to any person or circumstances, shall be held invalid, the remainder of this Article, to the extent it can be given effect, or the application of those provisions to persons or circumstances other than those to which it is held invalid, shall not be affected thereby, and to this end the provisions of this Article are severable. (Added by Ord. 300-88, App. 6/30/88)

[The next page is 575]

ARTICLE 19D: PROHIBITING CIGARETTE VENDING MACHINES

SEC. 1009. DEFINITIONS.

Unless the term is specifically defined in this Article or the contrary stated or clearly appears from the context, the definitions set forth in Article 19, Section 1002 of this Code shall govern the interpretation of this Article.

(a) "Cigarette vending machine" shall mean any electronic or mechanical device or appliance the operation of which depends upon the insertion of money, whether in coin or paper bill, or other thing representative of value, which dispenses or releases a tobacco product and/or tobacco accessories.

(b) "Tobacco product" shall mean any substance containing tobacco leaf, including but not limited to cigarettes, cigars, pipe, tobacco, snuff, chewing tobacco, and dipping tobacco.

(c) "Tobacco accessories" shall mean cigarette papers or wrappers, pipes, holders of smoking materials of all types, cigarette rolling machines, and any other item designed primarily for the smoking or ingestion of tobacco products.

(d) A "six-month owner" shall mean a person who purchased a cigarette vending machine fewer than six months prior to the effective date of this Amendment for the purpose of using the vending machine to sell or distribute tobacco products exclusively within the City and County of San Francisco and who on the effective date of this Amendment was using the vending machine in a place inaccessible to minors and who has not, or will not have, recovered his, her or its investment therein by the date on which discontinuance of use is required pursuant to Section 1009.1(b). (Added by Ord. 234-91, App. 6/18/91; amended by Ord. 20-97, App. 1/24/97)

SEC. 1009.1. PROHIBITION OF CIGARETTE VENDING MACHINES.

(a) No person shall locate, install, keep, maintain or use, or permit the location, installation, keeping, maintenance or use on his, her or its premises of any cigarette vending machine used or intended to be used for the purpose of selling or distributing any tobacco products or tobacco accessories therefrom.

(b) Any cigarette vending machine in use on the effective date of this Amendment on premises to which access by minors is prohibited by law shall be removed within 90 days after the effective date of this Amendment.

(c) A six-month owner may apply to the Director of Public Health for a use extension based on financial hardship. A use extension shall be granted to a six-month owner if the Director of Public Health, or the Director's designee appointed to consider the application, makes all of the following findings:

(1) That the cigarette vending machine was intended for use only within the corporate limits of the City and County of San Francisco and had been in use on premises inaccessible to minors on the effective date of this Amendment;

(2) That the vending machine owner had owned the machine for less than six months prior to the effective date of this Amendment;

(3) That the vending machine owner has not, or will not have recovered his, her or its investment therein before the date of required discontinuance;

(4) That the vending machine owner has no practical way to recover the investment in the machine other than its continued use within the corporate limits of the City and County of San Francisco on premises inaccessible to minors;

(5) That the investment not yet recovered exceeds 10 percent of the actual cost of the machine; and

(6) That the vending machine will be placed in a location on the premises easily viewed and supervised by the owner or a responsible employee.

The length of the use extension shall not exceed that additional time period necessary to allow recovery of the owner's investment; provided, however, that no use extension shall be granted which allows the total time during which the machine will be in use within the corporate limits of the City and County of San Francisco on premises inaccessible to minors to exceed one year from the date of installation of the machine. The cigarette vending machine owner shall bear the burden of proof on each issue. The decision of the Director of Public Health, or the Director's designee, shall be final. The Director's power to grant a use extension shall expire six months after the effective date of this Amendment. (Added by Ord. 234-91, App. 6/18/91; amended by Ord. 20-97, App. 1/24/97)

SEC. 1009.2. DISCLAIMERS.

By prohibiting cigarette vending machines, the City and County of San Francisco is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury. (Added by Ord. 234-91, App. 6/18/91; amended by Ord. 20-97, App. 1/24/97)

SEC. 1009.3. PENALTIES AND ENFORCEMENT.

(a) The Director of Public Health shall enforce Section 1009.1 hereof against violations by any of the following actions:

(1) Receiving complaints relating to violations of this Article;

(2) Acting upon complaints relating to violations of this Article by either:

(A) Serving notice requiring correction of any violation of this Article;

(B) Calling upon the City Attorney to maintain an action for injunction to enforce the provisions of this Article, to cause the correction of any such violation, and for assessment and recovery of a civil penalty for such violation.

(b) Any person who violates or refuses to comply with the provisions of this Article shall be liable for a civil penalty of $100, which penalty shall be assessed and recovered in a civil action brought in the name of the People of the City and County of San Francisco in any court of competent jurisdiction. Each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such. Any penalty assessed and recovered in an action brought pursuant to this paragraph shall be paid to the Treasurer of the City and County of San Francisco.

(c) Any person who violates or refuses to comply with the provisions of this Article shall be guilty of an infraction, and shall be deemed guilty of a separate offense for every day such violation or refusal shall continue. Every violation is punishable by (1) a fine of at least $25 but not exceeding $100 for a first violation; (2) a fine of at least $100 but not exceeding $200 for a second violation within one year; (3) a fine of at least $200 but not exceeding $500 for each additional violation within one year. (Added by Ord. 234-91, App. 6/18/91; amended by Ord. 20-97, App. 1/24/97)

SEC. 1009.4. SEVERABILITY.

If any provision of this Article, or the application of any such provision to any person or circumstances, shall be held invalid, the remainder of this Article, to the extent it can be given effect, or the application of those provisions to persons or circumstances other than those to which it is held invalid, shall not be affected thereby, and to this end the provisions of this Article are severable. (Added by Ord. 234-91, App. 6/18/91; amended by Ord. 20-97, App. 1/24/97)

[The next page is 581]

ARTICLE 19E: PROHIBITING SMOKING IN PLACES OF EMPLOYMENT AND CERTAIN SPORTS ARENAS

Per Ordinance 249-94, the provisions of this article are suspended unless and until such time that these provisions become operative again.

SEC. 1009.5. PROHIBITION OF SMOKING IN PLACES OF EMPLOYMENT AND SPORTS ARENAS.

(a) No employer shall knowingly or intentionally permit, and no person shall engage in, the smoking of tobacco products in an enclosed space at a place of employment.

(b) No owner, manager, or operator of a sports arena or stadium shall knowingly or intentionally permit, and no person on the premises shall engage in, the smoking of tobacco products in any enclosed or open space at a sports arena or stadium except in (1) concourses and ramps outside seating areas, (2) private suites and corridors to private suites, and (3) areas designated for parking. Any portion of a sports arena or stadium used as a bar or restaurant shall be subject to the provisions of this Article governing bars and restaurants as "places of employment." For purposes of this Section a sports arena or stadium means a publicly owned facility which has a seating capacity of at least 30,000 people.

(c) For purposes of this Section:

(1) Except as otherwise provided in this Section, the terms "employer" and "employee" shall have the same meaning as the construction given those terms in Labor Code Sections 6304 and 6304.1.

(2) "Place of employment" means any place, and the premises appurtenant thereto, where employment is carried on. "Place of employment" shall not include:

(A) That portion of any hotel or motel lobby designated for smoking, provided that no hotel or motel shall designate more than 25 percent of any lobby for smoking, and provided further that no hotel or motel shall permit smoking in any room used for exhibit space;

(B) Hotel and motel guest room accommodations designated as smoking rooms, provided that hotels and motels shall designate at least 35 percent of the guest rooms as nonsmoking;

(C) Facilities used to conduct charity bingo games pursuant to Penal Code Section 326.5 during such times that persons are assembled in the facility in connection with such games;

(D) Banquet rooms in use for private social functions;

(E) Bars. A "bar" means an area which is devoted to the serving of alcoholic beverages for consumption by patrons on the premises and in which the serving of food is only incidental to the consumption of such beverages. If a restaurant contains a bar, that portion that constitutes the bar shall not be considered a place of employment under this ordinance;

(F) Private homes;

(G) Any store that engages exclusively in the sale of tobacco and tobacco related products and any portion of any store devoted exclusively to the sale of tobacco and tobacco related products.

(d) For purposes of this Section, an employer who permits any nonemployee access to his or her place of employment on a regular basis

has not acted knowingly or intentionally if he or she has taken the following reasonable steps to prevent smoking by a nonemployee:

(1) Posted clear and prominent "No Smoking" signs at each entrance to the workplace premises;

(2) Has requested, when appropriate, that a nonemployee who is smoking refrain from smoking in the enclosed workplace.

For purposes of this subsection, "reasonable steps" shall not include the physical ejectment of a nonemployee from the place of employment.

(e) For purposes of this Section, the owner, manager, or operator of a sports arena has not acted knowingly or intentionally if he or she has taken the reasonable steps described in Subsection (d) to prevent smoking by a person on the premises who is not an employee of the owner, manager or operator.

(f) Insofar as this Article applies to actions or omissions involving smoking that are also governed by any other ordinance of the City and County of San Francisco, the provisions of this Article are intended to supersede any other provision; provided, however, that the provisions of this Article supersede such other provision only after the provisions of this Article that apply to such act or omission become operative. The intent of this Section is that the current ordinances regulating smoking continue to be enforced until the applicable provisions of this Article become operative. (Added by Ord. 359-93, App. 11/18/93)

SEC. 1009.6. HARDSHIP EXEMPTION FOR RESTAURANTS.

(a) Any owner or manager of a restaurant may apply to the Controller for an exemption from or modification of the requirements of this Article based on significant financial hardship caused by compliance with this Article. The applicant shall include all information required by the Controller. An application for exemption or modification shall be accompanied by a reasonable fee established by the Controller to cover the costs required to process the application and make a determination. The Controller shall give the Department of Public Health an opportunity to present relevant information with respect to each application.

(b) The applicant shall have the burden of proof in establishing that this Article has created an unreasonable economic effect on the applicant's business and threatens the survival of the restaurant, and that this economic effect is not the result of seasonal fluctuations or other conditions unrelated to the requirements of this Article. The Controller shall act on the application pursuant to administrative regulations adopted by the Controller. The Controller shall not be required to conduct a hearing on the application. The Controller shall issue a decision in writing to the applicant and to any other person who has requested a copy.

(c) The decision of the Controller may be appealed within 15 days of the issuance of the decision to the Board of Permit Appeals by the applicant or by any person who deems that his or her interests or that the general public interest will be adversely affected by the decision. The Board of Permit Appeals may concur in, overrule or modify the Controller's decision. The provisions of Sections 8 through 16 of Part III of the San Francisco Municipal Code shall govern the appeal process.

(d) No exemptions or modifications shall be granted to any restaurant which has not been smokefree for a period of less than six months. Notwithstanding any other provision of this Article, any restaurant which has been granted an exemption or modification from the requirements of this Article shall not permit smoking in more than 25 percent of the seating or floor space of the restaurant.

(e) Exemptions granted by the Controller or the Board of Permit Appeals shall be valid for a period not to exceed 12 months and may be renewed upon application to the Controller. Applications for renewal shall be subject to the same requirements and procedures as initial applications. (Added by Ord. 359-93, App. 11/18/93)

SEC. 1009.7. VIOLATIONS AND PENALTIES.

(a) The Director of Public Health may enforce the provisions of this Article against violations by serving notice requiring the correction of any violation within a reasonable time specified by the Director. Upon the violator's failure to comply with the notice within the time period specified, (1) the Director may request the City Attorney to maintain an action for injunction to enforce the provisions of this Article and for assessment and recovery of a civil penalty for such violation and (2) the owner of the premises or the person with the right to possession and management of the property may maintain an action for injunctive relief to enforce the provisions of this Article and an action for damages. Damages may be awarded up to $500 a day for each day the violation occurs or is permitted to continue. It is necessary to specify the amount of such damages because of the extreme difficulty that the owner or other authorized person would have in establishing injury based on lost business, lost productivity due to health injuries caused by tobacco smoke, and other costs arising because of the health problems created by smoking.

(b) Any person who violates or refuses to comply with the provisions of this Article, shall be liable for a civil penalty, not to exceed $500 for each day such violation is committed or permitted to continue, which penalty shall be assessed and recovered in a civil action brought in the name of the people of the City and County of San Francisco, by the City Attorney, in any court of competent jurisdiction. Any penalty assessed and recovered in a civil action brought pursuant to this Section shall be paid to the Treasurer of the City and County of San Francisco.

(c) In addition to any other penalty or provision regarding enforcement set forth in this Article, any violation of the prohibition set forth in this Article is a misdemeanor punishable by a fine not to exceed $250 for a first violation, $350 for a second violation within one year, and $600 for a third and for each subsequent violation within one year. (Added by Ord. 359-93, App. 11/18/93)

SEC. 1009.8. DISCLAIMERS.

In adopting and undertaking the enforcement of this ordinance, the City and County of San Francisco is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury. (Added by Ord. 359-93, App. 11/18/93)

SEC. 1009.9. SEVERABILITY.

If any provision of this Act or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of the Act that can be given effect without the invalid provision of application, and to this end the provisions of this Act are severable. (Added by Ord. 359-93, App. 11/18/93)

SEC. 1009.10. OPERATIVE DATE.

The provisions of this Article shall not be operative until February 1, 1994; provided, however, that with respect to restaurants, the provisions of this Article shall not be operative until January 1, 1995. (Added by Ord. 359-93, App. 11/18/93)

[The next page is 591]

ARTICLE 19F: PROHIBITING SMOKING IN ENCLOSED AREAS AND SPORTS STADIUMS

SEC. 1009.20. FINDINGS.

(a) The United States Surgeon General's 1986 Report on the Health Consequences of Involuntary Smoking reports the following:

(1) Involuntary smoking is a cause of disease, including lung cancer, in healthy nonsmokers.

(2) The children of parents who smoke compared with the children of nonsmoking parents have an increased frequency of respiratory infections, increased respiratory symptoms, and slightly smaller rates of increase in lung function as the lung matures.

(3) The simple separation of smokers and nonsmokers within the same air space may reduce, but does not eliminate, the exposure of nonsmokers to environmental smoke.

(b) The Board of Supervisors finds and declares:

(1) Nonsmokers have no adequate means to protect themselves from the damage inflicted upon them when they involuntarily inhale tobacco smoke.

(2) Regulation of smoking in public places is necessary to protect the health, safety, welfare, comfort, and environment of nonsmokers.

(c) It is, therefore, the intent of the Board of Supervisors, in enacting this Article, to protect the nonsmoker from environmental tobacco smoke and to eliminate smoking, as much as possible, in public places. (Added by Ord. 249-94, App. 7/7/94)

SEC. 1009.21. DEFINITIONS.

Unless the term is specifically defined in this Article or the contrary stated or clearly appears from the context, the definitions set forth in this Section shall govern the interpretation of this Article. The definitions set forth in this Article shall be construed so as to make the prohibition against smoking set forth herein broadly applicable.

(a) "Bar" means an area which is devoted to the serving of alcoholic beverages for consumption by patrons on the premises and in which the serving of food is only incidental to the consumption of such beverages.

(b) "Business establishment" means any retail establishment, office, business, store, factory, warehouse, storage facility or other place operated as a commercial venture. The term includes any place where services are provided or goods are manufactured, distributed, processed, assembled, sold or displayed for sale on a wholesale or retail basis. The term also includes any place operated as part of the commercial venture, such as places that provide accounting, management, personnel, information processing, accounting, communication, financial and other support services.

"Business establishment" includes, but is not limited to: (1) automobile dealerships, furniture or other showrooms for the display of merchandise offered for sale; (2) grocery, pharmacy, specialty, department and other stores which sell

goods or merchandise; (3) service stations, stores or shops for the repair or maintenance of appliances, shoes, motor vehicles or other items or products; (4) barbershops, beauty shops, cleaners, laundromats and other establishments offering services to the general public; (5) video arcade, poolhall, and other amusement centers; (6) offices providing professional services such as legal, medical, dental, engineering, accounting and architectural services; (7) banks, savings and loan offices, and other financial establishments; (8) hotels and motels, and other places that provide accommodations to the public, subject to the exceptions set forth in Section 1009.23.

"Business establishment" shall not include a separately enclosed business establishment directly administered and operated on site by a person or persons who own or have an ownership interest in the business if such establishment is smaller than five hundred square feet.

(c) "Child care facility" means a facility in which a person, at the request and consent of a parent or legal guardian, provides care during a part of any 24-hour period for compensation, whether or not such person is licensed.

(d) "Educational facility" means any school or education institution, whether commercial or nonprofit, operated for the purpose of providing academic classroom instruction, trade, craft, computer or other technical training, or instruction in dancing, artistic, musical or other cultural skills.

(e) "Nonprofit establishment" means any facility used for social, recreational, health care or similar services, or office, store, or other place operated by any corporation, unincorporated association or other entity created for charitable, philanthropic, educational, character building, political, social or other similar purposes, the net proceeds from the operation of which are committed to the promotion of the objects or purposes of the organization and not to private financial gain. A public agency is not a nonprofit entity.

(f) "Person" means any individual person, firm, partnership, association, corporation, company, organization, or legal entity of any kind.

(g) "Restaurant" means every enclosed restaurant, coffee shop, cafeteria, cafe, luncheonette, sandwich stand, soda fountain, or other enclosed eating establishment serving food to the general public.

(h) "Smoking" or "to smoke" means and includes inhaling, exhaling, burning or carrying any lighted smoking equipment for tobacco or any other weed or plant;

(i) "Sports arena" means sports stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys and similar places where the public assembles either to engage in physical exercise, participate in athletic competition or witness sports events. (Added by Ord. 249-94, App. 7/7/94)

SEC. 1009.22. PROHIBITING SMOKING IN BUILDINGS AND ENCLOSED STRUCTURES CONTAINING CERTAIN USES AND CERTAIN SPORTS STADIUMS.

(a) Smoking is prohibited in buildings and enclosed structures which contain any of the facilities or uses set forth below.

(1) Facilities owned or leased by the City and County of San Francisco; every commission, department or agency, with jurisdiction over such property shall adopt regulations or policies implementing the provisions of this Article; provided, however, with respect to facilities located outside the City and County of San Francisco, the regulations or policies shall prohibit smoking in enclosed areas during those times that the public has access, except that (A) in any enclosed area a designated smoking area may be provided if it is physically separated from and no larger than the nonsmoking area, and (B) when the public does not have access to an enclosed area, the provisions of Article 19 apply;

(2) Facilities in which the business of any governmental body or agency is conducted, including hearing rooms, courtrooms or places of public assembly;

(3) Polling places;

(4) Health facilities, including, but not limited to, hospitals, long term care facilities, doctors' and dentists' offices, inpatient rooms, and outpatient examination and treatment rooms;

(5) Educational facilities;

(6) Business establishments;

(7) Nonprofit establishments, except that persons qualifying under California Health Code Section 11362.5 to use medical marijuana may smoke medical marijuana on the premises of a nonprofit medical marijuana buyer's club;

(8) Aquariums, galleries, libraries and museums;

(9) Child care facilities, except when located in private homes;

(10) Facilities used for exhibiting motion pictures, drama, dance, musical performance, lectures, or other entertainment;

(11) Sports arenas; provided, however, that Subsection (b) shall govern sports stadiums as defined in that subsection;

(12) Convention facilities;

(13) Restaurants, subject to the provisions of Section 1009.24.

(14) Ticketing, boarding and waiting areas of public transit systems, including bus, train, trolley and cable car stops and shelters.

Smoking is prohibited throughout the building or structure and in the common areas, including the elevators, hallways, stairways, restrooms, conference and meetings rooms, and eating and break rooms, if any.

(b) No owner, manager, or operator of a sports stadium shall knowingly or intentionally permit, and no person on the premises shall engage in, the smoking of tobacco products in any enclosed or open space at a sports stadium except in (1) concourses and ramps outside seating areas, (2) private suites and corridors to private suites, and (3) areas designated for parking. Any portion of a sports stadium used as a bar or restaurant shall be governed by the provisions of this Article regulating smoking in bars and restaurants. For purposes of this subsection, a sports stadium means a publicly owned facility which has a seating capacity of at least 30,000 people.

(c) It is unlawful for any person to smoke in any area where this Article prohibits smoking. It is unlawful for the owner of any property, facility or establishment subject to this Article or if a different person has the right to possession or management of such property, facility or establishment, for that person to permit any person to smoke in any area where smoking is prohibited by this Article.

(d) No person who owns, operates or manages property will be deemed to be in violation of the requirements of this Article with respect to persons smoking in such areas over whom they have no right of direction and control if they have taken the following reasonable steps to prevent smoking by such persons:

(1) Posted clear and prominent "no smoking" signs at each entrance to the premises;

(2) Requested, when appropriate, that such person refrain from smoking.

For purposes of this subsection, "reasonable steps" shall not include the physical ejectment of a person from the premises. (Added by Ord. 249-94, App. 7/7/94; amended by Ord. 266-99, File No. 991462, App. 10/22/99; Ord. 68-06, File No. 051669, App. 4/20/2006)

SEC. 1009.23. EXCEPTIONS.

The following places shall not be subject to this Article:

(a) That portion of any hotel or motel lobby designated for smoking, provided that no hotel or motel shall designate more than 25 percent of any lobby for smoking, and provided further that no hotel or motel shall permit smoking in any room used for exhibit space;

(b) Hotel and motel guest room accommodations designated as smoking rooms, provided that hotels and motels shall designate at least 35 percent of the guest rooms as nonsmoking;

(c) Facilities used to conduct charity bingo games pursuant to Penal Code Section 326.5 during such times that persons are assembled in the facility in connection with such games;

(d) Banquet rooms in use for private social functions;

(e) Bars. If a restaurant contains a bar, smoking shall be permitted in that portion that constitutes the bar;

(f) Private homes;

(g) Any store that engages exclusively in the sale of tobacco and tobacco-related products and any portion of any store devoted exclusively to the sale of tobacco and tobacco-related products. (Added by Ord. 249- 94, App. 7/7/94)

SEC. 1009.24. OPERATIVE DATE, INTERIM REGULATION, AND HARDSHIP EXEMPTION FOR RESTAURANTS.

(a) Notwithstanding the provisions of Section 1009.22, the provisions of this Article prohibiting smoking in restaurants shall not be operative until January 1, 1995.

(b) Prior to January 1, 1995, smoking shall be prohibited in restaurants in lobbies, waiting areas, restrooms, and dining areas designated for nonsmoking. Unless the restaurant has been designated entirely nonsmoking, the owner, manager or operator of a restaurant shall allocate and designate by appropriate signage an adequate amount of space in these areas to meet the demands of both smokers and nonsmokers, and shall inform all patrons that nonsmoking areas are provided.

(c) On or after January 1, 1995, any owner or manager of a restaurant may apply to the Controller for an exemption from or modification of the requirements of this Article based on significant financial hardship caused by compliance with this Article.

(1) The applicant shall include all information required by the Controller. An application for exemption or modification shall be accompanied by a reasonable fee established by the Controller to cover the costs required to process the application and make a determination. The Controller shall give the Department of Public Health an opportunity to present relevant information with respect to each application.

(2) The applicant shall have the burden of proof in establishing that this Article has created an unreasonable economic effect on the applicant's business and threatens the survival of the restaurant, and that this economic effect is not the result of seasonal fluctuations or other conditions unrelated to the requirements of this Article. The Controller shall act on the application pursuant to administrative regulations adopted by the Controller. The Controller shall not be required to conduct a hearing on the application. The Controller shall issue a decision in writing to the applicant and to any other person who has requested a copy.

(3) The decision of the Controller may be appealed within 15 days of the issuance of the decision to the Board of Permit Appeals by the applicant or by any person who deems that his or her interests or that the general public interest will be adversely affected by the decision. The Board of Permit Appeals may concur in, overrule or modify the Controller's decision. The provisions of Sections 8 through 16 of Part III of the San Francisco Municipal Code shall govern the appeal process.

(4) No exemptions or modifications shall be granted to any restaurant unless it has been smokefree for at least one year. Notwithstanding any other provision of this Article, any restaurant which has been granted an exemption or modification from the requirements of this Article shall not permit smoking in more than 25 percent of the seating or floor space of the restaurant.

(5) Exemptions granted by the Controller or the Board of Permit Appeals shall be valid for a period not to exceed 12 months and may be renewed upon application to the Controller. Applications for renewal shall be subject to the same requirements and procedures as initial applications. (Added by Ord. 249-94, App. 7/7/94)

SEC. 1009.25. VIOLATIONS AND PENALTIES.

(a) The Director of Public Health may enforce the provisions of this Article against violations by serving notice requiring the correction of

any violation within a reasonable time specified by the Director. Upon the violator's failure to comply with the notice within the time period specified, (1) the Director may request the City Attorney to maintain an action for injunction to enforce the provisions of this Article and for assessment and recovery of a civil penalty for such violation and (2) the owner of the premises or the person with the right to possession and management of the property may maintain an action for injunctive relief to enforce the provisions of this Article and an action for damages. Damages may be awarded up to $500 a day for each day the violation occurs or is permitted to continue. It is necessary to specify the amount of such damages because of the extreme difficulty that the owner or other authorized person would have in establishing injury based on lost business, lost productivity due to health injuries caused by tobacco smoke, and other costs arising because of the health problems created by smoking.

(b) Any person who violates or refuses to comply with the provisions of this Article shall be liable for a civil penalty, not to exceed $500 for each day such violation is committed or permitted to continue, which penalty shall be assessed and recovered in a civil action brought in the name of the people of the City and County of San Francisco, by the City Attorney, in any court of competent jurisdiction. Any penalty assessed and recovered in a civil action brought pursuant to this Section shall be paid to the Treasurer of the City and County of San Francisco.

(c) In addition to any other penalty or provision regarding enforcement set forth in this Article, any violation of the prohibition set forth in this article is a misdemeanor punishable by a fine not to exceed $250 for a first violation, $350 for a second violation within one year, and $600 for a third and for each subsequent violation within one year. (Added by Ord. 249-94, App. 7/7/94)

SEC. 1009.26. DISCLAIMERS.

In adopting and undertaking the enforcement of this ordinance, the City and County of San Francisco is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury. (Added by Ord. 249-94, App. 7/7/94)

SEC. 1009.27. RELATIONSHIP TO OTHER SMOKING RESTRICTIONS.

The provisions of this Article 19F are intended to supersede the smoking regulations set forth in Articles 19A, 19B, 19C and 19E. The provisions of Articles 19A, 19B, 19C and 19E are hereby suspended. Notwithstanding the above, if the provisions of this Article 19F are determined invalid in whole or substantial part for any reason, the provisions of Article 19A, 19B, 19C and 19E shall no longer be suspended and shall become immediately operative. Articles 19A, 19B, 19C, and 19E encompass Sections 1006, 1006.1, 1006.2, 1006.3, 1006.4, 1006.5, 1007, 1007.1, 1007.2, 1007.3, 1007.4, 1007.5, 1008, 1008.1, 1008.2, 1008.3, 1008.4, 1008.5, 1008.6, 1008.7, 1008.8, 1009.5, 1009.6, 1009.7, 1009.8, 1009.9, and 1009.10. The Clerk of the Board shall cause to be printed appropriate notations in the Health Code indicating that the provisions of Articles 19A, 19B, 19C and 19E are suspended, unless and until such time that these provisions become operative again. (Added by Ord. 249-94, App. 7/7/94)

[INTENTIONALLY LEFT BLANK]

ARTICLE 19G: ENFORCEMENT OF SMOKING PROHIBITIONS

SEC. 1009.40. AUTHORITY.

(a) **Authority.** The provisions of Labor Code Section 6404.5, governing smoking in enclosed places of employment, shall be enforced by peace officers employed by the San Francisco Police Department and by employees of the Department of Public Health designated by the Director of Public Health; provided, however, that employees designated by the Director of Public Health with the authority to enforce Labor Code Section 6404.5 may only issue citations to employers and not to patrons, customers, consumers or other guests.

(b) **Department of Public Health Employees as Public Officers.** In the performance of their duties of monitoring and enforcing compliance with the provisions of Labor Code Section 6404.5, all persons authorized by the Director of Public Health to engage in such enforcement activities shall have the power, authority and immunity of a public officer and employee as set forth in California Penal Code Section 836.5, and to make arrests without a warrant whenever such employees have reasonable cause to believe that a violation of Labor Code Section 6404.5 has taken place in their presence. In any case in which a person is arrested pursuant to this authority and the person does not demand to be taken before a magistrate, the public officer or employee making the arrest shall prepare a written notice to appear and shall release the person on their promise to appear as prescribed by Chapter 5C (commencing with Section 853.6) of the California Penal Code.

The Director of Public Health, in coordination with the Chief of Police, shall establish and cause to be administered an enforcement training program designed to instruct each employee so authorized by this Section to exercise arrest and citation authority. Such training shall include guidance and instruction regarding the evidentiary prerequisites to proper prosecution of violations thereof; the appropriate procedures for making arrests or otherwise prudently exercising such arrest and citation authority; and the legal and practical ramifications and limitations relevant to exercising enforcement authority. (Added by Ord. 181-95, App. 6/2/95)

[The next page is 609]

ARTICLE 19H: PERMITS FOR THE SALE OF TOBACCO

SEC. 1009.50. FINDINGS.

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

A. State law prohibits the sale or furnishing of cigarettes, tobacco products and smoking paraphernalia to minors, as well as the purchase, receipt, or possession of tobacco products by minors. (California Penal Code section 308.) State law also prohibits public school students from smoking or using tobacco products while on campus, attending school-sponsored activities, or under the supervision or control of school district employees. (California Education Code section 48901(a).) In addition, state law prohibits smoking in enclosed places of employment (California Labor Code section 6404.5). Moreover, San Francisco has adopted ordinances that ban cigarette vending machines in the City (San Francisco Health Code section 1009.1), prohibit the self-service merchandising of tobacco products, except in places to which access by minors is prohibited by law (San Francisco Police Code section 4600.3), and prohibit smoking in enclosed areas and sports stadiums (San Francisco Health Code section 1009.22).

B. Despite these state and local restrictions, minors continue to obtain cigarettes and other tobacco products at alarming rates. Chil-

dren under the age of 18 consume 924 million packs of cigarettes annually in the United States. Over 29 million packs of cigarettes are sold to California children annually. More than 60 percent of all smokers begin smoking by the age of 14, and 90 percent begin by age 19.

C. In a 2002 California youth buying survey, 19.3 percent of retailers surveyed unlawfully sold tobacco products to minors compared to 17.1 percent in 2001.

D. California's rate of illegal tobacco sales to minors is steadily increasing. In 2002 the rate was 19.3 percent, up from 17.1 percent in 2001, and 12.8 percent in 2000.

E. The California Department of Health Services reports that 26.7 percent of California adolescents believe it is easy to buy a pack of cigarettes.

F. Despite active enforcement by the San Francisco Police Department, a significant number of retailers continue to sell tobacco illegally to minors. The rate of illegal tobacco sales documented by the Police Department during 2001 was 25.3 percent and 20.2 percent in 2002.

G. In a youth decoy operation conducted by the Police Department, 50 percent of the 12 bars visited illegally sold tobacco to a minor.

H. San Francisco has a substantial interest in promoting compliance with State laws prohibiting sales of cigarettes and tobacco products to minors, in promoting compliance with laws intended to discourage the purchase of tobacco products by minors, and in protecting our children from illegally obtained tobacco.

I. Requiring tobacco vendors to obtain a tobacco sales permit will not unduly burden legitimate business activities of retailers who sell or distribute cigarettes or other tobacco products to adults. It will, however, allow the City to regulate those establishments selling tobacco products to ensure that they comply with federal, state, and local tobacco laws.

J. This Article is designed to promote the public interest in ensuring that San Francisco businesses operate in compliance with applicable laws regulating tobacco, including laws prohibiting the sale of tobacco to minors and laws regulating smoking. (Added by Ord. 254-03, File No. 030869, App. 11/7/2003)

SEC. 1009.51. DEFINITIONS.

The following words and phrases, whenever used in this Article, shall be construed as defined in this section. Words in the singular include the plural and words in the plural include the singular. Words in the present tense include the future.

(a) "Department" means the Department of Public Health.

(b) "Director" means the Director of Health or his or her designee.

(c) "Establishment" means any store, stand, booth, concession or any other enterprise that engages in the retail sale of tobacco products.

(d) "Permittee" means a person who has obtained a tobacco sales permit for a specific location pursuant to this Article.

(e) "Person" means any individual, partnership, cooperative association, private corporation, personal representative, receiver, trustee, assignee, or any other legal entity.

(f) "Tobacco products" means tobacco and any substance containing tobacco leaf, including but not limited to cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, dipping tobacco, or any other preparation of tobacco, including the cigarettes commonly known as bidis.

(g) "Tobacco sales" means sales, or any offer to sell or exchange, for any form of consideration, tobacco products to any person by any person who operates an establishment. "Tobacco sales" includes any display of tobacco products. (Added by Ord. 254-03, File No. 030869, App. 11/7/2003)

SEC. 1009.52. REQUIREMENT FOR TOBACCO SALES PERMIT.

It shall be unlawful for any person to engage in tobacco sales, or to allow tobacco sales, in any establishment without first obtaining and maintaining a valid tobacco sales permit from the Department for each location where tobacco sales are conducted. Nothing in this Article shall be construed to grant any person obtaining and

maintaining a tobacco sales permit any status or right other than the right to act as a tobacco retailer at the location identified on the face of the permit. The obtaining of a permit does not in and of itself transform a business into a retail tobacco or wholesale shop within the meaning of California Labor Code section 6404.5. It shall be unlawful for any person to engage in tobacco sales, or to allow tobacco sales, at an establishment for which the Director has suspended the tobacco sales while the period of suspension remains in effect. It shall be unlawful for any person to engage in or allow tobacco sales at an establishment for which the Director has revoked the tobacco sales permit for three years from the date of revocation. Permits are valid as long as the annual license fees are paid. (Added by Ord. 254-03, File No. 030869, App. 11/7/2003)

SEC. 1009.53. APPLICATION PROCEDURE: INSPECTION OF PREMISES; ISSUANCE AND DISPLAY OF PERMIT.

(a) **Application.** An application for a tobacco sales permit shall be submitted in the name of the person(s) proposing to engage in the sale of tobacco products and shall be signed by each person or an authorized agent thereof. The application shall be accompanied by the appropriate fees as described in section 35 of the San Francisco Business and Tax Regulations Code. A separate application is required for each location where tobacco sales are to be conducted. All applications shall be submitted on a form supplied by the Department and shall contain the following information:

1. The name, address, and telephone number of the applicant;

2. The establishment name, address, and telephone number for each location for which a tobacco sales permit is sought;

3. Such other information as the Director deems appropriate, including the applicant's type of business, and whether the applicant has previously been issued a permit under this Article that is, or was at any time, suspended or revoked.

(b) **Inspection by Director.** Upon receipt of a completed application and fees, the Director may inspect the location at which tobacco sales are to be permitted. The Director may also ask the applicant to provide additional information that is reasonably related to the determination whether a permit may issue.

(c) **Issuance of Permit.** If the Director is satisfied that the applicant has met the requirements of this Article and that issuance of the permit will not violate any law, the Department shall issue the permit. No permit shall issue if the Director finds that the applicant is in violation of San Francisco Health Code section 1009.1 (regulating cigarette vending machines)or San Francisco Police Code section 4600.3 (regulating the self-service merchandising of tobacco products). No permit shall issue if the application is incomplete or inaccurate.

(d) **Display of Permit.** Each permittee shall display the permit prominently at each location where tobacco sales occur. No permit that has been suspended shall be displayed during the period of suspension. A permit that has been revoked is void and may not be displayed. (Added by Ord. 254-03, File No. 030869, App. 11/7/2003)

SEC. 1009.54. FEES FOR PERMIT.

The Department shall charge every applicant for a tobacco sales permit a non-refundable application fee for the initial inspection and processing of the application and an annual license fee sufficient to cover the costs of annual inspections, as determined by the Director. The application and processing fee shall be $50 and is otherwise governed by section 35 of the San Francisco Business and Tax Regulations Code. The annual fee is listed in section 249.16 of the San Francisco Business and Tax Regulations Code. (Added by Ord. 254-03, File No. 030869, App. 11/7/2003)

SEC. 1009.55. PERMIT MAY NOT BE TRANSFERRED TO NEW PERSONS OR LOCATIONS.

As described in section 77 of the San Francisco Business and Tax Regulations Code, to-

bacco permits may not be transferred or assigned. (Added by Ord. 254-03, File No. 030869, App. 11/7/2003)

SEC. 1009.56. ENFORCEMENT AND INSPECTION.

The Director may enforce all provisions of this Article. Specific grounds for enforcement are set forth in sections 1009.57 through 1009.65. Upon presentation of proper credentials, the Director may enter and inspect at any time during regular business hours any establishment that is engaging in tobacco sales, or is suspected by the Director of engaging in such sales. (Added by Ord. 254-03, File No. 030869, App. 11/7/2003)

SEC. 1009.57. CONDUCT VIOLATING SAN FRANCISCO HEALTH CODE SECTION 1009.1 (REGULATING CIGARETTE VENDING MACHINES).

(a) Upon a decision by the Director that the permittee or the permittee's agent or employee has engaged in any conduct that violates San Francisco Health Code section 1009.1 (regulating cigarette vending machines), the Director may suspend a tobacco sales permit as set forth in section 1009.66, impose administrative penalties as set forth in section 1009.67, or both suspend the permit and impose administrative penalties.

(b) The Director shall commence enforcement of this section by serving either a notice of correction under section 1009.68 of this Article or a notice of initial determination under section 1009.69 of this Article. (Added by Ord. 254-03, File No. 030869, App. 11/7/2003)

SEC. 1009.58. CONDUCT VIOLATING SAN FRANCISCO POLICE CODE SECTION 4600.3 (REGULATING THE SELF-SERVICE MERCHANDISING OF TOBACCO PRODUCTS).

(a) Upon a decision by the Director that the permittee or the permittee's agent or employee has engaged in any conduct that violates San Francisco Police Code section 4600.3 (regulating the self-service merchandising of tobacco products), the Director may suspend a tobacco sales permit as set forth in section 1009.66, impose administrative penalties as set forth in section 1009.67, or both suspend the permit and impose administrative penalties.

(b) The Director shall commence enforcement of this section by serving either a notice of correction under section 1009.68 of this Article or a notice of initial determination under section 1009.69 of this Article. (Added by Ord. 254-03, File No. 030869, App. 11/7/2003)

SEC. 1009.59. CONDUCT VIOLATING SAN FRANCISCO HEALTH CODE SECTION 1009.22 (PROHIBITING SMOKING IN ENCLOSED AREAS AND SPORTS STADIUMS).

(a) Upon a decision by the Director that the permittee or the permittee's agent or employee has engaged in any conduct that violates San Francisco Health Code section 1009.22 (prohibiting smoking in enclosed areas and sports stadiums), the Director may suspend a tobacco sales permit as set forth in section 1009.66, impose administrative penalties as set forth in section 1009.67, or both suspend the permit and impose administrative penalties.

(b) The Director shall commence enforcement of this section by serving either a notice of correction under section 1009.68 of this Article or a notice of initial determination under section 1009.69 of this Article. (Added by Ord. 254-03, File No. 030869, App. 11/7/2003)

SEC. 1009.61. CONDUCT VIOLATING CALIFORNIA PENAL CODE SECTION 308 (PROHIBITING THE SALE OF TOBACCO TO MINORS).

(a) Upon a decision by the Director that the permittee or the permittee's agent or employee has engaged in any conduct that violates California Penal Code section 308 (prohibiting the sale of tobacco to minors), the Director may suspend a tobacco sales permit as set forth in section 1009.66.

(b) The Director shall commence enforcement of this section by serving a notice of initial determination in accordance with section 1009.69 of this Article. (Added by Ord. 254-03, File No. 030869, App. 11/7/2003)

SEC. 1009.62. CONDUCT VIOLATING CALIFORNIA LABOR CODE SECTION 6404.5 (PROHIBITING SMOKING IN ENCLOSED PLACES OF EMPLOYMENT).

(a) Upon a decision by the Director that the permittee or the permittee's agent or employee has engaged in any conduct that violates California Labor Code section 6404.5 (prohibiting smoking in enclosed places of employment), the Director may suspend a tobacco sales permit as set forth in section 1009.66.

(b) The Director shall commence enforcement of this section by serving a notice of initial determination in accordance with section 1009.69 of this Article. (Added by Ord. 254-03, File No. 030869, App. 11/7/2003)

SEC. 1009.63. FRAUDULENT PERMIT APPLICATIONS.

(a) Upon a decision by the Director that the permittee or the permittee's agent or employee has obtained a tobacco sales permit from the Department by fraudulent or willful misrepresentation, the Director may suspend a tobacco sales permit as set forth in section 1009.66.

(b) Upon a final decision by the Director that the permittee or the permittee's agent or employee has obtained a tobacco sales permit from the Department by fraudulent or willful misrepresentation, the Director may impose administrative penalties as set forth in section 1009.67.

(c) Upon a final decision by the Director that the permittee or the permittee's agent or employee has obtained a tobacco sales permit from the Department by fraudulent or willful misrepresentation, the Director may revoke a tobacco sales permit.

(d) Upon a final decision by the Director that the permittee or the permittee's agent or employee has obtained a tobacco sales permit from the Department by fraudulent or willful misrepresentation, the Director may impose administrative penalties in addition to either suspending or revoking the tobacco sales permit.

(e) The Director shall commence enforcement of this section by serving a notice of initial determination in accordance with section 1009.69 of this Article.

(f) Any person who obtained a permit by fraud or misrepresentation may be prosecuted for either an infraction or a misdemeanor punishable by a fine not to exceed one hundred dollars ($100) for a first violation, two hundred dollars ($200) for a second violation within one year, and five hundred dollars ($500) for a third and for each subsequent violation within one year. (Added by Ord. 254-03, File No. 030869, App. 11/7/2003)

SEC. 1009.64. SELLING TOBACCO WITHOUT A PERMIT.

(a) Upon a final decision by the Director that any person has engaged in the sale of tobacco at any establishment without a permit, the Director may impose administrative penalties as set forth in section 1009.67. Persons with a permit application pending under section 1009.53 may sell tobacco without violating section 1009.64 until and unless their permit application is rejected by the Director.

(b) The Director shall commence enforcement of this section by serving a notice of initial determination in accordance with section 1009.69 of this Article. This Notice of Initial Determination may require that all tobacco sales cease and may impose an administrative penalty.

(c) The City Attorney may maintain an action for injunction to restrain any person from selling tobacco without a valid tobacco sales permit. In any such action, the City Attorney may seek civil penalties and may seek a judicial determination that a person must pay any administrative penalties. The person against whom an injunction issues also shall be liable for the costs and attorney's fees incurred by the City and County of San Francisco in bringing a civil action to enforce the provisions of this section.

(d) Any person who engages in tobacco sales without the required permit may be prosecuted for either an infraction or a misdemeanor punishable by a fine not to exceed one hundred dollars ($100) for a first violation, two hundred dollars ($200) for a second violation within one year, and five hundred dollars ($500) for a third and for each subsequent violation within one year. (Added by Ord. 254-03, File No. 030869, App. 11/7/2003)

SEC. 1009.65. OTHER ENFORCEMENT.

(a) Violations of this Article are hereby declared to be public nuisances and may be enforced as set forth in section 596 of the San Francisco Health Code.

(b) Violations of this Article are hereby declared to be unfair business practices and are presumed to damage each and every resident of the community in which the business operates.

(c) In addition to other remedies provided by this Article or by other law, any violation of this ordinance may be remedied by a civil action brought by the City Attorney, including, for example, administrative or judicial abatement proceedings, civil or criminal code enforcement proceedings, and suits for injunctive relief. The person against whom a successful civil action is brought shall be liable for the costs and attorney's fees incurred by the City and County of San Francisco. (Added by Ord. 254-03, File No. 030869, App. 11/7/2003)

SEC. 1009.66. TIME PERIOD OF SUSPENSION OF PERMIT.

When this Article allows the Director to suspend a permit, the following sanctions may be imposed:

(a) The Director may suspend the permit for a maximum of 90 days for the first violation.

(b) If a second violation occurs within twelve months of the first violation, the Director may suspend the permit for a maximum of six months.

(c) Upon the third, and each subsequent violation, if within twelve months of the prior violation, the Director may suspend the permit for a maximum of one year.

(d) Each suspension is an independent sanction and is served consecutively. (Added by Ord. 254-03, File No. 030869, App. 11/7/2003)

SEC. 1009.67. ADMINISTRATIVE PENALTY.

When this Article allows the Director to impose an administrative penalty, the Director may assess an administrative penalty not exceeding one hundred dollars ($100) for a first violation; not exceeding two hundred dollars ($200) for a second violation; and not exceeding five hundred dollars ($500) for the third and each subsequent violation. For purposes of administrative penalties, each day that tobacco sales occur without a permit shall constitute a separate violation. (Added by Ord. 254-03, File No. 030869, App. 11/7/2003)

SEC. 1009.68. NOTICE OF CORRECTION.

When the Director commences an enforcement action with a notice of correction, the Director shall serve the notice on the permittee or the permittee's agent. The notice shall state that the Department has determined that a violation may have occurred and that reasonable grounds exist to support this determination. The notice may require corrective action immediately or upon a schedule required by the Director. The Director may require the permittee to post the notice of correction at the location where the Department alleges that violations have occurred. If the permittee fails to obey a notice of correction, the Director may serve a notice of initial determination in accordance with section 1009.69 of this Article. (Added by Ord. 254-03, File No. 030869, App. 11/7/2003)

SEC. 1009.69. NOTICE OF INITIAL DETERMINATION.

When the Director sends a notice of initial determination, the Director shall serve the notice on the permittee or the permittee's agent. The Notice of Initial Determination may require that all tobacco sales cease. The notice shall state the basis for the Department's initial determination, including the alleged acts or failures to act that constitute a basis for suspension,

revocation, and/or an administrative penalty as provided in this Article. After affording the permittee an opportunity to provide information contesting the initial determination, the Director shall issue a decision, including an order imposing an administrative penalty, if any. Copies of this decision and related order(s) shall be served upon the party served with the notice of initial determination. If no notice of appeal of the Director's decision is filed within the appropriate period, the decision shall be deemed final and shall be effective 15 days after it was issued. (Added by Ord. 254-03, File No. 030869, App. 11/7/2003)

SEC. 1009.71. PAYMENT OF ADMINISTRATIVE PENALTIES.

Unless a timely notice of appeal of the Department's final decision is filed, the Department may require payment of any administrative penalty within 30 days of the Director's decision. The Department shall make a written demand for payment by personal delivery or certified mailed notice to the person sanctioned. Any administrative penalty assessed and received in an action brought under this Article shall be paid to the Treasurer of the City and County of San Francisco. The person against whom an administrative penalty is imposed also shall be liable for the costs and attorney's fees incurred by the City and County of San Francisco in bringing any civil action to enforce the provisions of this section, including obtaining a court order requiring payment of the administrative penalty. (Added by Ord. 254-03, File No. 030869, App. 11/7/2003)

SEC. 1009.72. APPEALS TO BOARD OF APPEALS.

(a) **Right of Appeal.** The final decision of the Director to deny, suspend, or revoke a permit, or to impose administrative sanctions, as provided in this Article, may be appealed to the Board of Appeals in the manner prescribed in Article I of the San Francisco Business and Tax Regulations Code. An appeal shall stay the action of the Director.

(b) **Hearing.** The procedure and requirements governing an appeal to the Board of Appeals shall be as specified in Article I of the San Francisco Business and Tax Regulations Code. (Added by Ord. 254-03, File No. 030869, App. 11/7/2003)

SEC. 1009.73. OTHER REMEDIES.

Nothing in this Article shall affect any other remedies which are available to the City and County under any law, including (1) San Francisco Health Code section 1009.1 (regulating cigarette vending machines); (2) San Francisco Police Code section 4600.3 (regulating the self-service merchandising of tobacco products); (3) San Francisco Health Code section 1009.22 (prohibiting smoking in enclosed areas and sports stadiums); (4) California Penal Code section 308 (regulating sales of tobacco products to minors), and (5) California Labor Code section 6404.5 (prohibiting smoking in enclosed places of employment). (Added by Ord. 254-03, File No. 030869, App. 11/7/2003)

SEC. 1009.74. AUTHORITY TO ADOPT RULES AND REGULATIONS.

The Director may issue and amend rules, regulations, standards, guidelines, or conditions to implement and enforce this Article. (Added by Ord. 254-03, File No. 030869, App. 11/7/2003)

SEC. 1009.75. CITY UNDERTAKING LIMITED TO PROMOTION OF THE GENERAL WELFARE.

In undertaking the enforcement of this ordinance, the City is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury. (Added by Ord. 254-03, File No. 030869, App. 11/7/2003)

SEC. 1009.76. PREEMPTION.

In adopting this Article, the Board of Supervisors does not intend to regulate or affect the rights or authority of the State to do those things that are required, directed or expressly autho-

rized by federal or state law. Further, in adopting this Article, the Board of Supervisors does not intend to prohibit that which is prohibited by federal or state law. (Added by Ord. 254-03, File No. 030869, App. 11/7/2003)

SEC. 1009.77. SEVERABILITY.

In the event that a court or agency of competent jurisdiction holds that federal or state law, rule or regulation invalidates any clause, sentence, paragraph or section of this Article or the application thereof to any person or circumstances, it is the intent of the Board of Supervisors that the court or agency sever such clause, sentence, paragraph or section so that the remainder of this Article shall remain in effect. (Added by Ord. 254-03, File No. 030869, App. 11/7/2003)

ARTICLE 19I: PROHIBITING SMOKING IN CITY PARK AND RECREATIONAL AREAS

SEC. 1009.80. DEFINITIONS.

For purpose of this Article, "smoking" or "to smoke" means and includes inhaling, exhaling, burning or carrying any lighted smoking equipment for tobacco or any other weed or plant. (Added by Ord. 28-05, File No. 041307, App. 2/4/2005)

SEC. 1009.81. PROHIBITING SMOKING IN CITY PARK AND RECREATIONAL AREAS.

(a) Smoking is prohibited on any unenclosed area of property in the City and County of San Francisco that is open to the public and under the jurisdiction of the Recreation and Park Commission or any other City department if the property is a park, square, garden, sport or playing field, pier, or other property used for recreational purposes.

(b) Nothing in this Section is intended to change the provisions of Health Code Section 1009.22(b) regulating smoking in sport stadiums.

(c) Each City department with jurisdiction over property subject to this Article shall post signs in appropriate locations to provide public notice that smoking is prohibited.

(d) The provisions of this Article do not apply in any circumstance where federal or state law regulates smoking if the federal or state law preempts local regulation or if the federal or state law is more restrictive.

(e) The provisions of this Article do not apply to playgrounds or tot lot sandbox areas, in and around which smoking is prohibited by California Health and Safety Code Section 104495.

(f) The provisions of this Article do not apply to piers primarily used for commercial purposes.

(g) [**Reserved.**] (Added by Ord. 28-05, File No. 041307, App. 2/4/2005; Ord. 110-06, File No. 060393, App. 5/19/2006)

SEC. 1009.82. VIOLATIONS, PENALTIES AND ENFORCEMENT.

Any person who violates this Article is guilty of an infraction and shall be punished by a fine not exceeding one hundred dollars ($100) for a first violation, two hundred dollars ($200) for a second violation of this Article within a year of a first violation, and five hundred dollars ($500) for each additional violation of this Article within a year of a first violation. Any peace officer, and pursuant to California Penal Code, Title 3, Section 836.5 any Park Patrol Officer (Classification No. 8208) and Supervisor Park Patrol (Classification No. 8210), shall have the authority to enforce the provisions of this Article. Punishment under this Article shall not preclude punishment pursuant to any provision of law proscribing the act of littering. (Added by Ord. 28-05, File No. 041307, App. 2/4/2005)

SEC. 1009.83. DISCLAIMERS.

In adopting and undertaking the enforcement of this Article, the City and County of San Francisco is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury. (Added by Ord. 28-05, File No. 041307, App. 2/4/2005)

[INTENTIONALLY LEFT BLANK]

ARTICLE 20: ALKYL NITRITES

SEC. 1010. PURPOSE AND FINDINGS.

The Board of Supervisors hereby finds:

(a) Alkyl nitrite products are held out for retail sale as "room odorizers" or room incenses, but purchasers commonly use them as inhalants to induce certain physical responses.

(b) The Federal Food, Drug and Cosmetic Act, enforced by the Federal Food and Drug Administration (FDA), regulates the manufacture and sale of, inter alia, drugs and devices intended to affect the structure or any function of the human body. The FDA does not regulate room odorizers since they purportedly function as a general air incense and are not intended to affect the structure or any function of the human body. The Sherman Food, Drug and Cosmetic Law of California is based on the federal act and also does not regulate room odorizers containing alkyl nitrites. Therefore, these room odorizers are not currently subject to regulation by federal, state or local drug control agencies.

(c) The manufacturers and distributors are advertising alkyl nitrite products as safe, thus causing users of such products to believe that they can be inhaled without any harmful effects. These representations are contrary to the opinion of the United States Consumer Product Safety Commission which has issued regulations requiring that consumer products containing alkyl nitrites be labeled to caution against inhaling, since the substance may be harmful to a person's health, and to statements by the FDA and the Center for Disease Control warning about possible adverse effects from ingesting or inhaling alkyl nitrites.

(d) The proliferation of the display of alkyl nitrite products in retail stores within the City and County of San Francisco, and the distribution of such products without proper warnings, exacerbates problems attending the abuse of alkyl nitrite products within this community.

(e) The problems caused by inhaling alkyl nitrites are as yet not completely understood, but there are indications that they may be carcinogenic and also may impair the immune system. Hence steps must be taken to stop the encouragement of the abuse of alkyl nitrite products as inhalants fostered by their unregulated display and sale.

(f) The Bureau of Communicable Disease Control of the Department of Public Health has prepared a report on the medical aspects of volatile alkyl nitrites and their relationship with AIDS. This report concludes that volatile alkyl nitrites are hazardous substances on toxicologic grounds alone and that there is epidemiologic evidence which associates moderate and heavy alkyl nitrite use with the development of Kaposi's sarcoma which is one of the principal manifestations of AIDS.

(g) This ordinance is necessary in order to discourage the abuse of products containing alkyl nitrites within the City and County of San Francisco. (Amended by Ord. 200-86, App. 6/6/86)

SEC. 1011. DEFINITIONS.

(a) "Alkyl nitrite" means any volatile alkyl nitrite compound, including, but not limited to, amyl nitrite, butyl nitrite and iso-butyl nitrite.

(b) "Alkyl nitrite product" means all products of any kind, sold at retail, containing an alkyl nitrite, whether or not such product is

intended for use or designed for use in injecting, ingesting, inhaling, or otherwise introducing alkyl nitrite into the human body. "Alkyl nitrite products" include, but are not limited to, products containing alkyl nitrites and intended for use or designed for use as a room odorizer or incense.

(c) "Business" means a fixed location, whether indoors or outdoors, at which merchandise is offered for sale at retail.

(d) "Display" means to show to a patron or place in a manner so as to be available for viewing or inspection by a patron.

(e) "Patron" means a person who enters a business for the purpose of purchasing or viewing as a shopper merchandise offered for sale at the business.

(f) "Person" means a natural person or any firm, partnership, association, corporation or cooperative association. (Amended by Ord. 200-86, App. 6/6/86)

SEC. 1012. SALE AND DISPLAY OF ALKYL NITRITE PRODUCTS TO MINORS PROHIBITED.

(a) No owner, manager, proprietor in charge of any room in any place of business selling, or displaying for the purpose of sale, any device or product containing alkyl nitrites other than prescription drugs and devices to inhale, ingest or inject prescription drugs, may allow or permit any person under the age of 18 years to be, remain in, enter or visit such room unless such minor person is accompanied by one of his or her parents, or by his or her legal guardian.

(b) A person under the age of 18 years may not be in, remain in, enter or visit any room in any place used for the sale, or displaying for sale, of devices or products containing alkyl nitrites, other than prescription drugs, unless such person is accompanied by one of his or her parents, or by his or her legal guardian.

(c) A person may not maintain a display for the sale of, or the offering to sell, devices or products containing alkyl nitrites, other than prescription drugs and devices to inhale, ingest or inject prescription drugs, in any place or business to which the public is invited unless such display is within a separate room or enclosure to which minors not accompanied by a parent or legal guardian are excluded. Each entrance to such a room shall have a sign posted in reasonably visible and legible words to the effect that alkyl nitrite products are being offered for sale in such a room, and minors, unless accompanied by a parent or legal guardian, are excluded. (Amended by Ord. 200-86, App. 6/6/86)

SEC. 1013. WARNING REQUIRED AT POINT OF SALE.

All owners, managers, proprietors in charge of any room in any place or business selling, or displaying for the purpose of sale, any device or product containing alkyl nitrites other than prescription drugs and devices to inhale, ingest or inject prescription drugs, shall post a warning sign at eye level, between five and six feet from the floor, and adjacent to any alkyl nitrite product offered for sale. Such sign shall be not less than eight inches by eleven inches in size and shall be printed on a contrasting background and in a legible manner conveying the following warning:

> "WARNING: These products contain alkyl nitrites ("Poppers"). Inhaling or swallowing alkyl nitrite may be harmful to your health. The use of alkyl nitrites may affect the immune system. Several studies have suggested that their use is associated with the development of Kaposi's sarcoma (an AIDS condition)."

The word "WARNING" shall be in a print of 84 point height and Helvetica type and the remainder of the text in a print of 24 point height and in Helvetica medium-face, Futura medium-face or Universe 65 type. (Amended by Ord. 200-86, App. 6/6/86)

SEC. 1013.1. EXEMPTION.

Sections 1012 and 1013 shall not apply to any of the following:

(a) Any pharmacist or other authorized person who sells or furnishes alkyl nitrite products described in Section 1011(b) above upon the prescription of a physician, dentist, podiatrist or veterinarian.

(b) Any physician, dentist, podiatrist or veterinarian who furnishes or prescribes alkyl nitrite products described in Section 1011(b) above to his or her patients.

(c) Any manufacturer, wholesaler or retailer licensed by the California State Board of Pharmacy to sell or transfer alkyl nitrite products described in Section 1011(b) above. (Amended by Ord. 200-86, App. 6/6/86)

SEC. 1014. USE PROHIBITED IN PUBLIC PLACES.

No person shall use, or cause to be used, an alkyl nitrite product in a place of public accommodation or amusement or on public property. Any alkyl nitrite product in a place of public accommodation or amusement or on public property that is uncapped or otherwise emitting alkyl nitrite vapors into the air shall be deemed to be in use. (Amended by Ord. 200-86, App. 6/6/86)

SEC. 1015. MISDEMEANOR PENALTY.

Any person who violates the provisions of this Article is guilty of a misdemeanor. Any person convicted of a misdemeanor hereunder is punishable by a fine of not more than $500 or by imprisonment for a period of not more than six months, or by both. A person who violates the provisions of Section 1012 is guilty of a separate offense for each day, or portion thereof, during which the violation continues. A person who violates the provisions of Section 1013 is guilty of a separate offense for each item of alkyl nitrite products which is distributed. (Amended by Ord. 200-86, App. 6/6/86)

SEC. 1016. SEVERABILITY.

If any provision or clause of this Article or the application thereof to any person or circumstance is held to be unconstitutional or to be otherwise invalid by any court of competent jurisdiction, such invalidity shall not affect other provisions of the Article, and clauses of this Article are declared to be severable. (Amended by Ord. 200-86, App. 6/6/86)

[The next page is 645]

ARTICLE 21: HAZARDOUS MATERIALS

DIVISION I
GENERAL PROVISIONS

DIVISION II
CERTIFICATE OF REGISTRATION

DIVISION III
UNDERGROUND STORAGE TANK PERMITS

DIVISION IV
ENFORCEMENT

DIVISION V
PUBLIC DISCLOSURE AND TRADE SECRETS

DIVISION VI
UNAUTHORIZED RELEASES AND CLOSURES OF ESTABLISHMENTS OR UNDERGROUND STORAGE TANKS

DIVISION I
GENERAL PROVISIONS

SEC. 1101. FINDINGS AND PURPOSE.

(a) Hazardous substances and hazardous wastes present in the community may pose acute and chronic health hazards to individuals who live and work in the City and County of San Francisco, and who are exposed to such substances as a result of fires, spills, industrial accidents, or other types of releases or emissions.

(b) The people who live and work in the City and County of San Francisco have a right and need to know of the use and potential hazards of hazardous materials in the community in order to plan for and respond to potential exposure to such materials.

(c) Information on the location, type, and the health risks of hazardous materials used, stored, or disposed of in the City and County of San Francisco is not now available to firefighters, health officials, planners, elected officials, and residents.

(d) This information is necessary to enable public officials to protect adequately the public health, safety and welfare of residents of the City and County of San Francisco.

(e) It is the intent of the Board of Supervisors of the City and County of San Francisco in adopting this Article to recognize the community's right to and need for information on the storage, use and disposal of hazardous materials in the City and to establish a system for the orderly provision of such information.

(f) It is further the intent of the Board of Supervisors of the City and County of San Francisco that the system of disclosure set forth in this Article shall provide the information essential to firefighters, health officials, planners, elected officials and residents in meeting their responsibilities to protect the health, safety and welfare of the community and to safeguard life and property from the hazards arising from the storage, handling and use of hazardous materials while protecting trade secrets to the extent compatible with the protection of the public health, safety and welfare.

(g) It is further the intent of the Board of Supervisors of the City and County of San Francisco to conform the provisions of this Article to California law regulating underground storage tanks and hazardous materials release response plans as provided in Chapters 6.7 and 6.75 and Article 1 of Chapter 6.95 of Division 20 of the California Health and Safety Code, which chapters are incorporated into this Article by refer-

ence, and to provide for additional stricter local requirements in accordance with Sections 25299.2 and 25500 of the California Health and Safety Code.

(h) It is the further intent of the Board of Supervisors of the City and County of San Francisco to recognize that the San Francisco Department of Public Health, Environmental Health Section has been certified by the Secretary of the California Environmental Protection Agency as a Certified Unified Program Agency as provided in Chapter 6.11 of Division 20 of the California Health and Safety Code. In accordance with that certification, it is the further intent of the Board of Supervisors of the City and County of San Francisco to conform this Article to provide the Department of Public Health with the authority necessary to carry out the Department's responsibilities under Chapter 6.11 of Division 20 of the California Health and Safety Code. (Added by Ord. 164-92, App. 6/10/92; amended by Ord. 399-97, App. 10/17/97)

SEC. 1102. DEFINITIONS.

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

(a) "Business" means an employer, self-employed individual, trust, firm, joint stock company, corporation including a government corporation, partnership, association, city, county, city and county, district, the State and any agency, department, office, board, commission, or bureau of State government, including, but not limited to, the campuses of the California Community Colleges, the California State University, and the University of California, and the federal government, to the extent authorized by federal law.

For the purpose of the application of this Article to the City and County of San Francisco, "business" includes any office or department under any elected or appointed official or under any board or commission.

(b) "Certificate of registration" means any Hazardous Materials Certificate of Registration, including any addenda thereto, and any temporary certificate of registration issued pursuant to this Article.

(c) "Chemical name" means the scientific designation of a substance in accordance with the International Union of Pure and Applied Chemistry or the system developed by the Chemical Abstracts Service.

(d) "Chief of Department" means the Chief of the San Francisco Fire Department or the Chief's designee.

(e) "City Planning Code" means Part II, Chapter 3 of the San Francisco Municipal Code.

(f) "Common name" means any designation or identification, such as a code name, code number, trade name, or brand name, used to identify a substance other than by its chemical name.

(g) "Contiguous" means without separation by a public street, alley, sidewalk or other public place or right-of-way even if connected by underground or overhead structures, such as but not limited to bridges or passageways.

(h) "Department" means the San Francisco Department of Public Health.

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

(j) "Environmental Health Section" means the Environmental Health Section in the Community Health and Safety Branch of the Public Health Division of the San Francisco Department of Public Health.

(k) "Establishment" means a single business operation conducted on the same or contiguous parcels of property under the same ownership or entitlement to use, and the building or buildings, appurtenant structures, and surrounding land area used by the establishment at that location or site. To be considered a single business operation, all business operations at the location must be under the direction and control of the same primary response person and accessible from the same public street entrance.

(l) "Etiologic agent" means a viable microorganism, or its toxin, which is listed in the regulations of the Department of Health and Human Services at Section 72.3 of Title 42 of the Code of Federal Regulations, which regulations are incorporated into this Article by reference, or

which causes or may cause severe, disabling or fatal disease in a healthy population. For purposes of this definition, "etiologic agent" does not include human or animal materials including but not limited to excreta, secreta, blood, and its components, tissue and tissue fluids being handled for purpose of diagnosis or in waste form.

(m) "Fire Code" means Part II, Chapter 4 of the San Francisco Municipal Code.

(n) "Freight forwarding and freight transportation services" means an establishment which packs, crates, prepares for shipping, warehouses, or otherwise handles hazardous materials in transit or operates a terminal through which hazardous materials pass, including but not limited to establishments specified in Codes 4231, 4731 and 4783 of the Manual of Standard Industrial Classification Codes, published by the United States Office of Management and Budget, 1987 Edition.

(o) "Handle" means to use, generate, process, produce, package, treat, store, emit, discharge, or dispose of a hazardous material in any fashion.

(p) "Handler" means any person or business which handles a hazardous material.

(q) "Hazardous material" means any material that, because of its quantity, concentration, or physical or chemical characteristics, poses a significant present or potential hazard to human health and safety or to the environment if released into the workplace or the environment. "Hazardous materials" include, but are not limited to, hazardous substances, hazardous waste, and any material which a handler or the Department has a reasonable basis for believing would be injurious to the health and safety of persons or harmful to the environment if released into the workplace or the environment.

A mixture shall be deemed to be a hazardous material if it contains either one-tenth of one percent or more of any carcinogen or one percent or more of any other hazardous material.

(r) "Hazardous materials plan" means a document consisting of, at a minimum, general business information about an establishment, an inventory of hazardous materials handled at the establishment, an emergency response plan for the establishment, an employee training plan for handling hazardous materials, a facility map and such other information as is required by this Article and regulations adopted by the Health Commission pursuant to this Article in order to obtain a certificate of registration.

(s) "Hazardous materials release site" means an establishment, UST, premises or real property containing a release or threatened release.

(t) "Hazardous substance" means any substance or chemical product for which one of the following applies:

(1) The manufacturer or producer is required to prepare or prepares a Material Safety Data Sheet (MSDS) for the substance or product pursuant to the California Hazardous Substances Information and Training Act (Chapter 2.5 (commencing with Section 6360) of Part 1 of Division 5 of the California Labor Code) or pursuant to the federal Occupational Safety and Health Act of 1970 and regulations promulgated under that Act (commencing with Section 651 of Title 29 of the United States Code);

(2) The substance is listed as a radioactive material in Appendix B of Part 20 of Chapter 1 of Title 10 of the Code of Federal Regulations, maintained and updated by the Nuclear Regulatory Commission;

(3) The substances listed pursuant to Parts 172 and 173 of Title 49 of the Code of Federal Regulations;

(4) The materials listed in Subdivision (b) of Section 6382 of the California Labor Code;

(5) The chemicals listed in Subdivisions (b) and (c) of Section 12000 of Title 22 of the Code of California Regulations, which Section is incorporated into this Article by reference;

(6) The substances listed as hazardous substances in Subsection (f) of Section 25281 of the California Health and Safety Code.

(u) "Hazardous waste" means hazardous waste, as defined in Sections 25115, 25117, and 25316 of the California Health and Safety Code.

(v) "Health Commission" means the San Francisco Health Commission.

(w) "Laboratory" means a business or part of a business operated by scientists or engineers, or by students or technicians under their supervision, for the following purposes: investigation of physical, chemical or biological properties of substances; development of new or improved chemical processes, products, or applications; analysis, testing, or quality control; or instruction and practice in a natural science or in engineering. These operations are characterized by the use of a relatively large and variable number of chemicals on a scale in which the containers used for reactions, transfers, and other handling of chemicals are normally small enough to be easily and safely manipulated by one person.

(x) "MSDS" means a Material Safety Data Sheet prepared pursuant to Section 6390 of the California Labor Code and Section 5194 of Title 8 of the Code of California Regulations, or pursuant to the regulations of the Occupational Safety and Health Administration of the U.S. Department of Labor in Subsection (g) of Section 1910.1200 of Title 29 of the Code of Federal Regulations, which Section is incorporated into this Article by reference.

(y) "Operator" means any person in control of, or having daily responsibility for, the daily operation of an underground storage tank system.

(z) "Owner" means the owner of an underground storage tank or the person or persons named on the last assessment rolls of the City and County of San Francisco as the owner of (i) the real property where an underground storage tank is located, or (ii) for underground storage tanks located under the surface of any improved or unimproved public street, sidewalk, alley, court or other place dedicated for or subject to an easement for public access, the immediately adjacent real property that is or was served by the underground storage tank.

(aa) "Permit" means any permit to operate an underground storage tank, including any addenda thereto, issued pursuant to this Article.

(bb) "Permittee" means any person to whom a permit is issued pursuant to this Article and any authorized representative, agent or designee of such person.

(cc) "Person" means an individual, trust, firm, joint stock company, corporation including a government corporation, partnership, association, city, county, city and county, district, the State, any department or agency thereof or the United States, to the extent authorized by federal law.

For the purpose of the application of this Article to the City and County of San Francisco, a "person" includes any office or department under any elected or appointed official or under any board or commission.

(dd) "Pipe" means pipe as defined in Sections 25281(l) and 25281.5 of the California Health and Safety Code.

(ee) "Primary response person" means the individual representing the business who can provide technical information and assistance in the event of a release or threatened release of hazardous materials and has full facility access, site familiarity and authority to make decisions for the business regarding implementation of appropriate site mitigation.

(ff) "Registered quantity limit" means the maximum amount of hazardous material that can be stored in an establishment pursuant to a certificate of registration. The Director shall set separate registered quantity limits for an establishment for which a certificate of registration is obtained in accordance with the requirements of this Article.

(gg) "Registrant" means any business to whom a certificate of registration is issued pursuant to this Article and any authorized representative, agent or designee of such business.

(hh) "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of a hazardous material into the environment unless permitted or authorized by a regulatory agency.

(ii) "Responsible party" means (i) for a hazardous materials release site, a person or business that owns, operates, occupies or controls the hazardous materials release site, or (ii) for a UST or establishment containing hazardous materials that is subject to closure under this Article, the person or business that owns or operates the UST or establishment and the owner of the real property upon which the UST or establishment is located.

(jj) "SIC Code" means the identification number assigned to specific types of businesses by the Manual of Standard Industrial Classification Codes, published by the United States Office of Management and Budget.

(kk) "Spill" means any uncontrolled release of a hazardous material.

(ll) "Storage" means the containment, handling, use, generation, processing, production, packaging, emitting, discharging, disposal or treatment of hazardous materials.

(mm) "Sump" means a pit or other subsurface container in which liquids collect.

(nn) "Threatened release" means a condition creating a substantial probability of harm, when the probability and potential extent of harm make it reasonably necessary to take immediate action to prevent, reduce, or mitigate damages to persons, property, or the environment.

(oo) "Trade secret" means trade secrets as defined in Subdivision (d) of Section 6254.7 of the California Government Code and Section 1060 of the California Evidence Code.

(pp) "Unauthorized release" means any release of any hazardous material that does not conform to the provisions of this Article or is not otherwise authorized by law or a governmental agency, including, but not limited to, the federal Environmental Protection Agency, the California Environmental Protection Agency, or the Department of Public Works pursuant to the San Francisco Industrial Waste Ordinance.

(qq) "Underground storage tank" means any one or combination of tanks, including pipes connected thereto, which is used for the storage of hazardous substances as defined in Subsection (f) of Section 25281 of the California Health and Safety Code and which is located substantially or totally beneath the surface of the ground.

"Underground storage tank" does not include any of the following:

(1) A tank with a capacity of 1,100 gallons or less which is located on a farm and which stores motor vehicle fuel used primarily for agricultural purposes and not for resale;

(2) A tank which is located on a farm, at a residence of a person, or under public property adjacent to the residence of a person, which has the capacity of 1,100 gallons or less, and which is used to store home heating oil for consumptive use on the farm or at the residence. A tank which is no longer used to provide home heating oil to the farm or residence is not exempted by this Section;

(3) Structures such as sumps, separators, storm drains, catchbasins, oil-field gathering lines, refinery pipelines, lagoons, evaporation ponds, well cellars, separation sumps, lined and unlined pits. Sumps which are part of a monitoring system required under Sections 25291 or 25292 of the California Health and Safety Code and sumps or other structures defined as underground storage tanks under Subchapter IX (commencing with Section 6991) of Chapter 82 of Title 42 of the United States Code are not exempted by this Section;

(4) A tank holding hydraulic fluid for a closed loop mechanical system that uses compressed air or hydraulic fluid to operate lifts, elevators, and other similar devices. (Added by Ord. 164-92, App. 6/10/92; amended by Ord. 399-97, App. 10/17/97)

Sec. 1103.
(Added by Ord. 164-92, App. 6/10/92; amended by Ord. 399-97, App. 10/17/97; Ord. 42-00, File No. 000241, App. 3/24/2000; repealed by Ord. 56-03, File No. 030041, App. 4/11/2003)

Sec. 1103.1.
(Added by Ord. 164-92, App. 6/10/92; amended by Ord. 42-00, File No. 000241, App. 3/24/2000; repealed by Ord. 56-03, File No. 030041, App. 4/11/2003)

Sec. 1103.2.
(Added by Ord. 164-92, App. 6/10/92; amended by Ord. 399-97, App. 10/17/97; repealed by Ord. 56-03, File No. 030041, App. 4/11/2003)

SEC. 1103.3. DIRECTOR TO REPORT.

The Director of Health shall regularly advise the Health Commission regarding activities and other matters related to this Article. (Added by Ord. 164-92, App. 6/10/92; amended by Ord. 399-97, App. 10/17/97; Ord. 56-03, File No. 030041, App. 4/11/2003)

SEC. 1104. DEPARTMENT TO PROVIDE PUBLIC INFORMATION.

The Department of Public Health shall provide educational information to the public on hazardous materials including, but not limited to, information on the identification, proper storage, handling, use and disposal of hazardous materials. (Added by Ord. 164-92, App. 6/10/92)

SEC. 1105. DIRECTOR TO MAINTAIN LIST OF MATERIALS REGULATED.

The Director of Health shall maintain, for public inspection, a copy of each of the laws and regulations including any applicable lists of hazardous materials, hazardous substances and hazardous wastes. (Added by Ord. 164-92, App. 6/10/92; amended by Ord. 399-97, App. 10/17/97)

SEC. 1106. UNIFIED PROGRAM IMPLEMENTATION.

(a) The Department is the certified unified program agency for San Francisco pursuant to Health and Safety Code Chapter 6.11. The Department is responsible for administration of the following requirements:

(1) Except as specified in Health and Safety Code Subparagraph 25404(c)(1)(B), the requirements of Health and Safety Code Chapter 6.5 (commencing with Section 25100, and the regulations adopted by the Department of Toxic Substances Control pursuant thereto, applicable to hazardous waste generators and persons operating pursuant to a permit-by-rule, conditional authorization or conditional exemption. This program is implemented by Article 22 of this Code;

(2) The requirement of Subdivision (c) of Health and Safety Code Section 25270.5 for owners and operators of aboveground storage tanks to prepare a spill prevention control and countermeasure plan. The Director is authorized to require owners and operators to prepare spill prevention control and countermeasure plans in accordance with Health and Safety Code Section 25270.5(c);

(3) The requirements of Health and Safety Code Chapter 6.7 (commencing with Section 25280) concerning underground storage tanks, except for the responsibilities assigned to the State Water Resources Control Board pursuant to Section 25297.1. This program, along with local requirements, is implemented by Division III of this Article;

(4) The requirements of Article 1 (commencing with Section 25501) of Chapter 6.95 of the Health and Safety Code, concerning hazardous material release response plans and inventories. This program, along with local requirements, is implemented by Division II of this Article;

(5) The requirements of Article 2 (commencing with Section 25531) of Chapter 6.95 of the Health and Safety Code concerning regulated substances. This program, along with local requirements, is implemented by Article 21A of this Code;

(6) The requirements of Subsections 8001.3.2(a) and 8001.3.3(a) of the Uniform Fire Code, as adopted by the State Fire Marshal, concerning hazardous material management plans and inventories. (Added by Ord. 399-97, App. 10/17/97)

DIVISION II
CERTIFICATE OF REGISTRATION

SEC. 1110. REGISTRATION REQUIRED.

(a) Any business which operates an establishment, or any owner of real property upon which an establishment is located, shall for each establishment that meets any of the criteria set forth in this Section, obtain and keep current a

hazardous materials certificate of registration and implement the hazardous materials plan submitted with the registration application:

(1) The establishment operates a laboratory which handles, as part of its laboratory function, at any one time during the reporting year, any hazardous material or mixture containing a hazardous material in a container that has a capacity equal to, or greater than a weight of 25 grams (0.06 pounds) or a volume of 100 milliliters (0.025 gallons) or 10 cubic feet at standard temperature and pressure for compressed gas;

(2) The establishment handles any one hazardous material or any one mixture containing a hazardous material in a container or containers with a total capacity at any one time during the reporting year that is equal to, or greater than, a weight of 500 pounds, or a volume of 55 gallons or 200 cubic feet at standard temperature and pressure for compressed gas;

(3) The establishment handles one or more hazardous material or mixture containing a hazardous material in a container or containers with a combined total capacity at any one time during the reporting year equal to, or greater than, a weight of 500 pounds, or a volume of 55 gallons or 200 cubic feet at standard temperature and pressure for compressed gas. In determining the combined total container capacity of the hazardous materials, the establishment shall include:

(A) All liquid hazardous materials in containers with a capacity equal to, or greater than, one gallon;

(B) All solid hazardous materials in containers with a capacity equal to, or greater than, 25 pounds;

(C) All compressed gas hazardous materials in containers with a capacity equal to, or greater than, 10 cubic feet.

(4) The establishment handles any one or more radioactive material or mixture containing a radioactive material in a quantity for which an emergency plan is required to be adopted pursuant to Part 30 (commencing with Section 30.1), Part 40 (commencing with Section 40.1), or Part 70 (commencing with Section 70.1), of Chapter 1 of Title 10 of the Code of Federal Regulations, or pursuant to any regulations adopted by the state in accordance with those regulations;

(5) The establishment handles any one or more etiologic agents.

(b) Any person not subject to Subsection (a) who is required to submit chemical inventory information pursuant to Section 11022 of Title 42 of the United States Code, as that section read on August 1, 1997, or as it may be subsequently amended shall obtain and keep current a hazardous materials certificate of registration and implement the hazardous materials plan submitted with the registration application as required by this Article.

(c) Within 30 days of any one of the following events, any business required to obtain a certificate of registration pursuant to this Section shall file an addendum to the certificate of registration detailing the handling and the following appropriate information:

(1) Change of business name;

(2) A 50 percent or more increase in the quantity of a previously disclosed material;

(3) Any handling of a previously undisclosed hazardous material subject to the inventory requirements of this Article. (Added by Ord. 164-92, App. 6/10/92; amended by Ord. 399-97, App. 10/17/97)

SEC. 1110.1. HAZARDOUS MATERIALS PLANS AND APPLICATION FOR CERTIFICATE OF REGISTRATION.

Every business, or owner of real property upon which an establishment is located, that is required by this Article to register and implement a hazardous materials plan shall obtain a certificate of registration by filing a written application with the Director of Health upon forms furnished for that purpose, certifying that the hazardous materials plan as described in the application meets the requirements of this Article, and paying the required fees. A complete application shall include, without limitation, all of the following:

(a) **Part 1.** General business information, which shall include, but not be limited to:

(1) The name and address of the establishment and business phone number of applicant, the name and titles and 24-hour emergency

phone numbers of the primary response person and an alternate, the number of employees, number of shifts, hours of operation, and principal business activity and its SIC Code number;

(2) The names and addresses of the persons who own and operate the business and, if different, the name and address of the person or persons who own the real property upon which the business or any portion thereof is located;

(3) Such other information as is necessary to enable the Director of Health to determine that employees and the general public are protected from exposure to hazardous materials.

(b) **Part 2.** A chemical inventory reporting form, including but not limited to the following information:

(1) The information required pursuant to Health and Safety Code Section 25509 and any implementing regulations;

(2) Any additional inventory information required by Section 11022 of Title 42 of the United States Code, as that section read on August 1, 1997, or as it may be subsequently amended, until such time as the inventory information required above is determined, pursuant to federal law or regulation, to be substantially equivalent to the inventory information required under the Emergency Planning and Community Right-to-Know Act of 1986 (Title 42 of the United States Code, commencing with Section 11001);

(3) For mixtures, the inventory information reported shall be the required information on the entire mixture;

(4) For hazardous materials handled by freight forwarding and freight transportation services, the establishment is not required to report hazardous materials stored for less than 30 days.

(c) **Part 3.** A plan for emergency response to a release or threatened release of a hazardous material, including but not limited to the following information:

(1) Immediate notification to appropriate local emergency rescue personnel;

(2) Procedures for the mitigation of a release or threatened release to minimize any potential harm or damage to persons, property or the environment;

(3) Evacuation plans and procedures, including immediate notice, for the business site and for the affected public;

(4) Information on the availability, testing, and maintenance of emergency equipment.

(d) **Part 4.** A program and implementation plan for training all new employees and annual training, including refresher courses, for all employees in safety procedures in the event of a release or threatened release of a hazardous material, including but not limited to, familiarity with the plans and procedures specified in Part 3. Businesses shall maintain written records of such training including, but not limited to, descriptions of the training classes held and lists of attendees, including names, dates, and signatures. Such documentation shall be provided to the Director upon request.

(e) **Part 5.** A program for reducing the use of hazardous materials and the generation of hazardous waste if required of the applicant pursuant to this subsection.

(1) For an applicant subject to the Hazardous Waste Reduction and Management Review Act (HWRMRA) (Article 11.9 of Chapter 6.5 of Division 20 of the California Health and Safety Code, commencing with Section 25244.12), which Act is incorporated into this Article by reference, the applicant shall, on request of the Director of Health, submit a copy of the applicant's current source-reduction evaluation review and plan, hazardous waste management performance report, and plan and report summaries prepared pursuant to Health and Safety Code Section 25244.18(g) and applicable regulations.

(2) For an applicant not subject to HWRMRA, if a California Department of Toxic Substances Control Hazardous Waste Audit Study Checklist is available for the applicant's industry classification, the applicant shall, on request of the Director of Health, submit a completed copy of the most current applicable checklist and a certification by the applicant that the information

contained in the completed checklist is true and correct to the best of the applicant's knowledge. An applicant may exempt from the audit any waste stream which is exempted from the requirements of HWRMRA and its implementing regulations. The audit shall be reviewed and updated every four years.

(3) (A) For each applicant covered by Subsection (e)(1) or (2) above, whose inventory includes one or more hazardous materials that do not enter a waste stream, the applicant shall submit a hazardous materials reduction plan that takes into account all hazardous materials stored and identifies hazardous materials reduction measures that are technically feasible and economically practicable.

(B) The plan shall identify technically feasible product substitutions or product use reduction or elimination measures.

(C) The plan shall estimate hazardous materials use expected to be reduced annually, a timetable for implementation of each reduction measure and certification that the information submitted in the plan is true and correct to the best of the knowledge of the applicant.

(f) **Part 6.** A map of the business establishment drawn at a scale and in a format and detail that meets the Director's requirements. The map shall be updated whenever the business is required to obtain an addendum to the certificate of registration or any additional approvals.

(g) In the event the business determines that some or all of the information contained in the hazardous materials application for registration constitutes a trade secret, the business shall place such information on a separate hazardous materials application for registration and clearly mark each sheet of said form "Trade Secret." The Director shall take measures to ensure that the information contained on the hazardous materials application for registration not be disclosed except pursuant to the protections and according to the procedures and standards set down in Section 1142 and any regulations adopted by the Health Commission pursuant to the provisions of this Article.

(h) In addition to the information previously specified in this Section, the Department may require a business or the owner of real property upon which a business establishment is located to submit hazard characteristic information on the hazardous materials stored, including but not limited to, applicable Material Safety Data Sheets, and any additional information that it finds is necessary to protect the health and safety of persons, property, or the environment. Following submittal of hazard characteristic information, the Department may require the applicant to revise any part of the application to accurately reflect hazards identified by the Department through review of such information. (Added by Ord. 164-92, App. 6/10/92; amended by Ord. 399-97, App. 10/17/97)

SEC. 1111. TEMPORARY CERTIFICATE OF REGISTRATION.

A temporary certificate of registration may be issued where the hazardous materials subject to the registration requirements are handled at an establishment during a one-time period not to exceed 90 days in a consecutive six-month period. The Director of Health may approve a temporary certificate of registration under circumstances that do not comply with all the provisions of this Code, provided that the Director determines that such temporary handling does not present any increased risk of fire or health hazard. A temporary registration shall be issued for a period not to exceed 90 days. (Added by Ord. 164-92, App. 6/10/92; amended by Ord. 399-97, App. 10/17/97)

SEC. 1112. BUSINESSES ON LEASED OR RENTED PROPERTY.

Any business which registers with the Department pursuant to this Article and is located on leased or rented real property shall notify, in writing, the real property owner that the business and the real property owner are subject to the requirements of this Article and the business has obtained a certificate of registration. The business shall provide a copy of the certificate of registration and the hazardous materials plan to the owner or the owner's agent within five work-

ing days after receiving a request for a copy from the owner or the owner's agent. (Added by Ord. 164-92, App. 6/10/92)

SEC. 1113. REVIEW OF APPLICATIONS.

The Department shall review a completed application for a certificate of registration, determine if it is deficient in any way, and notify the applicant of these defects and of a compliance schedule for correcting the defects. The applicant shall submit a corrected application within the time specified in the compliance schedule. (Added by Ord. 164-92, App. 6/10/92)

SEC. 1114. CONTENTS OF CERTIFICATE OF REGISTRATION AND POSTING.

(a) The certificate of registration shall contain the following information:

(1) The name and address of the registrant for purposes of notice and service of process;

(2) The street address of the establishment for which the certificate of registration is issued;

(3) The registered quantity limit(s) for the establishment;

(4) The date the certificate of registration is effective;

(5) The date of expiration, except for those registrants exempted from renewal under Section 1115 of this Article.

(b) Each certificate of registration shall include requirements that the registrant reimburse the City for extraordinary costs, in addition to applicable registration fees, for inspection and monitoring, administration, incidental expenses and cleanup and remediation costs resulting from releases of hazardous materials or failure by the registrant to handle hazardous materials in accordance with the requirements of this Article. Furthermore, the certificate shall provide that if the registrant fails to immediately notify the Department of a release or threatened release of hazardous material, and the failure results in or significantly contributes to an emergency, including a fire, to which the City is required to respond, the registrant shall be assessed the full cost of the City emergency response as well as the cost of cleaning up and disposing of the hazardous material. Certificates of registration shall not be renewed unless all such costs have been paid to the City.

(c) The registrant shall post a copy of the certificate of registration obtained pursuant to this Section, in a location open to public access during normal business hours, at each establishment for which a certificate of registration is obtained. (Added by Ord. 164-92, App. 6/10/92; amended by Ord. 168-95, App. 5/26/95; Ord. 399-97, App. 10/17/97)

SEC. 1115. TERM, RENEWALS AND TRANSFERS.

(a) A certificate of registration shall be issued for a term of one year, except as otherwise provided in this Article.

(b) Except as provided in Subsection (c) of this Section, the registrant shall submit an application for a renewal at least 30 days prior to the expiration date of the certificate of registration. The application for renewal shall include a certification by the registrant that it has reviewed all information previously submitted for its current registration to determine if any revisions are needed and that it has made any necessary changes to the previously submitted application. A copy of any changes shall be submitted to the Department of Health as part of the renewal application.

(c) A physician, dentist, podiatrist, veterinarian, or pharmacist, who is required pursuant to Section 1110 to obtain a certificate of registration solely because he or she operates an establishment that handles oxygen, nitrogen or nitrous oxide is exempt from filing a renewal application and paying an annual renewal fee as provided in this Section and Section 1176(b) of this Article, provided that at any one time the total container capacity of oxygen or nitrous oxide, as determined in accordance with the provisions of Section 1110, is less than 1,000 cubic feet of each material at standard temperature and pressure. If a business that is exempted from registration renewal, at any one time handles oxygen or nitrous oxide in a container or contain-

ers with a total capacity that is equal to or greater than 1,000 cubic feet of each material at standard temperature and pressure, or handles any other hazardous material that meets any of the criteria set forth in Section 1110, then the business shall no longer qualify for the exemption and shall comply with the registration renewal requirements of this Article.

(d) The certificate of registration is not transferable to another owner, address or physical location within the same address. (Added by Ord. 164-92, App. 6/10/92; amended by Ord. 168-95, App. 5/26/95; Ord. 399- 97, App. 10/17/97)

SEC. 1116. HANDLING OF HAZARDOUS MATERIALS.

(a) All persons and businesses shall handle all hazardous materials regulated by this Article in conformity with the provisions of this Code, the San Francisco Building Code, San Francisco Electric Code, San Francisco Public Works Code, San Francisco Fire Code and San Francisco City Planning Code. The Director of Health shall approve all installation, construction, repair or modification, closure, and removal of storage facilities.

(b) The Director of Health, as provided in this Code, may:

(1) Exempt a person or business from any specific requirement if, and only if, the person or business has demonstrated by clear and convincing evidence that strict application of the requirement would create practical difficulties not generally applicable to other establishments or property and that granting the exemption will not increase the hazard of exposure to hazardous materials and such exemption is not in conflict with any requirement of federal or State law concerning the handling of hazardous materials. The Director shall specify in writing the basis for any exemption under this paragraph; or

(2) Impose reasonable additional or different requirements if, and only if, such requirements are necessary to protect the public health, safety and welfare from the hazards arising from the storage, handling and use of hazardous materials. (Added by Ord. 164-92, App. 6/10/92)

SEC. 1117. LABELING OF HAZARDOUS MATERIALS.

All persons and businesses required to obtain a certificate of registration shall maintain a label on each container of hazardous material regulated by this Article in a manner consistent with the applicable federal, State, and local laws and regulations. (Added by Ord. 164-92, App. 6/10/92; amended by Ord. 399-97, App. 10/17/97)

DIVISION III
UNDERGROUND STORAGE TANK PERMITS

SEC. 1120. PERMIT TO OPERATE AN UNDERGROUND STORAGE TANK.

(a) Except as otherwise authorized by this Article, Chapter 6.7 of the California Health and Safety Code, commencing with Section 25280, and any implementing regulations, no person shall own or operate an underground storage tank ("UST") unless a permit for its operation has been issued by the Department as required by this Article, Chapters 6.7 and 6.75 of the California Health and Safety Code, commencing with Section 25280, and any implementing regulations.

(b) Any person required to obtain a UST permit pursuant to this Article shall submit an application and any required information and fees upon notification by the Department. Any person so notified by the Department who fails to submit the required information and fees within the time specified in the notice shall be assessed an additional fee and a site investigation fee, if a site investigation is required, as a penalty. The amount of the additional fee and site investigation fee is specified in Section 1176. A person assessed such fees may appeal the amount of the fee levied by requesting a Director's hearing pursuant to Section 1137. (Added by Ord. 164-92, App. 6/10/92; amended by Ord. 399-97, App. 10/17/97)

SEC. 1120.1. APPLICATION FOR PERMIT.

(a) Any person that is required to obtain one or more UST permits shall obtain the permits by filing application forms required by the Department, paying the required permit fee and demonstrating compliance with this Article and Article 31 if the permit is for a site located in Hunters Point Shipyard Parcel A as determined by inspection of the UST by the Department. For permits in the area of San Francisco subject to the requirements of Article 31, such permit application shall not be deemed complete until the department receives written notification from the Director that the applicant has complied with all provisions of Article 31 that are required to be met prior to permit issuance.

(b) Any person required to obtain a UST permit shall submit the information required by the Department, Article 31 and Chapters 6.7 and 6.75 of the California Health and Safety Code (commencing with Section 25280) and implementing regulations adopted by the State Water Resources Control Board and the Health Commission. No permit shall be granted to the owner or operator of a UST unless the applicant demonstrates compliance with this Article and its implementing regulations, Article 31 and all applicable provisions of Chapters 6.7 and 6.75 of the California Health and Safety Code (commencing with Section 25280) and implementing regulations, as the law and regulations may be amended.

(c) All modifications, repairs, closures and removals of USTs shall require approval of the Department, compliance with this Article and its implementing regulations, compliance with Article 31 if the approval is for a site in Hunters Point Shipyard Parcel A, compliance with applicable provisions of Chapters 6.7 and 6.75 of the California Health and Safety Code (commencing with Section 25280) and its implementing regulations, and payment of applicable fees. Any person who performs unauthorized modifications, repairs, removals or closures, or fails to schedule a site inspection with the Department prior to performing such work shall be assessed additional fees and a site investigation fee, if a site investigation is required, as a penalty. The amount of the additional fees and site investigation fee is specified in Section 1176. A person assessed such fees may appeal the amount of the fee levied by requesting a Director's hearing pursuant to Section 1137.

(d) No permit may be granted pursuant to this Article until the Department has inspected the UST and unless the applicant has corrected any Code violations cited by the Department; the applicant has furnished all requested information and paid the required permit fees; and the applicant demonstrates to the satisfaction of the Director of Health, by the submission of appropriate plans and other required information, that the design and construction of the UST meets all applicable City, State and federal laws and regulatory requirements.

(e) Each permit shall include requirements that the person reimburse the City for extraordinary costs, in addition to applicable permit fees, for inspection and monitoring, administration, incidental expenses and cleanup and remediation costs resulting from releases of hazardous substances or failure by the permittee to handle hazardous substances in accordance with the requirements of this Article. Permits shall not be renewed unless all such costs have been paid to the City. (Added by Ord. 164-92, App. 6/10/92; amended by Ord. 399-97, App. 10/17/97; Ord. 303-04, File No. 041541, App. 12/24/2004)

SEC. 1121. TERMS, RENEWALS, AND TRANSFERS.

(a) A UST permit shall be issued for a term of one year, except as otherwise provided in this Article.

(b) Every application for the renewal of a permit shall be made at least 30 days prior to the expiration date of such permit. The application for renewal shall include a certification by the permittee that the permittee has reviewed the information submitted on the permit application and any addenda thereto and that any necessary changes to the permit application and addenda have been made. Applications to renew a UST permit shall comply with all applicable require-

ments of Chapters 6.7 and 6.75 of the California Health and Safety Code (commencing with Section 25280).

(c) Any permit for which a properly completed application for renewal has been received by the Director of Health prior to the expiration date shall remain in effect until a decision has been made on the application and all administrative appeals have been exhausted or the time for appeal has expired.

(d) A permit is not transferable to another person, address or physical location within the same address. (Added by Ord. 164-92, App. 6/10/92; amended by Ord. 399-97, App. 10/17/97)

SEC. 1122. GENERAL REGISTRATION AND PERMIT PROVISIONS, DISCLAIMER.

(a) A certificate of registration or permit does not take the place of any license required by State, federal or local law nor does compliance with the permit requirements of this Article relieve any party of compliance with any other applicable State, federal or local law.

(b) Granting of a certificate of registration or permit under the provisions of this Article does not constitute authorization to handle hazardous materials at any establishment, if such handling violates a provision of this Article or any other local, federal, or State statute, code, ordinance, rule, or regulation relating to hazardous materials, or if hazardous materials are handled in such a manner as to cause an unauthorized release of hazardous materials or to pose a significant risk of such unauthorized release. (Added by Ord. 164-92, App. 6/10/92)

SEC. 1123. CONTENTS OF PERMITS AND POSTING.

(a) A permit to operate a UST shall contain the following information:

(1) The name and address of the permittee for purposes of notice and service of process;

(2) The street address of the establishment for which the permit is issued;

(3) Authorization of the UST approved under the permit;

(4) The date the permit is effective;

(5) The date of expiration;

(6) Any special conditions of the permit.

(b) The permittee shall post a notice of the permit obtained pursuant to this Section, in a location open to public access during normal business hours, at each establishment for which a permit is obtained. (Added by Ord. 164-92, App. 6/10/92; amended by Ord. 399-97, App. 10/17/97)

SEC. 1124. DETERMINATION.

(a) The Director of Health shall take final action on a permit denial, issuance, modification or renewal by mailing a copy of the permit denial, issuance, modification or renewal to the applicant, and if different, the owner of record of the real property on which the UST is located.

(b) The Director of Health shall publish notice of the action on the permit by posting a notice at City Hall or at the Department of Health offices at 101 Grove Street, or by publication in a newspaper of general circulation. The notice shall include a summary of the Director's action on the permit, and instructions for filing a public hearing request. The Director's action shall be final 15 days after the Director's posting or publication of the notice of permit action, unless a public hearing is requested as provided in Subsection (c).

(c) Any person who deems that his or her interests or property or that the general public interest will be adversely affected by the Director's denial, issuance, modification, or renewal of a permit may request a public hearing within 15 days of the Director's publication of a notice of permit action. The Director shall hold a public hearing after giving the notice provided in Section 1137. (Added by Ord. 164-92, App. 6/10/92; amended by Ord. 399-97, App. 10/17/97)

DIVISION IV ENFORCEMENT

SEC. 1130. VIOLATIONS.

In addition to any other provisions of this Article, the following acts or omissions of a

person or business subject to regulation under this Article shall constitute a violation of this Article:

(a) Fraud, wilful misrepresentation, or any wilfully inaccurate or false statement in applying for a new or renewed permit or certificate of registration;

(b) Fraud, wilful misrepresentation, or any wilfully inaccurate or false statement in any report required by this Article;

(c) Failure to correct conditions constituting an unreasonable risk of an unauthorized release of hazardous materials within a reasonable time after notice from a governmental entity other than the City;

(d) If an underground storage tank owner or operator: Failure to comply with applicable requirements of a permit; failure to establish and maintain evidence of financial responsibility as required pursuant to this Article; failure to take corrective action in response to an unauthorized release; failure to properly close an underground storage tank; failure to permit inspection or perform any monitoring, testing or reporting required by this Article; or making any false statement, representation, or certification in any application, record, report, or other document submitted or required to be maintained pursuant to this Article;

(e) If an underground storage tank operator: Operation of an underground storage tank without a permit or failure to maintain records or report an unauthorized release as required pursuant to this Article;

(f) If an underground storage tank owner: Failure to obtain a permit; abandonment of any underground storage tank subject to this Article; knowing failure to take reasonable and necessary steps to assure compliance by the operator with this Article; or failure to repair or upgrade an underground storage tank in accordance with this Article;

(g) Any violation of Subsections 8001.3.2(a) or 8001.3.3(a) of the Uniform Fire Code, as adopted by the State Fire Marshal, concerning hazardous material management plans and inventories. (Added by Ord. 164- 92, App. 6/10/92; amended by Ord. 399-97, App. 10/17/97)

SEC. 1131. EMERGENCY POWERS.

(a) Whenever the Director of Health or a duly authorized representative discovers a hazardous materials release site, the Director is empowered to order the responsible party or parties to vacate or close the hazardous materials release site and institute emergency remedial actions, as provided in this Section, without a written notice or hearing, until the condition requiring such action has been abated.

(b) Following any unauthorized release, the Director of Health is empowered to order the hazardous materials release site secured from public and/or private access, including the ordering of the evacuation, closure or other isolation of the hazardous materials release site so as to prevent any further public or private exposures to hazardous materials. The Director of Health is also empowered to issue directives as to what monitoring must be done to assess the degree of contamination present and to evaluate what degree of cleanup shall be undertaken in order to assure safe reoccupancy of the hazardous materials release site.

(c) The Director of Health may verify that the unauthorized release of hazardous material is being contained and appropriately disposed. Any time the Director of Health has reason to believe that any responsible party is not adequately containing and disposing of such hazardous material, the Director of Health may undertake and direct an emergency response in order to protect the public health and safety.

(d) In the event the Director of Health determines that immediate action is necessary and the responsible party has not undertaken and will not undertake such necessary action, the Director may direct the institution of those remedial actions reasonably necessary under the circumstances to protect the health, safety and welfare of the community from the hazards attending the unauthorized release. The responsible party shall be strictly liable to the City for

the reimbursement of all costs incurred by the City for any such emergency remedial action, including, but not limited to, the costs of fighting fires. All costs due for which payment is not received within 30 days of the mailing of a notice to the responsible party of payment due, shall be delinquent and subject to a penalty of 10 percent, not to exceed $2,000, and interest at the rate of one percent per month on the outstanding balance from the date payment is due. In addition, the City may impose a special assessment lien against the property as provided in Section 1136. The lack of either negligence or wilfulness of the responsible party in causing or allowing such discharge shall have no bearing on the liability imposed by this Section.

(e) The decision whether any hazardous materials release site is safe for reentry by the public following such order of the Director of Health regarding evacuation, closures, etc. shall be made exclusively by the Director of Health. (Added by Ord. 164-92, App. 6/10/92; amended by Ord. 399-97, App. 10/17/97)

SEC. 1132. AUTHORITY OF THE DIRECTOR.

The Director of Health shall have authority to administer and enforce all provisions of this Article. Pursuant to this authority the Director of Health may issue certificates of registration and permits for underground storage tanks; deny, revoke or suspend any permits issued pursuant to this Article; enforce the provisions of this Article by any lawful means available for such purpose; inspect establishments; inspect and monitor hazardous materials release sites; and require persons or businesses operating establishments or USTs to take actions to prevent the release of hazardous materials and to clean up and abate a release of hazardous materials. The Director of Health and officials of the Fire Department, Department of Public Works, Department of City Planning and other affected departments shall mutually cooperate with each other to carry out the intent of this Article. (Added by Ord. 164-92, App. 6/10/92; amended by Ord. 399-97, App. 10/17/97)

SEC. 1133. ENFORCEMENT ACTIONS.

(a) **Cease and Desist Orders.**

(1) Whenever the Director finds that a person, business or responsible party is handling hazardous materials in violation of any requirement imposed pursuant to this Article, or pursuant to any order, regulation or permit issued by the Director, the Director may:

(A) Issue an order directing the person, business or responsible party to cease and desist such violation and directing the person, business or responsible party to achieve compliance in accordance with a detailed time schedule of specific actions the person, business or responsible party must take in order to correct or prevent violations of this Article;

(B) Issue an order revoking or suspending any permit.

(2) Any order issued by the Director under this Section may require the person, business or responsible party to provide such information as the Director deems necessary to explain the nature of the violation. The Director may require in any cease and desist order that the discharger pay to the City the costs of any extraordinary inspection or monitoring deemed necessary by the Director because of the violation.

(b) **Cleanup and Abatement Orders.**

(1) Any person, business or responsible party who has caused or permitted an unauthorized release or is causing or permitting an unauthorized release or any other person responsible for the cleanup of an unauthorized release who fails to take cleanup action in violation of this Article or any order, regulation, or prohibition issued by the Director, shall, upon order of the Director and at the expense of the person, business or responsible party, clean up such unauthorized release and abate the effects.

(2) Any responsible party who fails to take action to close a UST or establishment containing hazardous materials, or otherwise violates this Article or any order, regulations, or prohibition issued by the Director related to closure, shall, upon order of the Director and at the

expense of the responsible party, close the UST or establishment and abate the effects of any release.

(3) The Director may perform any cleanup, abatement, or remedial work required under Subdivision (b)(1) or (2) when required by the magnitude of the violation or when necessary to prevent pollution, nuisance, or injury to the environment or protect public health and safety. Such action may be taken in default of, or in addition to, remedial work by the person, business or responsible party, regardless of whether injunctive relief is being sought.

(4) Any person, business or responsible party who has violated or is in violation of the requirements of this Article shall be liable to the City for costs incurred in cleaning up and abating the effects of the violation, or taking other remedial action, including but not limited to administrative costs, inspection costs and attorneys fees. All costs for which payment is not received within 30 days of the issuance of a notice to the responsible party of payment due, shall be delinquent and subject to a penalty of 10 percent, not to exceed $2,000, and interest at the rate of one percent per month on the outstanding balance from the date payment is due. In addition, the City may impose a special assessment lien against the property as provided in Section 1136.

(c) **Administrative Civil Penalty Orders.**

(1) The Director may issue a complaint, approved as to form by the City Attorney, to any person or business on whom an administrative civil penalty may be imposed pursuant to Section 1134. The complaint shall allege the acts or failures to act that constitute a basis for liability and the amount of the proposed administrative civil penalty. The Director shall serve the complaint by personal service or certified mail and shall inform the party so served that a hearing shall be conducted within 60 days after the party has been served, unless the party waives the right to a hearing. If the party waives the right to a hearing, the Director shall issue an order setting liability in the amount proposed in the complaint unless the Director and the party have entered into a settlement agreement, in which case the Director shall issue an order setting liability in the amount specified in the settlement agreement. The settlement agreement shall be approved by the City Attorney as to form. Where the party has waived the right to a hearing or where the Director and the party have entered into a settlement agreement, the order shall not be subject to review by any court or agency.

(2) Any hearing required by Subsection (1) shall be conducted in accordance with the procedures in Section 1137. After conducting any hearing required under this Section, the Department shall, within 30 days after the case is submitted, issue a decision, including an order setting the amount of the administrative civil penalty to be imposed.

(3) Orders setting civil liability issued under this Section shall become effective and final upon issuance, and payment shall be made within 30 days of issuance. Copies of these orders shall be served by personal service or by certified mail upon the party served with the complaint and upon other persons who appeared at the hearing and requested a copy.

(4) Within 30 days after service of a copy of a decision issued by the Director, any person so served may file with the superior court a petition for writ of mandate for review of the decision. Any person who fails to file the petition within this 30-day period may not challenge the reasonableness or validity of a decision or order of the Director in any judicial proceedings brought to enforce the decision or order or for other remedies. Except as otherwise provided in this Section, Section 1094.5 of the California Code of Civil Procedure shall govern any proceedings conducted pursuant to this Section. In all proceedings pursuant to this Section, the court shall uphold the decision of the Department if the decision is based upon substantial evidence in the whole record. The filing of a petition for writ of mandate shall not stay any accrual of any penalties assessed pursuant to this Article. This subdivision does not prohibit the court from granting any appropriate relief within its jurisdiction.

(d) **Injunctive Relief.**

(1) Upon the failure of any person, business or responsible party to comply with any requirement of this Article, a permit, any regulation, a cease and desist order, a cleanup and abatement order, or any other order issued by the Director, the City Attorney, upon request by the Director, may petition the proper court for injunctive relief, payment of civil penalties, and any other appropriate remedy, including restraining such person, business or responsible party from continuing any prohibited activity and compelling compliance with lawful requirements.

(2) In any civil action brought pursuant to this Article in which a temporary restraining order, preliminary injunction, or permanent injunction is sought, it is not necessary to allege or prove at any stage of the proceeding any of the following:

(A) Irreparable damage will occur should the temporary restraining order, preliminary injunction, or permanent injunction not be issued;

(B) The remedy at law is inadequate.

The court shall issue a temporary restraining order, preliminary injunction, or permanent injunction in a civil action brought pursuant to this Article without the allegations and without the proof specified above.

(e) **Termination of Establishment Containing Hazardous Materials.** In addition to other remedies, when in the judgement of the Director, a person or business operating an establishment containing hazardous materials has not or cannot demonstrate satisfactory progress toward compliance with the requirements of this Article, the Director may remove any hazardous materials handled at the establishment, after providing written notice to the person or business operating the establishment and the owner of the real property upon which the establishment is located, by certified mail 30 days in advance of such action.

(f) **Notices of Violation.** Whenever the Director determines that a person, business or responsible party is not in compliance with the provisions of this Article, the Director may issue a notice of violation ordering the person, business or responsible party to comply with this Article.

(g) The Director may request that the District Attorney institute criminal proceedings in enforcement of this Article against any violation, the Chief of Department initiate enforcement procedures pursuant to the provisions of the Fire Code, and the Chief of Police and authorized agents assist in the enforcement of this Article.

(h) Except as otherwise provided in this Section for administrative civil penalty orders, an order issued under this Section shall become final five days after mailing if issued by certified mail, or upon receipt if issued by personal service.

(i) Except as otherwise provided in this Section for administrative civil penalty orders, any party who is the subject of an enforcement action under this Section may request a public hearing within 15 days of the final date of an order issued under this Section, but except for orders revoking or suspending a permit, the effective date of an order shall not be postponed solely because of the filing of a request for a hearing. Notice of a public hearing and of the final decision of the Director shall be given as provided in Section 1137. (Added by Ord. 164-92, App. 6/10/92; amended by Ord. 399-97, App. 10/17/97)

SEC. 1134. PENALTIES.

(a) **Criminal Penalties.**

(1) Any person or business that wilfully prevents, interferes with, or attempts to impede the enforcement of this Article by any authorized representative of the Director is, upon conviction, guilty of a misdemeanor.

(2) Any person or business which violates Section 1151(a) shall, upon conviction, be punished by a fine of not more than $25,000 for each day of violation, or by imprisonment in the County Jail for not more than one year, or by both fine and imprisonment. If the conviction is for a violation committed after a first conviction under this Section, the person or business shall be punished by a fine of not less than $2,000 or more than $50,000 per day of violation, or by

imprisonment in the State Prison for 16, 20, or 24 months or in the County Jail for not more than one year, or by both fine and imprisonment.

(3) Any person subject to the underground storage tank requirements of Chapter 6.7 of California Health and Safety Code (commencing with Section 25280) who falsifies any monitoring records required by that chapter or this Article, or knowingly fails to report an unauthorized release as required by that chapter and Section 1151(b), shall, upon conviction, be punished by a fine of not less than $5,000 or more than $10,000, by imprisonment in the County Jail for not to exceed one year, or by both fine and imprisonment.

(4) Any person or business who violates Section 1150 shall, upon conviction, be guilty of a misdemeanor or an infraction. If charged as an infraction, upon conviction, said person or business shall be punishable by a fine in an amount not to exceed $250. If charged as a misdemeanor, upon conviction, said person or business shall be punished by imprisonment in the County Jail not exceeding six months or a fine not exceeding $500, or both. Each day each violation is committed or permitted to continue shall constitute a separate offense. In addition to any peace officer, the following classes of employees of the City and County of San Francisco shall have the authority to enforce the provisions of this subsection:

Class Number	Class Title
6120	Environmental Health Inspector
6122	Senior Environmental Health Inspector
6124	Principal Environmental Health Inspector
6137	Assistant Industrial Hygienist
6138	Industrial Hygienist
6139	Senior Industrial Hygienist
6140	Hazardous Materials Program Manager
6126	Director, Environmental Health Section
6281	Fire Safety Inspector II
H-4	Fire Inspector
1372	Special Assistant, Environment Health Section

(b) **Civil Penalties.**

(1) Any business or person which violates the requirements of Division II of this Article or fails to permit an inspection required pursuant to this Article shall be civilly liable to the City in an amount of not more than $2,000 for each day in which the violation occurs.

(2) Any business or person which knowingly violates the requirements of Division II of this Article or fails to permit an inspection required pursuant to this Article after reasonable notice of the violation shall be civilly liable to the City in an amount not to exceed $5,000 for each day in which the violation occurs.

(3) Any owner of an underground storage tank who commits any of the violations listed in Section 1130(d) and (f) and any operator of an underground storage tank who commits any of the violations listed in Section 1130(d), (e) and (f) shall be civilly liable to the City in an amount not less than $500 or more than $5,000 for each underground storage tank for each day of violation.

(4) Any person who violates any requirements of Articles 3 and 4 of Chapter 6.75 of the California Health and Safety Code, (commencing with Section 25299.30) shall be civilly liable to the City in the amount of not more than $10,000 for each underground storage tank for each day of violation.

(c) **Administrative Civil Penalties.**

(1) Notwithstanding Subsection (b), any person or business who violates this Article is civilly liable to the Department for an administrative civil penalty, in an amount not to exceed $2,000 for each day in which the violation occurs. If the violation results in, or significantly contributes to, a release or threatened release of any hazardous material, any fire, or any health or medical problem requiring toxicological, health, or medical consultation, the business shall also be as-

sessed the full cost of the City emergency response, as well as the cost of cleaning up and disposing of the hazardous materials.

(2) Notwithstanding Subsection (b), any person or business who knowingly violates this Article after reasonable notice of the violation is civilly liable to the Director for an administrative penalty, in an amount not to exceed $5,000 for each day in which the violation occurs.

(3) An administrative civil penalty shall not be recoverable pursuant to this subsection and Subsection (b) for the same violation.

(d) The court in determining civil and criminal penalties and the Director in determining administrative civil penalties imposed pursuant to this Article shall consider the extent of harm caused by the violation, the nature and persistence of the violation, the length of time over which the violation occurs, the frequency of past violations, any action taken to mitigate the violation, and the financial burden to the violator.

(e) **Apportionment of Penalties.**

(1) Criminal and civil penalties collected pursuant to Subsections (a)(2) and (b)(1) and (2) shall be apportioned consistent with the provisions of Sections 25515.2 and 25517 of the California Health and Safety Code.

(2) Administrative civil penalties collected pursuant to Subsection (c) shall be apportioned consistent with the provisions of Sections 25514.5(g) and (h) of the California Health and Safety Code. (Added by Ord. 164- 92, App. 6/10/92; amended by Ord. 399-97, App. 10/17/97)

SEC. 1135. CIVIL ACTION FOR RETALIATION.

A civil action may be instituted against any employer by any employee who has been discharged, demoted, suspended, or in any other manner discriminated against in terms or conditions of employment, or threatened with any such retaliation, because such employee has, in good faith, made any oral or written report or complaint related to the enforcement of this Article to any company official, public official or union official, or has testified in any proceeding in any way related thereto. In addition to any actual damages which may be awarded, damages shall include costs and attorneys' fees. The Court may award punitive damages in a proper case. (Added by Ord. 164-92, App. 6/10/92)

SEC. 1136. SPECIAL ASSESSMENT LIENS.

(a) Cost and charges incurred by the City by reason of the cleanup and abatement of an unauthorized release; abatement of any violation of this Article, including but not limited to monitoring and inspection costs; a delinquency in the payment of a bill for fees applicable under this section in excess of 30 days; and any final administrative civil penalties assessed against a person or business for violations of this Article shall be an obligation owed to the City by the owner of the property where the hazardous materials were handled. The City shall mail to the owner of the property where the hazardous materials were handled or the person or business against whom the final administrative civil penalty was assessed. Such obligation may collected by means of the imposition of a lien against the property of the owner of the property where the hazardous materials were handled or of the person or business against whom the final administrative civil penalty was assessed. The City shall mail to the owner of the property where the hazardous materials were handled and to the person or business against whom the final administrative civil penalty was assessed (if different from the owner of the property) a notice of the amounts due and a warning that lien proceedings will be initiated against the property if the amounts are not paid within 30 days after mailing of the notice.

(b) Liens shall be created and assessed in accordance with the requirement of Article XX of Chapter 10 of the San Francisco Administrative Code (commencing with Section 10.230). (Added by Ord. 164-92, App. 6/10/92; amended by Ord. 322-00, File No. 001917, App. 12/28/2000)

SEC. 1137. DIRECTOR'S HEARINGS.

(a) The Director shall hold a public hearing for the following purposes:

(1) To issue an order that imposes an administrative civil penalty pursuant to Section 1133(c) of this Article unless the party against

whom liability is to be imposed has waived the right to a hearing as provided in Section 1133(c);

(2) To issue an order pursuant to Section 1133(a) that revokes or suspends a permit;

(3) To take public comment on a permit application under Section 1124, upon timely and proper request by a person authorized pursuant to Section 1124(c);

(4) To take public comment on the approval of a corrective action plan or modification to a corrective action plan pursuant to Section 1143, upon timely and proper request by a person authorized pursuant to Section 1143(g);

(5) To comply with a request for a public hearing under Section 1133(i) following an enforcement action by the Director, upon timely and proper request by a person authorized pursuant to Section 1133(i);

(6) To hear an appeal from the levy of fee penalties and site investigation fees imposed pursuant to Sections 1120 and 1120.1. The Director may reduce the amount of the fees only upon a showing of just cause, such as demonstrable negligence on the part of an employee or agent;

(7) To take public comment on a risk management plan pursuant to Article 21A of this Code.

(b) Notices of public hearings pursuant to this Section shall be given by publication in a newspaper of general circulation in the City for at least two days and not less than 10 days prior to the date of such hearing. Written notice setting forth the date of the public hearing shall be sent to interested persons, including without limitation the hazardous materials handler and the property owner, by certified mail at least 10 days in advance of the hearing. The notice shall state the nature and purpose of the public hearing.

(c) In any hearing under this Article, all parties involved shall have the right to offer testimonial, documentary, and tangible evidence bearing on the issues, to see and copy all documents and other information the City relies on in the proceeding, to be represented by counsel, and to confront and cross-examine any witnesses against them. Any hearing under this Article may be continued by the person conducting the hearing for a reasonable time for the convenience of a party or a witness.

(d) In a hearing to issue an order setting liability for administrative civil penalties, the Director shall designate a certified court reporter to report all testimony, the objections made, and the ruling of the Director. Fees for transcripts of the proceedings shall be at the expense of the party requesting the transcript as prescribed by Section 69950 of the California Government Code, and the original transcript shall be filed with the Director at the expense of the party ordering the transcript.

(e) At the conclusion of a public hearing, the Director may take any action consistent with this Article and other applicable law. The Director's decision shall be in writing, and shall contain a statement of reasons in support of the decision. Following a public hearing, the decision of the Director shall be sent by certified mail to the handler and the property owner and any other interested person.

(f) Hearings requested pursuant to Subsections (a)(3), (a)(4), and (a)(5) shall be subject to a hearing fee as provided in Section 1176.

(g) The decision of the Director to issue, deny, revoke, suspend, modify or renew a permit may be appealed to the Board of Appeals in the manner prescribed in Article I, Part III of the San Francisco Municipal Code.

(h) The Director's action shall be final unless an appeal, if provided by this Article, is filed in a timely manner. (Added by Ord. 164-92, App. 6/10/92; amended by Ord. 348-92, App. 11/18/92; Ord. 399-97, App. 10/17/97)

SEC. 1138. REMEDIES NOT EXCLUSIVE.

Remedies under this Section are in addition to and do not supersede or limit any and all other remedies, civil or criminal. (Added by Ord. 164-92, App. 6/10/92)

DIVISION V
PUBLIC DISCLOSURE AND TRADE SECRETS

SEC. 1140. MAINTENANCE OF FILES.

The Health Department shall maintain files of all application forms and supporting materials

received from persons, businesses and establishments subject to the requirements of this Article, and shall provide for a central data bank of health and safety information. These files shall be open to the public for inspection, by appointment, and for reproduction upon payment of a fee during normal business hours at an office designated by the Director of Health. Computer data shall be provided in a form to be determined by the Director of Health. Said form shall be easily intelligible to the general public. Files required to be maintained pursuant to this Section shall be kept for a period of five years, after which they may be destroyed. (Added by Ord. 164-92, App. 6/10/92; amended by Ord. 399-97, App. 10/17/97)

SEC. 1141. PUBLIC DISCLOSURE.

(a) Any person may request information regarding hazardous materials at an establishment from the Director of Health in accordance with this Section. Upon any request for a copy of records, the Director of Health shall, within 10 working days after receipt of such request, take either of the following actions:

(1) Provide the information requested to said person; or

(2) Notify said person that the Director of Health has determined:

(A) That the provision of the requested information will take longer than 10 working days because of the extensive amount or complicated nature of the information requested, or

(B) That said request for information is denied, and the reasons therefor.

In the event of a medical emergency, the Director of Health and/or the Chief of Department shall take all measures necessary to obtain the information immediately.

(b) The Director of Health shall maintain, for a reasonable period of time, a record of all persons who request access to the application forms and supporting materials. The record shall include:

(1) The person's name, address and telephone number;

(2) The name and address of the person, business or governmental agency such person represents; and

(3) The identity of the specific file(s) examined or requested to be copied.

(c) The provisions of this Article are not intended to impair the power of the Director of Health to refuse to disclose information where the Director determines, pursuant to the California Public Records Act, that the public interest served by nondisclosure outweighs the public interest served by disclosure. (Added by Ord. 164- 92, App. 6/10/92; amended by Ord. 399-97, App. 10/17/97)

SEC. 1142. TRADE SECRETS.

(a) If a person or business believes that any information required to be reported or disclosed by this Article involves the release of a trade secret, the person or business shall provide the information to the Department and shall notify the Department in writing of that belief. The Department shall not disclose any properly substantiated trade secret which is so designated by a person or business except in accordance with this Section and Section 25511 of the Health and Safety Code.

(b) Information certified by appropriate officials of the United States, as necessarily kept secret for national defense purposes, shall be accorded the full protection against disclosure as specified by such official or in accordance with the laws of the United States.

(c) The location of explosives stored by the San Francisco Police Department and other law enforcement or government agencies shall not be disclosed.

(d) Information designated as a trade secret may be disclosed to:

(1) An officer or employee of the City and County of San Francisco, the State of California or the United States of America, for use in connection with the official duties of such officer or employee acting under authority of law for the protection of health;

(2) Persons or businesses contracting with the City and County and their employees if, in the opinion of the Director of Health, such disclosure is necessary and required for the satisfactory performance of the work to be done under the contract or to protect the health and safety of the employees of the contractor;

(3) Any physician where the physician certifies in writing to the Director of Health that such information is necessary to the medical treatment of a patient; where the Director determines that a medical emergency exists, the Director may waive the written certification; or

(4) Health professionals (i.e., physician, industrial hygienist, toxicologist, epidemiologist, or occupational health nurse) in a nonemergency situation where the request is in writing and the request describes in reasonable detail the medical need for the information.

(e) When the Director of Health receives a request for information pursuant to Section 1141 and the registrant or permittee has designated as a trade secret the information sought, the Director of Health shall notify the registrant or permittee in writing of said request by certified mail. The Director of Health may release the information 30 days after the date of mailing said notice, unless prior to the expiration of said 30-day period, the registrant or permittee institutes and thereafter prosecutes in a timely manner an action in a court of competent jurisdiction claiming that the information is subject to protection as a trade secret under California law and seeking an injunction prohibiting disclosure of said information to the general public.

(f) In adopting this Article, the Board of Supervisors does not intend to authorize or require the disclosure to the public of any trade secrets protected under the laws of the State of California.

(g) This Section is not intended to empower a registrant or permittee to refuse to disclose any information including, but not limited to, trade secrets, to the Director of Health either in obtaining a certificate of registration or permit or upon demand by the Director.

(h) Notwithstanding any other provision of this Article, any officer or employee of the City and County, or former officer or employee or contractor with the City or employee thereof, who by virtue of such employment or official position has obtained possession of or has had access to information, the disclosure of which is prohibited by this Section, and who knowing that disclosure of the information is prohibited, knowingly and wilfully discloses the information in any manner to any person or business not entitled to receive it, shall be guilty of a misdemeanor.

(i) The Director of Health shall advise any person or business to whom a trade secret is disclosed pursuant to this Section that the disclosure thereof, except as authorized by this Section, constitutes a misdemeanor. (Added by Ord. 164-92, App. 6/10/92; amended by Ord. 399-97, App. 10/17/97)

SEC. 1143. PUBLIC NOTICE AND PARTICIPATION PROCEDURES FOR UNDERGROUND STORAGE TANK RELEASES.

(a) The procedures of this section apply to underground storage tank sites included in the Underground Storage Tank Local Oversight Program (LOP) through a contract between the City and County of San Francisco and the State Water Resources Control Board pursuant to California Health and Safety Code Section 25297.1.

(b) The Department shall make available to the public a list of current LOP sites.

(c) For purposes of this Article "corrective action plan" means any corrective action plan or workplan submitted to the Department pursuant to Section 2722 of Section 2725 of Title 23 of the California Code of Regulations. For all LOP sites that require a corrective action plan in accordance with State Water Resources Control Board regulations or Department guidelines or regulations, after a responsible party submits to the Department a proposed corrective action plan or modification to a corrective action plan, including a request to terminate a corrective action prior to meeting established clean up

levels, the Department shall determine the adequacy of the proposed corrective action plan or modification. If Department staff determine that the proposed corrective action plan or modification is adequate, the Department shall submit a proposed memorandum of findings to the Director of Health for his or her signature.

(d) When the memorandum of findings has been signed and dated, the Director of Health shall prepare a notice of the action, which shall include the name of the property owner, the address of the site, the type of remediation, a summary of the Director's action and instructions for filing a public hearing request.

(e) The Director of Health shall publish the notice by:

(1) Mailing a copy to the responsible party, and if different, the owner of record of the real property on which the LOP site is located;

(2) Posting the notice at City Hall or at the Department of Health offices at 101 Grove Street;

(3) Publishing the notice in a newspaper of general circulation;

(4) For nonresidential LOP sites, posting the notice at the site and mailing the notice to all real property owners within 300 feet of the exterior boundaries of the real property upon which the site is located, using for this purpose the names and addresses of such owners as shown on the latest citywide assessment roll in the office of the Tax Collector. Failure to send notice by mail to any such property owner where the address of such owner is not shown on such assessment roll shall not invalidate any proceedings in connection with such action;

(5) For residential LOP sites, posting the notice at the site;

(6) Providing the notice in any additional manner that the Director shall deem appropriate, including publishing the notice in non-English publications serving the affected community.

(f) The Director's action shall be final 15 days after the Director's publication of the notice of corrective action plan approval, in a newspaper of general circulation, unless a public hearing is requested as provided in Subsection (g).

(g) Any person who deems that his or her interests or property or that the general public interest will be adversely affected by the Director's action may request a public hearing within 15 days of the Director's publication of a notice of approval of a corrective action plan or modification to a corrective action plan. The Director shall hold a public hearing after giving the notice provided in Section 1137. (Added by Ord. 348-92, App. 11/18/92)

DIVISION VI
UNAUTHORIZED RELEASES AND CLOSURES OF ESTABLISHMENTS OR UNDERGROUND STORAGE TANKS

SEC. 1150. UNAUTHORIZED RELEASES OF HAZARDOUS MATERIALS PROHIBITED.

No person shall deposit, discharge or dispose of any hazardous material or container holding a hazardous material upon any public street, sidewalk, park or other public right-of-way or public place or deposit, discharge or dispose of any hazardous material or container holding a hazardous material in a receptacle intended for refuse collection unless authorized by this Article or other applicable code or federal or State law. No person shall handle a hazardous material in such a manner as to cause or threaten to cause an unauthorized release of hazardous material to any public place or any parcel, lot, lands, water or waterways within the City and County of San Francisco. (Added by Ord. 164-92, App. 6/10/92)

SEC. 1151. REPORTING UNAUTHORIZED RELEASE OF HAZARDOUS MATERIALS.

(a) As soon as a person or business or any employee, authorized representative, agent or designee of the business or other person who is required to have a certificate of registration has reason to conclude that an unauthorized release of a hazardous material may have occurred at an establishment, such person or business or any employee, authorized representative, agent or designee of the business or other person shall

immediately notify the Department and the California Office of Emergency Services if required by that agency's regulations under the circumstances.

(b) Any person who owns or operates an underground storage tank or who causes an unauthorized release at an underground storage tank site shall comply with all requirements of Chapters 6.7 and 6.75 of California Health and Safety Code (commencing with Section 25280) with respect to an unauthorized release.

(c) The responsible party or parties of a hazardous materials release site cleanup shall be responsible for the cleanup of any unauthorized or uncontrolled release and shall institute and complete all actions necessary to remedy the effects of any unauthorized release, whether sudden or gradual. (Added by Ord. 164-92, App. 6/10/92; amended by Ord. 399-97, App. 10/17/97)

SEC. 1152. PERIODIC INSPECTION AFTER UNAUTHORIZED RELEASE.

Whenever an unauthorized release occurs at an establishment, the Department may inspect the establishment to determine whether continued hazardous materials handling at such establishment is suitable or whether the establishment should be subject to enforcement action. In making such a determination, the Director of Health shall consider the age of the establishment, the methods of containment, the concentration of the hazardous materials contained, the severity of a potential unauthorized release, and the suitability of other long-term preventive measures that meet the objectives of this Article. Enforcement action may be taken by the Director of Health as set forth in this Article. (Added by Ord. 164-92, App. 6/10/92; amended by Ord. 399-97, App. 10/17/97)

SEC. 1153. ABANDONED ESTABLISHMENTS OR UNDERGROUND STORAGE TANKS.

(a) Any owner of real property having reason to believe that an abandoned UST or establishment containing hazardous materials ("hazardous materials establishment") is located on or under the real property or is located under the surface of any improved or unimproved public street, sidewalk, alley, court or other place dedicated for or subject to an easement for public access that is immediately adjacent to the real property shall make a reasonable effort to locate and identify such a hazardous materials establishment or UST. Whenever an abandoned hazardous materials establishment or UST is located, said owner of real property shall file a plan for the closing or the upgrading and registering or permitting of such hazardous materials establishment or UST within 30 days of its discovery. The closure plan shall conform to the standards specified in Section 1154 and regulations promulgated by the Director of Health.

(b) In the event that the Director of Health has reason to believe that an abandoned hazardous materials establishment or UST is located on or under any real property within the City and County of San Francisco, the Director shall notify in writing the owner of the real property that an abandoned hazardous materials establishment or UST may be located on or under the real property and compliance with this Article is required. If the Director has reason to believe that an abandoned hazardous materials establishment or UST is located under the surface of any improved or unimproved public street, sidewalk, alley, court or other place dedicated for or subject to an easement for public access, the Director shall provide the notice to the owner of the immediately adjacent property.

(c) If any other City official notifies a person, business or other responsible party of the existence of an abandoned hazardous materials establishment or UST on or under the person's property or under public property adjacent to the person's property, the official shall send a copy of the notification to the Director of Health. The Director of Health shall cooperate with such City official to ensure that the abandoned hazardous materials establishment or UST is registered or permitted or closed in conformity with this Article. (Added by Ord. 164-92, App. 6/10/92; amended by Ord. 399-97, App. 10/17/97)

SEC. 1154. CLOSURE OF ESTABLISHMENTS OR UNDERGROUND STORAGE TANKS.

(a) Any person or business who owns or operates any establishment or UST subject to the certificate of registration or permit requirements of this Article and the owner of the real property upon which the establishment or UST is located shall either obtain a valid certificate of registration or permit or file a closure plan in accordance with this Section.

(b) Except as otherwise provided in Subsections (e) and (f), the responsible party or parties shall close an establishment or UST in accordance with a closure plan filed with and approved by the Director of Health. The closure plan shall be designed at a minimum to meet the following objectives:

(1) Eliminate the need for further maintenance of the closed storage facility or establishment;

(2) Ensure that a threat to public health or safety or to the environment from residual hazardous materials in the UST or establishment or the release of hazardous materials from the UST or establishment is eliminated; and

(3) Ensure that the removal, disposal, neutralization, or reuse of the hazardous materials that were stored in or released from the UST or establishment is accomplished in an appropriate manner.

(c) The Director may promulgate regulations implementing the closure plan objectives specified in this Section and specifying additional requirements for closure plans that the Director determines are necessary for the protection of public health and safety and the environment.

(d) A person or business shall apply for approval to close such UST or establishment and pay all applicable fees not less than 30 days prior to the termination of the storage of hazardous materials at the UST or establishment.

(e) Notwithstanding Subsection (b), underground storage tanks shall be closed and sites remediated in conformity with all applicable requirements of Chapters 6.7 and 6.75 of the California Health and Safety Code (commencing with Section 25280), and implementing regulations of the State Water Resources Control Board and the Health Commission. For a nonresidential site included in the Underground Storage Tank Local Oversight Program (LOP) that requires a corrective action plan pursuant to State Water Resources Control Board regulations or Department guidelines or regulations, the responsible party shall submit to the Department, as part of a proposed corrective action plan, a Community Health and Safety Plan which addresses community health and safety issues reasonably expected to arise during assessment and remediation activities. A Community Health and Safety Plan shall meet the following objectives: assure a safe and healthy environment for the public; minimize hazards, accidents, off-site releases and community exposures due to site activities; and assure an appropriate level of community awareness. In the case of an underground storage tank located under the surface of any improved or unimproved public street, sidewalk, alley, court or other place dedicated for or subject to an easement for public access, the person that owns or operates the underground storage tank or the owner of the immediately adjacent real property shall be responsible for closure of the underground storage tank, with the exception of an underground storage tank installed solely for the benefit of the City and County of San Francisco.

(f) Notwithstanding Subsection (b), if the closure of any UST or establishment subject to regulation under this Article is within the jurisdiction of any federal or State agency, the Director of Health shall request the appropriate federal or State agency to determine closure requirements for the UST or establishment. (Added by Ord. 164-92, App. 6/10/92; amended by Ord. 348-92, App. 11/18/92; Ord. 399-97, App. 10/17/97)

SEC. 1155. OBLIGATIONS OF RESPONSIBLE PARTIES FOR CLOSURE AND CLEANUP.

(a) Any responsible party who undertakes action to remedy the effects of unauthorized release(s) or close an establishment or UST shall

not be barred by this Article from seeking to recover appropriate costs and expenditures from other responsible parties.

(b) Each responsible party shall be jointly and severally liable to the City and County of San Francisco for all costs incurred in any closure or remedial action taken by the City pursuant to the provisions of Section 1131 or Section 1133(b) of this Article and the Department's administrative costs for reviewing and approving closure, remedial action and corrective action plans and carrying out the public notice and participation procedures of Section 1143 of this Article. These costs shall constitute a debt payable to the City.

(c) The person or business who handles hazardous materials regulated by this Article shall indemnify, hold harmless and defend the City against any claim, cause of action, disability, loss, liability, damage, cost or expense, howsoever arising, which occurs by reason of an unauthorized release or a closure action undertaken in connection with the handling of hazardous materials regulated by this Article by the person or business except as arises from the City's sole willful act or sole active negligence. (Added by Ord. 164-92, App. 6/10/92; amended by Ord. 348-92, App. 11/18/92; Ord. 399-97, App. 10/17/97)

DIVISION VII
INSPECTION AND RECORDS

SEC. 1160. INSPECTIONS BY DIRECTOR OF HEALTH.

In order to carry out the purposes of this Article, the Director of Health, or any duly authorized representative, has the authority specified in Section 25508 of Chapter 6.95 of the California Health and Safety Code, to inspect any establishment, building or premises subject to registration under this Article, including any place where an underground storage tank is located or records relevant to its operation are kept, or any place where the Director has reason to believe an unauthorized release of a hazardous material has occurred, is occurring or is threatening to occur. The Director of Health, or any duly authorized representative, has the authority specified in Section 25185.5 of Chapter 6.5 of the California Health and Safety Code, with respect to real property which is within 2,000 feet of any place specified above. The authority conferred by this Section includes the authority to conduct any monitoring or testing of an underground storage tank system and to inspect for hazardous materials in addition to hazardous waste. This right of entry shall be exercised only at reasonable hours, and entry shall be made to any establishment or property only with the consent of the owner or tenant thereof, or with a proper inspection warrant or other remedy provided by law to secure entry. The Director shall cause to be corrected any conditions which would constitute a violation of this Article or of any other statute, code, rule, or regulation affecting the handling of hazardous materials. (Added by Ord. 164-92, App. 6/10/92; amended by Ord. 399-97, App. 10/17/97)

SEC. 1161. INSPECTIONS BY REGISTRANT OR PERMITTEE.

(a) The registrant or permittee shall conduct regular inspections of its own establishments at least quarterly to assure compliance with this Article and shall maintain logs or file reports as required by the Director of Health. Documentation of inspections shall be kept either on forms provided by the Director of Health or on alternate forms, provided that the alternate forms contain all of the information found on the forms provided by the Director. Documentation of inspections shall be made available by the registrant or permittee upon request.

(b) The Director of Health may require the owner or operator of an underground storage tank, upon request, to submit any information relevant to the compliance with this Article, to conduct monitoring or testing, and to report the results of that monitoring or testing under penalty of perjury. (Added by Ord. 164-92, App. 6/10/92; amended by Ord. 168-95, App. 5/26/95)

SEC. 1161.1. SPECIAL INSPECTIONS.

In addition to the inspections specified above, the Director of Health may require the periodic

employment of special inspectors to conduct an audit or assessment of a registrant or permittee's establishment to make a hazardous material safety evaluation and to determine compliance with the provisions of this Article.

(a) An inspector shall demonstrate expertise in proper containment of hazardous materials to the satisfaction of the Director of Health in order to qualify as a special inspector.

(b) The special inspection report shall include an evaluation of the establishment and its storage facilities and recommendations consistent with the provisions of this Article where appropriate. A copy of the report shall be filed with the Director of Health at the same time that it is submitted to the registrant or permittee.

(c) The registrant or permittee shall, within 30 days of said report, file with the Director of Health a plan to implement all recommendations, or shall demonstrate to the satisfaction of the Director of Health why such recommendations shall not be implemented. (Added by Ord. 164-92, App. 6/10/92)

SEC. 1161.2. SUBSTITUTED INSPECTIONS.

An inspection by an employee of any other public agency may be deemed by the Director of Health as a substitute for any requirement of Section 1161.1 upon determination by the Director of Health that said employee is qualified to make such an inspection. (Added by Ord. 164-92, App. 6/10/92)

SEC. 1162. MAINTENANCE OF RECORDS BY PERSON OR BUSINESS.

All records required by this Article shall be maintained by the person or business at the establishment and said records shall be made available to the Director of Health for inspection during normal working hours and upon reasonable notice. (Added by Ord. 164-92, App. 6/10/92; amended by Ord. 399-97, App. 10/17/97)

DIVISION VIII MISCELLANEOUS

SEC. 1170. REGULATIONS.

(a) The Director of Health shall adopt and, from time to time, may amend reasonable regulations implementing the provisions and intent of this Article. Said regulations shall be approved by the Health Commission at a public hearing. In addition to the notices required by law, before the Health Commission approves the issuance or amendment of any rule or regulation, the Director of Health shall provide a 30-day public comment period by providing published notice in an official newspaper of general circulation in the City and County of San Francisco of the intent to issue or amend the rule or regulation.

(b) Regulations promulgated by the Director of Health shall be designed to protect the public health, safety and welfare from the hazards arising from the handling of hazardous materials. In developing such regulations, the Director of Health shall consider, among other things, State and federal statutes and regulations pertaining to hazardous materials and consensus standards such as those published by the National Fire Protection Association (NFPA) with the purpose of coordinating local regulations with them. The Director of Health shall also consult with other City departments, bureaus and commissions and other public agencies with jurisdiction over hazardous materials regulation, in developing said regulations.

(c) Regulations promulgated by the Director of Health and approved by the Health Commission shall be maintained in the Office of the Clerk of the Board of Supervisors. (Added by Ord. 164-92, App. 6/10/92)

SEC. 1171. DISCLAIMER OF LIABILITY.

(a) The degree of protection required by this Article is considered reasonable for regulatory purposes. The standards set forth in this Article are minimal standards and do not imply that compliance will ensure no unauthorized release of hazardous material. This Article shall not create liability on the part of the City, or any of its officers or employees for any damages that result from reliance on this Article or any administrative decision lawfully made pursuant to this Article. All persons handling hazardous materials within the City should be and are advised to

determine to their own satisfaction the level of protection desirable to ensure no unauthorized release of hazardous materials.

(b) In undertaking this program to obtain disclosure of information relating to the location of hazardous materials, the City and County of San Francisco is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury.

(c) All inspections specified in this Article shall be at the discretion of the City and nothing in this Article shall be construed as requiring the City to conduct any such inspection nor shall any actual inspection made imply a duty to conduct any other inspection. (Added by Ord. 164-92, App. 6/10/92)

SEC. 1172. DUTIES ARE DISCRETIONARY.

Subject to the limitations of due process, notwithstanding any other provision of this Code whenever the words "shall" or "must" are used in establishing a responsibility or duty of the City, its elected or appointed officers, employees, or agents, it is the legislative intent that such words establish a discretionary responsibility or duty requiring the exercise of judgment and discretion. (Added by Ord. 164-92, App. 6/10/92)

SEC. 1173. CONFLICT WITH OTHER LAWS.

Notwithstanding any other provision of this Article:

A person or business is exempted from any provisions of this Article that conflict with State or federal law or regulations to which person or business is subject. (Added by Ord. 164-92, App. 6/10/92)

SEC. 1174. SEVERABILITY.

If any section, subsection, sentence, clause, or phrase of this Article is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Article. The Board of Supervisors hereby declares that it would have passed this Article and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the Article would be subsequently declared invalid or unconstitutional. (Added by Ord. 164-92, App. 6/10/92)

SEC. 1175. FEES.

The Director of Health, through the Health Commission, shall recommend to the Board of Supervisors appropriate processing, registration, permit and related fees sufficient to pay for but not exceed the costs in administering this Article. Such fees shall include, but not be limited to:

(a) The cost of inspection and enforcement action performed by authorized hazardous materials inspectors;

(b) The cost of the appeals process;

(c) The cost of filing and processing documents;

(d) The cost of printing forms and informational brochures by the Director of Health;

(e) The cost of setting up and running a centralized computer data bank on hazardous materials;

(f) Other expenses incurred by the City and County of San Francisco in implementing and enforcing this Article. (Added by Ord. 164-92, App. 6/10/92)

SEC. 1175.1. DELINQUENT FEES.

All fees shall be due and payable within 30 days of the date of issuance of a notice of payment due. Delinquent fees shall be subject to a penalty of 10 percent plus interest at the rate of one percent per month on the outstanding balance which shall be added to the amount of the fee collected from the date that payment is due. In addition, the City may impose a lien against the property as provided in Article XX of Chapter

10 of the San Francisco Administrative Code (commencing with Section 10.230). (Added by Ord. 164-92, App. 6/10/92; amended by Ord. 322-00, File No. 001917, App. 12/28/2000)

SEC. 1175.2. REFUND OF FEES.

Permit and registration applicants shall not be entitled to a refund or rebate of a fee because the permit or certificate of registration is denied or application withdrawn. Permit or registration fees are not refundable if the person or business discontinues the activity or use of an establishment prior to the expiration of the term or if the permit is suspended or revoked prior to the expiration of the term. (Added by Ord. 164-92, App. 6/10/92)

SEC. 1175.3. NOT EXEMPTED FROM PAYING OTHER FEES.

Payment of fees as provided in this Article, Article 21A or Article 22 does not exempt the person or business from payment of any other charges which may be levied pursuant to other sections of the San Francisco Municipal Code or written rules and regulations of any department relating to the permit or registration. (Added by Ord. 164-92, App. 6/10/92; amended by Ord. 399-97, App. 10/17/97)

SEC. 1175.4. REVIEW OF FEES.

The Director of Health shall cause an annual report to be made and filed with the Controller no later than April 1st of each year as set forth in Section 3.7 of the San Francisco Administrative Code.

The Controller shall file said report with the Board of Supervisors no later than May 15th of each year along with a proposed ordinance readjusting the fee rates as necessary to ensure that they produce sufficient revenue to support the costs of providing the services for which each fee is assessed. After receipt of the report, the Board of Supervisors shall, by ordinance, establish or readjust the rates for certificates of registration, permits, inspections, and other related hazardous materials and hazardous waste fees set forth in this Article, Article 21A, or Article 22. (Added by Ord. 164-92, App. 6/10/92; amended by Ord. 399-97, App. 10/17/97)

SEC. 1175.5. DETERMINATION OF PERCENTAGE OF FEES CREDITED TO OTHER DEPARTMENTS.

Each year the Controller shall determine what percentage of any fee charged pursuant to this Article, Article 21A and Article 22 offsets the costs incurred by City departments other than the Health Department in regulating and inspecting activities authorized by certificates of registration or permits issued by the Health Department pursuant to this Article, Article 21A and Article 22 and the appropriate percentage of such fees shall be credited by the Health Department to the other departments; provided, however, the Health Department shall not charge for the Fire Department's costs if the materials stored or activities at the establishment are subject to the permit requirements of the Fire Code (Part II, Chapter 4) and shall not charge for permit review by the City Planning Department if the owner of the establishment is required to obtain a building permit or previously has received a Health Department, Police Department or Fire Department permit based on the same materials, activities or use. (Added by Ord. 164-92, App. 6/10/92; amended by Ord. 399-97, App. 10/17/97)

SEC. 1176. HAZARDOUS MATERIALS FEE SCHEDULE.

(a) **Fees Generally.** Fees for services and regulatory functions of the Department of Public Health pursuant to this Article shall be as provided in this Section.

(b) **State Surcharge.** Registrants and permittees subject to the requirements of this Article shall pay the annual State surcharge for general program oversight, along with any program-specific service charges established by the Secretary of the California Environmental Protection Agency pursuant to Health and Safety Code Section 25404.5(b).

(c) **Hazardous Materials Registration Fees.**

(1) Registration fees shall be payable on the filing of a complete application for a certificate of registration and on annual renewal. On the filing of an addendum disclosing increased quantities or previously undisclosed hazardous materials, a registration fee is due equal to the difference between the most recently charged registration fee and the fee due taking into account the information in the addendum.

(2) Registration fees shall be as follows:

(A) Temporary certificate of registration, $143 for fiscal year 2004 (beginning July 1, 2004), $151 for fiscal year 2005 (beginning July 1, 2005), $159 for fiscal year 2006 (beginning July 1, 2006);

(B) Freight forwarding and freight transportation services establishments, $285 for fiscal year 2004 (beginning July 1, 2004), $301 for fiscal year 2005 (beginning July 1, 2005), $319 for fiscal year 2006 (beginning July 1, 2006);

(C) For all other registrants subject to this Article, a fee determined by the total quantity of liquids, quantity of solids and quantity of gases required to be registered by the establishment, excluding hazardous materials contained in underground storage tanks. The applicable fee shall be determined by adding together the appropriate quantity groups as set forth in Chart I for liquids, solids and gases at the establishment (excluding hazardous materials contained in underground storage tanks) in order to arrive at a quantity group total. The corresponding fee for each quantity group total is set forth in Chart II.

(D) An establishment required to obtain a UST permit which does not have any aboveground storage of hazardous materials subject to this Article shall be exempt from payment of a registration fee.

CHART I
QUANTITY GROUPS

Group No.	Quantity of Liquids (Gallons)	Quantity of Solids (Pounds)	Quantity of Gases (Cubic Feet)
1	less than 55	less than 500	less than 200
2	55—99	500—999	200—1,499
3	100—499	1,000—1,499	1,500—2,499
4	500—999	1,500—1,999	2,500—3,999
5	1,000—1,499	2,000—3,499	4,000—4,999
6	1,500—1,999	3,500—4,999	5,000—5,999
7	2,000—2,749	5,000—7,499	6,000—6,999
8	2,750—3,499	7,500—9,999	7,000—7,999
9	3,500—4,499	10,000—14,999	8,000—8,999
10	4,500—5,499	15,000—19,999	9,000—9,999
11	5,500—6,499	20,000—24,999	10,000—12,499
12	6,500—7,499	25,000—29,999	12,500—14,999
13	7,500—8,999	30,000—39,999	15,000—17,499
14	9,000—9,999	40,000—49,999	17,500—19,999
15	10,000 or greater	50,000 or greater	20,000 or greater

CHART II CERTIFICATE OF REGISTRATION FEE SCHEDULE			
Quantity Group Total	**Registration Fee**		
	Fiscal Year 2004	*Fiscal Year 2005*	*Fiscal Year 2006*
1	$234	$247	$261
2	$244	$258	$273
3	$265	$280	$296
4	$317	$335	$354
5	$359	$380	$401
6	$403	$425	$449
7	$445	$470	$497
8	$489	$517	$546
9	$531	$562	$593
10	$573	$605	$639
11	$637	$673	$711
12	$702	$741	$783
13	$766	$809	$855
14	$829	$876	$926
15	$895	$946	$999
16	$957	$1,012	$1,069
17	$1,022	$1,080	$1,141
18	$1,085	$1,147	$1,212
19	$1,151	$1,216	$1,285
20	$1,224	$1,293	$1,366
21	$1,299	$1,372	$1,450
22	$1,374	$1,451	$1,534
23	$1,449	$1,531	$1,617
24	$1,525	$1,611	$1,702
25	$1,598	$1,688	$1,784
26	$1,673	$1,767	$1,868
27	$1,748	$1,847	$1,951
28	$1,832	$1,936	$2,046
29	$1,917	$2,025	$2,140
30	$2,003	$2,117	$2,237
31	$2,089	$2,207	$2,332
32	$2,174	$2,297	$2,427
33	$2,259	$2,387	$2,522
34	$2,345	$2,477	$2,618
35	$2,430	$2,568	$2,713
36	$2,515	$2,657	$2,808
37	$2,601	$2,749	$2,904
38	$2,686	$2,838	$2,999
39	$2,750	$2,906	$3,071
40	$2,814	$2,973	$3,142
41	$2,878	$3,041	$3,214
42	$2,951	$3,118	$3,295
43	$2,985	$3,154	$3,333
44	$3,028	$3,200	$3,381
45	$3,071	$3,245	$3,428

(d) **UST Permit Fees.** A person required to obtain a UST permit shall pay an annual fee for each tank at each site $270 for fiscal year 2004 (beginning July 1, 2004), $285 for fiscal year 2005 (beginning July 1, 2005), $301 for fiscal year 2006 (beginning July 1, 2006).

(e) **Miscellaneous Other Fee Schedules.** Other hazardous materials fees shall be as follows:

TYPE OF FEE	AMOUNT		
	Fiscal Year 2004	*Fiscal Year 2005*	*Fiscal Year 2006*
Application fee for UST repair, modification, removal, or closure approval and up to three hours field inspection, per site	$724	$765	$808
Field inspection fee, per hour (business hours)	$137	$145	$153
Field inspection fee, per hour (Saturday, Sunday, evenings)	$206	$218	$230
Permit review by Department of City Planning	$70	$74	$78
Closure plan processing fee and up to three hours of plan review	$448	$473	$500
Closure plan review exceeding three hours, per hour	$137	$145	$153
Consultation fee, per hour	$137	$145	$153
Director's hearing pursuant to Sections 1137(a)(3), (4), (5), and (7)	$220	$232	$245
Application fee for a Voluntary Remedial Agreement with the Director	$390	$414	$439
Voluntary Remedial Agreement Fee, hourly rate	$137	$145	$153

(f) **Additional Fees as Penalties.** Additional fees assessed pursuant to Sections 1120 and 1120.1 shall be as follows:

TYPE OF FEE	AMOUNT		
	Fiscal Year 2004	*Fiscal Year 2005*	*Fiscal Year 2006*
Site investigation (maximum)	$894	$945	$998
Failure to timely obtain a Certificate of Registration or obtain a UST permit, unless otherwise provided in this section	$368	$389	$411
Failure to timely register a temporary storage facility	$143	$151	$159

TYPE OF FEE	AMOUNT		
	Fiscal Year 2004	*Fiscal Year 2005*	*Fiscal Year 2006*
Failure to obtain approval to modify, repair, close, or remove an UST	$894	$945	$998
Failure to schedule a site inspection prior to the modification, closure, or removal of an UST	$448	$473	$500

(g) **Application Fee for New Certificate of Registration.** Registrants and permittees shall pay an application fee for a new Certificate of Registration $143 for fiscal year 2004 (beginning July 1, 2004), $151 for fiscal year 2005 (beginning July 1, 2005), $159 for fiscal year 2006 (beginning July 1, 2006).

(h) **Hazardous Materials and Hazardous Waste Base Fee.** Any business that is subject to requirements of Articles 21, 21A and/or 22 shall pay an annual base fee $143 for fiscal year 2004 (beginning July 1, 2004), $151 for fiscal year 2005 (beginning July 1, 2005), $159 for fiscal year 2006 (beginning July 1, 2006). This subsection shall not apply to Minimal Quantity Generator as defined in Section 1204(b) of Article 22 of this Code.

(i) Beginning with fiscal year 2007-2008, no later than April 15 of each year, the Controller shall adjust the fees provided in this Article to reflect changes in the relevant Consumer Price Index, without further action by the Board of Supervisors. In adjusting the fees, the Controller may round these fees up or down to the nearest dollar, half-dollar or quarter-dollar. The Director shall perform an annual review of the fees scheduled to be assessed for the following fiscal year and shall file a report with the Controller no later than May 1st of each year, proposing, if necessary, an adjustment to the fees to ensure that costs are fully recovered and that fees do not produce significantly more revenue than required to cover the costs of operating the program. The Controller shall adjust fees when necessary in either case. (Added by Ord. 164-92, App. 6/10/92; amended by Ord. 168-95, App. 5/26/95; Ord. 399-97, App. 10/17/97; Ord. 158-99, File No. 990761, App. 6/11/99; Ord. 184-04, File No. 040747, App. 7/22/2004)

ARTICLE 21A: RISK MANAGEMENT PROGRAM

SEC. 1180. SCOPE AND INTENT.

This Article is intended to authorize the Department of Public Health, as the certified unified program agency approved pursuant to Chapter 6.11 of the Health and Safety Code, to implement the program for prevention of accidental releases set forth in Chapter 6.95 (commencing with Article 2) of the Health and Safety Code, and any implementing regulations, together with the additional local requirements set forth in this Article. The Director shall have all of the powers and authority granted to a certified unified program agency to implement and enforce Article 2 of Chapter 6.95 of the Health and Safety Code, in addition to local requirements imposed by this Article. (Added by Ord. 399-97, App. 10/17/97)

SEC. 1181. DEFINITIONS.

(a) "Covered process" means a process that has a regulated substance present in more than a threshold quantity, as determined pursuant to Section 68.115 of Title 40 of the Code of Federal Regulations.

(b) "Department" shall mean the San Francisco Department of Public Health.

(c) "Director" shall mean the Director of the Department of Public Health.

(d) "Qualified person" means a person who is qualified to attest, at a minimum, to the completeness of an RMP.

(e) "Regulated substance" means any substance which is either of the following:

(1) A regulated substance listed in Section 68.130 of Title 40 of the Code of Federal Regulations pursuant to Paragraph (3) of Subsection (r) of Section 112 of the Clean Air Act (42 U.S.C. Section 7412(r)(3)); or

(2) An extremely hazardous substance listed in Appendix A of Part 355 of Title 40 of the Code of Federal Regulations which is any of the following:

(A) A gas at standard temperature and pressure,

(B) A liquid with a vapor pressure at standard temperature and pressure equal to or greater than 10 millimeters mercury,

(C) A solid that is one of the following:

(i) In solution, in molten form,

(ii) In powder form with a particle size less than 100 microns, or

(iii) Reactive with a National Fire Protection Association rating of 2, 3, or 4,

(D) A substance that is determined by the State of California to either:

(i) Meet one or more of the criteria set forth in Clauses (A), (B), or (C), or

(ii) Pose a regulated substance accident risk pursuant to Section 25543.3 of the Health and Safety Code.

(f) "RMP" means the risk management plan required under Subpart G of Part 68 of Title 40 of the Code of Federal Regulations or Article 2, Chapter 6.95 of the Health and Safety Code, in addition to local requirements imposed under this Article.

(g) "Regulated substance accident risk" means a potential for the accidental release of a regulated substance into the environment which could produce a significant likelihood that persons exposed may suffer acute health effects resulting in significant injury or death.

(h) "Stationary source" means any buildings, structures, equipment, installations, or substance-emitting stationary activities which belong to the same industrial group, which are located on one or more contiguous properties, which are under the control of the same person (or persons under common control), and from which an accidental release may occur. A stationary source includes transportation containers that are no longer under active shipping papers and transportation containers that are connected to equipment at the stationary source for the purposes of temporary storage, loading, or unloading. The term "stationary source" does not include transportation, including storage incident to transportation, of any regulated substance or any other extremely hazardous substance under the provisions of this Article, if that transportation is regulated under Part 192, Part 193, or Part 195 of Title 49 of the Code of Federal Regulations. Properties shall not be considered contiguous solely because of a railroad or gas pipeline right-of-way.

(i) "Threshold quantity" means the quantity of a regulated substance that is determined to be present at a stationary source in the manner specified in Section 68.115 of Title 40 of the Code of Federal Regulations and that is the lesser of the following:

(1) The threshold quantity for the regulated substance specified in Section 68.130 of Title 40 of the Code of Federal Regulations;

(2) The "State threshold quantity" as that term is defined in Section 25532(j) of the Health and Safety Code. (Added by Ord. 399-97, App. 10/17/97)

SEC. 1182. SUBMISSION OF RMP.

(a) The owner or operator of a stationary source shall prepare and submit an RMP if an RMP is required pursuant to Part 68 of Title 40 of the Code of Federal Regulations not later than the date specified in 40 CFR 68.150. An RMP required under this subsection shall be prepared in accordance with those regulations, the applicable requirements of Article 2 of Chapter 6.95 of the Health and Safety Code and any State implementing regulations, and shall be submitted to the Director and the United States Environmental Protection Agency.

(b) For any stationary source with one or more covered processes that is not otherwise required to prepare an RMP pursuant to Subsection (a), the Director shall make a preliminary determination whether there is a significant likelihood that the use by a stationary source of regulated substances may pose a regulated substances accident risk.

(1) If the Director determines that there is a significant likelihood of a regulated substances accident pursuant to this Article and Article 2 of Chapter 6.95 of the Health and Safety Code, the Director shall require the stationary source to prepare and submit an RMP, or the Director may reclassify the covered process from Program 2 to Program 3, as specified in Part 68 of Title 40 of the Code of Federal Regulations.

(2) If the Director determines that there is not a significant likelihood of a regulated substances accident risk pursuant to Article 2 of Chapter 6.95 of the Health and Safety Code, the Director may do either of the following:

(A) Require the preparation and submission of an RMP, but the Director need not do so if he or she determines that the likelihood of a regulated substances accident is remote, unless otherwise required by federal law; or

(B) Reclassify a covered process from Program 3 to Program 2 or from Program 2 to Program 1, as specified in Part 68 of Title 40 of the Code of Federal Regulations, unless the classification of the covered process is specified in those regulations.

(3) Where an RMP is required only pursuant to this subsection, the RMP shall be submitted to the Director.

(c) Each RMP required to be prepared pursuant to this Section shall be prepared and submitted in accordance with the provisions of Article 2, Chapter 6.95 of the Health and Safety Code and any implementing regulations. The RMP, and any revisions, shall comply with all information, notification and certification requirements specified in Article 2, Chapter 6.95 of the Health and Safety Code and any implementing regulations. The owner or operator of a stationary source shall provide any additional technical or clarifying information in its possession deemed necessary by the Director to clarify the RMP or which is reasonably necessary to determine the sufficiency of the RMP. An RMP required to be prepared pursuant to this Section shall be certified as complete by a qualified person and by the owner or operator of the stationary source. (Added by Ord. 399-97, App. 10/17/97)

SEC. 1183. NOTICE OF DEFICIENCY AND SUBMISSION OF CORRECTED RMP.

The Director shall review the completed and certified RMP and notify the stationary source of any deficiencies. The stationary source shall submit a corrected RMP within 60 days of the notification of deficiency, unless granted a one-time extension of no more than 30 days by the Director. The Director may authorize the Bay Area Air Quality Management District ("BAAQMD") to conduct a technical review of the RMP. (Added by Ord. 399-97, App. 10/17/97)

SEC. 1184. PUBLIC REVIEW AND COMMENT ON RMPS.

(a) Within 15 days after the Director determines the RMP is complete, the Director shall make the RMP available to the public for review and comment for a period of at least 45 days. Upon receiving a written request during the public comment for a public hearing, the Director shall hold a public hearing on the RMP in accordance with Section 1137 of this Code.

(b) The Director shall publish in a daily local newspaper and mail to interested persons and organizations a notice briefly describing and stating that the RMP is available for public review at a specified location.

(c) The Director shall review the RMP and any comments received in accordance with State law. (Added by Ord. 399-97, App. 10/17/97)

SEC. 1185. TERMS, RENEWALS AND IMPLEMENTATION.

(a) The stationary source shall maintain all records concerning an RMP for a period of at least five years unless otherwise provided in Subpart D of Part 68 of Title 40 of the Code of Federal Regulations.

(b) Any stationary source with one or more covered processes, or any stationary source for which the Director has determined an RMP shall be required, shall comply with the deadlines set forth in Health and Safety Code Section 25536. The RMP shall be implemented in accordance with the Health and Safety Code Section 25535. In addition, any stationary source which is required to submit an RMP in accordance with this Article shall follow all RMP program guidance prepared for stationary sources and distributed by the Director.

(c) The stationary source shall review the RMP and make necessary revisions to the RMP in accordance with State and federal law, or upon order of the Director following a regulatory inspection during which violations are found.

(d) A revised RMP shall be submitted to the Director within 60 days following any modification which would materially affect the handling of a regulated substance.

(e) (1) Any business which was required to prepare, submit and implement a risk management and prevention program pursuant to Article 2, Chapter 6.95 of the Health and Safety Code as it read on December 31, 1996, and which is required to prepare and submit an RMP pursuant to this Article, shall continue to implement the risk management and prevention program until the business has submitted an RMP in accordance with this Article.

(2) Any business which was required to prepare, submit and implement a risk management and prevention program pursuant to Article 2, Chapter 6.95 of the Health and Safety Code as it read on December 31, 1996, and which is not required to prepare an RMP pursuant to this Article is required to comply only with those requirements of Article 2, Chapter 6.95 of the Health and Safety Code that apply to the business.

(3) Any stationary source which was not required to prepare, submit and implement a risk management and prevention program pursuant to Article 2, Chapter 6.95 of the Health and Safety Code as it read on December 31, 1996, but which is required to prepare an RMP pursuant to this Article shall submit and implement an RMP not later than the deadlines specified in Subpart A (commencing with Section 68.1) of Part 68 of Subchapter C of Chapter I of Title 40 of the Code of Federal Regulations. (Added by Ord. 399-97, App. 10/17/97)

SEC. 1186. MODIFICATION OF FACILITY OR REGULATED SUBSTANCE HANDLING.

(a) A stationary source that intends to modify a facility in a manner which may result in either a significant change in the amount of regulated substances handled by the facility or in a significantly changed risk in handling a regulated substance, as compared to the amount of substances and amount of risk identified in the facility's RMP relating to the covered process proposed for modification, shall comply with the requirements of Health and Safety Code Section 25543.2 prior to operating the modified facility. An increase in production up to a stationary source's existing operating capacity or an increase in production levels up to the production levels authorized in a permit granted pursuant to Health and Safety Code Section 42300 shall not constitute a modification for purposes of this Section.

(b) The stationary source subject to this Section shall revise the appropriate documents expeditiously, but not later than 60 days from the date of the facility modification. (Added by Ord. 399-97, App. 10/17/97)

SEC. 1187. RMP PRIOR TO APPROVAL OF A DEVELOPMENT PROJECT OR ISSUANCE OF A BUILDING PERMIT.

Pursuant to Government Code Section 65850.2, within five days of submitting a development project application or building permit application to the City and County of San Francisco, the applicant shall certify to the Director whether or not the proposed project will have more than a threshold quantity of a regulated substance in a process. Within 25 days of receipt of such certification and such additional information as the Director deems adequate to determine whether an RMP will be required, the Director shall issue either a notice of requirement to comply with, or determination of exemption from, the requirement for an RMP. (Added by Ord. 399-97, App. 10/17/97)

SEC. 1188. INSPECTIONS AND ACCESS TO INFORMATION.

(a) In accordance with Health and Safety Code Section 25537, the Director shall inspect each stationary source subject to this Article at least once every three years in order to determine whether the stationary source is in compliance with the requirements of this Article.

(b) The Director may have access to inspect any stationary source subject to this Article and to review all information in the possession of the stationary source which is reasonably necessary

to allow the Director to determine the stationary source's compliance with this Article. Upon request by the Director, a stationary source shall provide to the Director information regarding that source's compliance with this Article.

(c) Claims by a stationary source that information required to be provided to the Director under this Article constitutes trade secret information shall be addressed in accordance with Health and Safety Code Section 25538. (Added by Ord. 399-97, App. 10/17/97)

SEC. 1189. STATIONARY SOURCES SUBJECT TO HAZARDOUS MATERIALS PROGRAM.

(a) Where a stationary source subject to the requirements of this Article is also subject to the requirements of Division II of Article 21 for the same substance, compliance with this Article shall be deemed compliance with Division II of Article 21 for that substance to the extent not inconsistent with federal law and the requirements of Division II of Article 21. However, this subsection shall not apply where the requirements imposed for a particular substance under this Article are less stringent than the requirements imposed on a stationary source for the same substance pursuant to Division II of Article 21.

(b) A stationary source that relies on Subsection (a) for compliance with the applicable requirements of Division II of Article 21 shall annually submit to the Director a statement that the stationary source has made no changes required to be reported pursuant to Division II of Article 21, or identifying all reportable changes. (Added by Ord. 399-97, App. 10/17/97)

SEC. 1190. PENALTIES.

(a) Any stationary source that violates this Article shall be civilly liable to the City in an amount of not more than $2,000 for each day in which the violation occurs. If the violation results in, or significantly contributes to, a release or threatened release of any regulated substance, any fire, or any health or medical problem requiring toxicological, health or medical consultation, the stationary source shall also be assessed the full cost of the City emergency response, as well as the cost of cleaning up and disposing of the hazardous materials.

(b) Any stationary source that knowingly violates the provisions of this Article after reasonable notice of the violation shall be civilly liable to the City in an amount not to exceed $25,000 for each day in which the violation occurs and upon conviction, may be punished by imprisonment in the County Jail for not more than one year.

(c) Any person or stationary source that violates any rule or regulation, emission limitation, permit condition, order, fee requirement, filing requirement, duty to allow or carry out inspection or monitoring activities, or duty to allow entry imposed pursuant to this Article and for which delegation or approval of implementation and enforcement authority has been obtained by the State pursuant to Subsections (l) and (r) of Section 112 of the Clean Air Act (42 U.S.C. Sections 7412(l) and 7412(r)) or the regulations adopted pursuant thereto, is strictly liable for a civil penalty not to exceed $10,000 for each day in which the violation occurs.

(d) Any person or stationary source that knowingly makes any false material statement representation or certification in any record, report, or other document filed, maintained, or used for the purpose of compliance with this Article, or destroys, alters, or conceals such document, shall, upon conviction, be punished by a fine of not more than $25,000 for each day of violation, by imprisonment in the County Jail for a period not to exceed one year, or by both fine and imprisonment.

If the conviction is for a violation committed after a first conviction under this subsection, the person or stationary source shall be punished by a fine of not less than $2,000 or more than $50,000 per day of violation, by imprisonment in the State Prison for one, two, or three years or in the County Jail for not more than one year, or both fine and imprisonment.

If a violation under this subsection results in, or significantly contributes to, an emergency, including a fire, to which the City is required to

respond, the person or stationary source shall also be assessed the full cost of the City emergency response, as well as the cost of cleaning up and disposing of the hazardous materials.

(e) Any person or stationary source that knowingly violates any requirement of this Article, including any fee or filing requirement, for which delegation of federal implementation and enforcement authority has been obtained by the State pursuant to Subsections (l) and (r) of Section 112 of the Clean Air Act (42 U.S.C. Sections 7412(l) and 7412(r)) or that knowingly renders inaccurate any federally required monitoring device or method, shall upon conviction, be punished by a fine of not more than $10,000 for each day of violation.

(f) If civil penalties are recovered pursuant to Subparagraphs (a), (b) or (c), the same offense shall not be subject to a criminal prosecution pursuant to Subparagraphs (d) or (e). If the Director refers a violation to the District Attorney and a criminal complaint is filed, any civil action brought pursuant to this Article for that offense shall be dismissed. (Added by Ord. 399-97, App. 10/17/97)

SEC. 1191. FEES AND CHARGES.

(a) In accordance with the single fee system established pursuant to Health and Safety Code Section 25404.5, stationary sources required under this Article to submit an RMP shall pay the following fees and charges:

(1) **RMP Review and Processing Fees.** A stationary source that is notified that it must submit an RMP shall pay the following one-time fee to cover the cost of submission review and processing. This fee shall be due at the time the stationary source is notified that it must prepare an RMP:

(A) Program 1 facilities: $1044 for fiscal year 2004 (beginning July 1, 2004), $1103 for fiscal year 2005 (beginning July 1, 2005), $1166 for fiscal year 2006 (beginning July 1, 2006);

(B) Program 2 or Program 3 facilities: $6136 for fiscal year 2004 (beginning July 1, 2004), $6480 for fiscal year 2005 (beginning July 1, 2005), $6849 for fiscal year 2006 (beginning July 1, 2006);

(2) **Annual Fee for Stationary Sources.** A stationary source that is required to prepare and maintain an RMP shall pay the following annual fee, due at the first billing cycle after the RMP is considered complete by the Director, and annually thereafter:

(A) Program 1 facilities: $148 for fiscal year 2004 (beginning July 1, 2004), $156 for fiscal year 2005 (beginning July 1, 2005), $165 for fiscal year 2006 (beginning July 1, 2006);

(B) Program 2 or Program 3 facilities: $296 for fiscal year 2004 (beginning July 1, 2004), $313 for fiscal year 2005 (beginning July 1, 2005), $330 for fiscal year 2006 (beginning July 1, 2006).

(b) Beginning with fiscal year 2007-2008, no later than April 15 of each year, the Controller shall adjust the fees provided in this Article to reflect changes in the relevant Consumer Price Index, without further action by the Board of Supervisors. In adjusting the fees, the Controller may round these fees up or down to the nearest dollar, half-dollar or quarter-dollar. The Director shall perform an annual review of the fees scheduled to be assessed for the following fiscal year and shall file a report with the Controller no later than May 1st of each year, proposing, if necessary, an adjustment to the fees to ensure that costs are fully recovered and that fees do not produce significantly more revenue than required to cover the costs of operating the program. The Controller shall adjust fees when necessary in either case. (Added by Ord. 399-97, App. 10/17/97; amended by Ord. 158-99, File No. 990761, App. 6/11/99; Ord. 177-04, File No. 040735, App. 7/22/2004)

SEC. 1192. COLLECTION, ADMINISTRATION AND REVIEW OF FEES.

The Director of Health through the Health Commission shall recommend to the Board of Supervisors appropriate fees sufficient to pay for but not exceed the costs incurred in administering this Article. Such fees shall be set, collected, reviewed and administered in accordance with

Sections 1175.1 through 1175.5 of Article 21 of this Code. (Added by Ord. 399- 97, App. 10/17/97)

SEC. 1193. TRADE SECRETS.

(a) If a stationary source believes that any information submitted or otherwise provided to the Department pursuant to this Article involves the release of a trade secret, the stationary source shall provide the information to the Department and shall notify the Department in writing of that belief. Upon receipt of a claim of trade secret related to an RMP, the Department shall review the claim and shall segregate properly substantiated trade secret information from information which shall be made available to the public upon request in accordance with the California Public Records Act. The Department shall not disclose any properly substantiated trade secret which is so designated by a stationary source except in compliance with this Section and Section 25538 of the Health and Safety Code.

(b) Information certified by appropriate officials of the United States, as necessarily kept secret for national defense purposes, shall be accorded the full protection against disclosure as specified by such official or in accordance with the laws of the United States.

(c) The location of explosives stored by the San Francisco Police Department and other law enforcement or government agencies shall not be disclosed.

(d) Information designated as a trade secret may be disclosed to:

(1) An officer or employee of the City and County of San Francisco, the State of California or the United States of America, for use in connection with the official duties of such officer or employee acting under authority of law for the protection of health;

(2) Persons or businesses contracting with the City and County and their employees if, in the opinion of the Director of Health, such disclosure is necessary and required for the satisfactory performance of the work to be done under the contract or to protect the health and safety of the employees of the contractor;

(3) Any physician where the physician certifies in writing to the Director of Health that such information is necessary to the medical treatment of a patient; where the Director determines that a medical emergency exists, the Director may waive the written certification; or

(4) Health professionals (i.e., physician, industrial hygienist, toxicologist, epidemiologist, or occupational health nurse) in a nonemergency situation where the request is in writing and the request describes in reasonable detail the medical need for the information.

(e) (1) When the Director receives a request for information which includes information which the stationary source has designated as a trade secret, the Director shall notify the stationary source of said request by certified mail. The stationary source shall have 30 days from receipt of the notice to provide the Director with any materials or information intended to supplement the information submitted pursuant to Subsection (a) and needed to substantiate the trade secret claim.

(2) The Director shall inform the stationary source by certified mail that some or all of a claim of trade secret has not been substantiated. The Director shall release the information 30 days after receipt by the stationary source of said notice, unless prior to the expiration of said 30-day period, the stationary source files an action in a court of competent jurisdiction for a declaratory judgment that the information is subject to protection under Subsection (b) as a trade secret, or for an injunction prohibiting disclosure of said information to the general public, and promptly notifies the Director of that action.

(f) In adopting this Article, the Board of Supervisors does not intend to authorize or require the disclosure to the public of any trade secrets protected under the laws of the State of California.

(g) This Section is not intended to authorize a stationary source to refuse to disclose any information, including but not limited to, trade secrets, required pursuant to this Article.

(h) Notwithstanding any other provision of this Article, any officer or employee of the City and County, or former officer or employee or contractor with the City or employee thereof, who by virtue of such employment or official position has obtained possession of or has had access to information, the disclosure of which is prohibited by this Section, and who knowing that disclosure of the information is prohibited, knowingly and wilfully discloses the information in any manner to any person not entitled to receive it, shall, upon conviction, be punished by imprisonment in the County Jail for not more than six months or by a fine of not more than $1,000, or by both fine and imprisonment.

(i) The Director of Health shall advise any person to whom a trade secret is disclosed pursuant to this Section that the disclosure thereof, except as authorized by this Section, constitutes a misdemeanor. (Added by Ord. 399-97, App. 10/17/97)

SEC. 1194. AUTHORITY TO ADOPT RULES, REGULATIONS AND GUIDELINES.

(a) The Director may adopt and thereafter, from time to time, may amend rules, regulations and guidelines implementing the provisions and intent of this Article. Before issuing or amending any such procedure, the Department of Public Health shall provide a 30-day public comment period by providing published notice in an official newspaper of general circulation in the City of the intent to issue or amend the procedure. Rules and regulations shall be approved by the Health Commission at a public hearing. In addition to the notices required by law, the Secretary of the Health Commission shall send written notice, at least 15 days prior to the hearing, to any interested party who sends a written request to the Health Commission for notice of hearings on hazardous materials regulation.

(b) Regulations promulgated by the Director and approved by the Health Commission shall be maintained in the Office of the Clerk of the Board of Supervisors.

(c) The Director may require generators to submit information deemed necessary by the Director, including, but not limited to: the name and address of the generator, the name and address of the property owner, and a description of the type and volume of hazardous materials handled or stored. (Added by Ord. 399-97, App. 10/17/97)

SEC. 1195. SEVERABILITY.

If any section, subsection, sentence, clause or phrase of this Article is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Article. The Board of Supervisors hereby declares that it would have passed this Article and each and every section, subsection, sentence, clause or phrase not declared invalid or unconstitutional without regard to whether any portion of this Article would be subsequently invalid or unconstitutional. (Added by Ord. 399-97, App. 10/17/97)

SEC. 1196. DISCLAIMER OF LIABILITY.

(a) The degree of protection required by this Article is considered reasonable for regulatory purposes. The standards set forth in this Article are minimal standards and do not imply that compliance will ensure no unauthorized release of hazardous materials. This Article shall not create liability on the part of the City, or any of its officers or employees for any damages that result from reliance on this Article or any administrative decision lawfully made pursuant to this Article. All persons handling hazardous materials within the City should be and are advised to determine to their own satisfaction the level of protection desirable to ensure no unauthorized release of hazardous materials.

(b) In undertaking this program to obtain disclosure of information relating to the location and handling of hazardous materials, the City and County of San Francisco is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an obligation for breach

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

(c) All inspections specified or authorized by this Article shall be at the discretion of the City and nothing in this Article shall be construed as requiring the City to conduct any such inspection nor shall any actual inspection made imply a duty to conduct any other inspection. (Added by Ord. 399-97, App. 10/17/97)

SEC. 1197. DUTIES ARE DISCRETIONARY.

Subject to the limitations of due process and applicable requirements of State or federal law, and notwithstanding any other provision of this Code whenever the words "shall" or "must" are used in establishing a responsibility or duty of the City, its elected or appointed officers, employees, or agents, it is the legislative intent that such words establish a discretionary responsibility or duty requiring the exercise of judgment and discretion. (Added by Ord. 399-97, App. 10/17/97)

SEC. 1198. CONFLICT WITH OTHER LAWS.

Notwithstanding any other provision of this Article:

A person or business is exempted from any provisions of this Article that conflict with State or federal law or regulations to which person or business is subject. (Added by Ord. 399-97, App. 10/17/97)

[The next page is 725]

ARTICLE 22: HAZARDOUS WASTE MANAGEMENT

SEC. 1201. SCOPE AND INTENT.

The California Hazardous Waste Control Act, California Health and Safety Code, Division 20, Chapter 6.5, Article 2, Section 25100, et seq., authorizes the California State Department of Toxic Substances Control and local certified unified program agencies to regulate facilities that generate or treat hazardous waste.

It is the intent of the Board of Supervisors in adopting this Article to authorize the Director of the Department of Public Health, as the certified unified program agency approved pursuant to Chapter 6.11 of the Health and Safety Code, to implement and enforce the requirements of the California Hazardous Waste Control Act applicable to generators of hazardous waste and persons operating pursuant to a permit-by-rule, conditional authorization or conditional exemption set forth in Health and Safety Code Section 25404(c)(1). (Added by Ord. 193-90, App. 5/24/90; amended by Ord. 399-97, App. 10/17/97)

SEC. 1202. DEFINITIONS.

The definitions in the Hazardous Waste Control Act, California Health and Safety Code, Division 20, Chapter 6.5, and its implementing regulations, California Code of Regulations, Title 22, Chapter 30, Division 4, as of the effective date of this Article, are hereby adopted by reference. The terms used in this ordinance shall be as defined in the Hazardous Waste Control Act and its implementing regulations, setting minimum standards for management of hazardous waste, except as to the following:

(1) **Department** means the San Francisco Department of Public Health.

(2) **Director** means the Director of Public Health or his or her designee. (Added by Ord. 193-90, App. 5/24/90; amended by Ord. 399-97, App. 10/17/97)

SEC. 1203. IMPLEMENTATION AND ENFORCEMENT OF HAZARDOUS WASTE CONTROL ACT.

The Director shall have the authority granted to certified unified program agencies by Health and Safety Code Section 25404(c)(1) to implement and enforce the provisions of the Hazardous Waste Control Act as set forth in California Health and Safety Code, Division 20, Chapter 6.5, and the minimum standards of management of hazardous waste as specified in Title 22 of the California Code of Regulations, Chapter 30, Division 4. The Director shall have the authority to carry out all duties imposed on certified unified program agencies with respect to regulation of hazardous waste, including, but not limited to, the following:

(1) Conduct inspections as provided for in Health and Safety Code Sections 25185 and 25185.5, of any factory, plant, construction site, waste disposal site, transfer station, establishment or any other place or environment where hazardous wastes are stored, handled, processed, disposed of, or being treated to recover resources;

(2) Maintain records of compliance with the Hazardous Waste Control Act;

(3) Require hazardous waste generators as provided herein, to pay inspection and administration fees to cover the Department's costs of

administering the provisions of this Article. Such fees may include but shall not be limited to the cost of inspection, document development and processing, recordkeeping, enforcement activities, and informational materials development and distribution;

(4) Issue authorizations for on-site treatment of hazardous waste to persons eligible to operate pursuant to permit-by-rule, conditional authorization or conditional exemption;

(5) Enforce against violations of the Hazardous Waste Control Act in accordance with Health and Safety Code, Division 20, Chapter 6.5, Article 8. (Added by Ord. 193-90, App. 5/24/90; amended by Ord. 399-97, App. 10/17/97)

SEC. 1204. FEES AND CHARGES.

In accordance with the single fee system established pursuant to Health and Safety Code Section 25404.5, hazardous waste generators shall pay the following fees and charges to cover the Department's costs incurred in implementing and enforcing the program established by this Article:

(a) **State Surcharge.** The annual State surcharge for general program oversight, in addition to any tiered permitting service charge, as established by the Secretary of the California Environmental Protection Agency pursuant to Health and Safety Code Section 25404.5(b).

(b) **Hazardous Waste Generator Fee.** Hazardous waste generators subject to the program established by this Article shall pay an annual fee based upon the amount of hazardous waste generated during the preceding year. The amount of this fee is set forth in Chart I. Minimal Quantity Generator shall pay an annual fee of $72 for fiscal year 2004 (beginning July 1, 2004), $76 for fiscal year 2005 (beginning July 1, 2005), $80 for fiscal year 2006 (beginning July 1, 2006). Minimal Quantity Generator shall be exempted from the annual base fee set forth in Section 1176(h) of Article 21 of this Code. For purposes of determining this fee, the term "Minimal Quantity Generator" or "MQG" shall mean a generator that meets all of the following requirements:

(1) The quantity of hazardous waste generated by the generator does not exceed 50 pounds per month or 500 pounds per year; and

(2) Hazardous waste is not treated on site; and

(3) The generator is not required to have a hazardous materials registration pursuant to Article 21 for hazardous materials used or stored at the site.

CHART I
HAZARDOUS WASTE GENERATOR FEES

HW QUANTITY GENERATED/YEAR	ANNUAL FEE		
	Fiscal Year 2004	*Fiscal Year 2005*	*Fiscal Year 2006*
> 0—5 tons, other than MQG	$ 267	$ 282	$ 298
5—25 tons	$ 557	$ 588	$ 622
25—50 tons	$ 778	$ 822	$ 868
50—250 tons	$ 1,116	$ 1,179	$ 1,246
250—500 tons	$ 1,548	$ 1,636	$ 1,728
500—1,000 tons	$ 2,167	$ 2,290	$ 2,420
1,000—2,000 tons	$ 3,142	$ 3,320	$ 3,509
2,000 + tons	$ 4,400	$ 4,649	$ 4,912

(c) **Tiered Permitting Fee.** Persons operating pursuant to a permit-by-rule, conditional authorization or conditional exemption shall pay the following annual fee, based upon the type of permit, except that in the case of persons subject to more than one permitting tier at one facility, the fee for all tiered permits at that facility shall be a single fee set at the amount of the fee for the highest applicable tier:

(1) Permit-by-rule: $607 for fiscal year 2004 (beginning July 1, 2004), $641 for fiscal year 2005 (beginning July 1, 2005), $677 for fiscal year 2006 (beginning July 1, 2006);

(2) Conditional authorization: $185 for fiscal year 2004 (beginning July 1, 2004), $195 for fiscal year 2005 (beginning July 1, 2005), $206 for fiscal year 2006 (beginning July 1, 2006);

(3) Conditional exemption: $96 for fiscal year 2004 (beginning July 1, 2004), $102 for fiscal year 2005 (beginning July 1, 2005), $107 for fiscal year 2006 (beginning July 1, 2006).

(d) **Inspection Fee.** In administering the provisions of this Article and conducting inspections pursuant to Health and Safety Code Sections 25185 and 25185.5, the Department shall require hazardous waste generators and persons operating pursuant to a permit-by-rule, conditional authorization or conditional exemption to pay inspection and administrative fees to cover the Department's costs of any inspection (other than a routine inspection) conducted by the Department when it has reason to believe a generator is not in compliance with the hazardous waste laws and regulations. The fee for any such inspection and associated administrative activities for each hour or portion thereof for inspections performed during business hours shall be $137 for fiscal year 2004 (beginning July 1, 2004), $145 for fiscal year 2005 (beginning July 1, 2005), $153 for fiscal year 2006 (beginning July 1, 2006); and for each hour or portion thereof for inspections performed during nonbusiness hours, including Saturdays, Sundays and evenings, shall be $206 for fiscal year 2004 (beginning July 1, 2004), $218 for fiscal year 2005 (beginning July 1, 2005), $230 for fiscal year 2006 (beginning July 1, 2006).

(e) When the real property where the site is located is owned by a person other than the operator of the site, it is the operator's duty to pay any inspection and administration fees. However, in the event the operator fails to pay any inspection and administration fee as provided for in this Article, the City and County may impose a lien on the real property pursuant to the provisions of this Article and San Francisco Administrative Code, Chapter 10, Article XX.

(f) **Consultation Fee.** The Director is authorized to charge a fee for Department staff to consult with regulated parties subject to this Article or their representatives concerning compliance with the requirements of this Article. The fee shall be $137 for fiscal year 2004 (beginning July 1, 2004), $145 for fiscal year 2005 (beginning July 1, 2005), $153 for fiscal year 2006 (beginning July 1, 2006).

(g) Beginning with fiscal year 2007-2008, no later than April 15 of each year, the Controller shall adjust the fees provided in this Article to reflect changes in the relevant Consumer Price Index, without further action by the Board of Supervisors. In adjusting the fees, the Controller may round these fees up or down to the nearest dollar, half-dollar or quarter-dollar. The Director shall perform an annual review of the fees scheduled to be assessed for the following fiscal year and shall file a report with the Controller no later than May 1st of each year, proposing, if necessary, an adjustment to the fees to ensure that costs are fully recovered and that fees do not produce significantly more revenue than required to cover the costs of operating the program. The Controller shall adjust fees when necessary in either case. (Added by Ord. 193-90, App. 5/24/90; amended by Ord. 399-97, App. 10/17/97; Ord. 158-99, File No. 990761, App. 6/11//99; Ord. 175-04, File No. 040733, App. 7/22/2004)

SEC. 1205. AUTHORITY TO ADOPT RULES, REGULATIONS AND GUIDELINES.

(a) Consistent with the requirements of the California Health and Safety Code, the Director may adopt and thereafter, from time to time,

may amend rules, regulations and guidelines implementing the provisions and intent of this Article. Before issuing or amending any such procedure, the Department of Public Health shall provide a 30-day public comment period by providing published notice in an official newspaper of general circulation in the City of the intent to issue or amend the procedure. Rules and regulations shall be approved by the Health Commission at a public hearing. In addition to the notices required by law, the Secretary of the Health Commission shall send written notice, at least 15 days prior to the hearing, to any interested party who sends a written request to the Health Commission for notice of hearings on hazardous waste regulation.

(b) Regulations promulgated by the Director and approved by the Health Commission shall be maintained in the Office of the Clerk of the Board of Supervisors.

(c) The Director may require generators to submit information deemed necessary by the Director, including, but not limited to: the name and address of the generator, the name and address of the property owner, and a description of the type and volume of hazardous waste generated, treated, stored, recycled or disposed. (Added by Ord. 193-90, App. 5/24/90; amended by Ord. 399-97, App. 10/17/97)

SEC. 1206. SEVERABILITY.

If any section, subsection, sentence, clause or phrase of this Article is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Article. The Board of Supervisors hereby declares that it would have passed this Article and each and every section, subsection, sentence, clause or phrase not declared invalid or unconstitutional without regard to whether any portion of this Article would be subsequently invalid or unconstitutional. (Added by Ord. 193-90, App. 5/24/90; amended by Ord. 399-97, App. 10/17/97)

SEC. 1207. DISCLAIMER OF LIABILITY.

(a) The degree of protection required by this Article is considered reasonable for regulatory purposes. The standards set forth in this Article are minimal standards and do not imply that compliance will ensure no unauthorized release of hazardous waste. This Article shall not create liability on the part of the City, or any of its officers or employees for any damages that result from reliance on this Article or any administrative decision lawfully made pursuant to this Article. All persons handling hazardous waste within the City should be and are advised to determine to their own satisfaction the level of protection desirable to ensure no unauthorized release of hazardous waste.

(b) In undertaking this program to regulate the handling of hazardous waste, the City and County of San Francisco is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury.

(c) Except as otherwise required by State or federal law, all inspections specified or authorized by this Article shall be at the discretion of the City and nothing in this Article shall be construed as requiring the City to conduct any such inspection nor shall any actual inspection made imply a duty to conduct any other inspection. (Added by Ord. 399-97, App. 10/17/97)

SEC. 1208. DUTIES ARE DISCRETIONARY.

Subject to the limitations of due process and applicable requirements of State and federal law, and notwithstanding any other provision of this Code, whenever the words "shall" or "must" are used in establishing a responsibility or duty of the City, its elected or appointed officers, employees, or agents, it is the legislative intent that such words establish a discretionary responsibility or duty requiring the exercise of judgment and discretion. (Added by Ord. 399-97, App. 10/17/97)

SEC. 1209. CONFLICT WITH OTHER LAWS.

Notwithstanding any other provision of this Article:

A person or business is exempted from any provisions of this Article that conflict with State or federal law or regulations to which person or business is subject. (Added by Ord. 399-97, App. 10/17/97)

[The next page is 741]

ARTICLE 22A: ANALYZING SOILS FOR HAZARDOUS WASTE

SEC. 1220. DEFINITIONS.

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

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

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

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

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

(e) "Hazardous waste" means any substance that meets the definition of hazardous waste in Section 25117 of the California Health and Safety Code or Appendix X of Division 4.5, Chapter 10, Article 5 of Title 22 California Administrative Code. (Added by Ord. 35-99, App. 3/12/99)

SEC. 1221. APPLICABILITY OF ARTICLE.

Pursuant to Section 1001 of the San Francisco Public Works Code, an applicant shall comply with this Article. (Added by Ord. 35-99, App. 3/12/99)

SEC. 1222. WAIVER OF REQUIREMENTS FOR COMPLIANCE.

Director may waive the requirements imposed by this Article if the applicant demonstrates that the property has been continuously zoned as residential under the City Planning Code since 1921, has been in residential use since that time, and no evidence has been presented to create a reasonable belief that the soil may contain hazardous wastes. The Director shall provide the applicant and the Director of Building Inspection with written notification that the requirements of this Article have been waived. (Added by Ord. 35-99, App. 3/12/99)

SEC. 1223. DIRECTOR'S DISCRETIONARY AUTHORITY TO REQUIRE COMPLIANCE.

In addition to those areas defined pursuant to Section 1221, the Director has authority to require soil analysis pursuant to the provisions of this Article as part of any building permit application when the Director has reason to

believe that hazardous wastes may be present in the soil at the property. (Added by Ord. 35-99, App. 3/12/99)

SEC. 1224. SITE HISTORY.

The applicant shall provide to the Director a site history for the property prepared by an individual with the requisite training and experience described in regulations adopted pursuant to Section 1232. The site history shall contain a statement indicating whether the property is listed on the National Priorities List, published by the United States Environmental Protection Agency pursuant to the federal Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. Section 9604(c)(3) or listed as a hazardous substance release site by the California Department of Toxic Substances Control or the State Water Resources Control Board pursuant to the California Hazardous Substances Account Act, Health and Safety Code Section 25356. The applicant shall file the site history with the Director and the certified laboratory. (Added by Ord. 35-99, App. 3/12/99)

SEC. 1225. SOIL SAMPLING AND ANALYSIS.

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

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

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

(3) PCBs;

(4) pH levels;

(5) Cyanides;

(6) Methane and other flammable gases;

(7) Total petroleum hydrocarbons;

(8) Semi-volatile compounds;

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

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

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

(c) **Testing of Sampled Soil.** Samples shall be analyzed by a certified laboratory in accordance with methods for analyzing samples for the presence of hazardous wastes approved by the California Department of Toxic Substances Control or the State Water Resources Control Board and the San Francisco Bay Regional Water Quality Control Board. (Added by Ord. 35-99, App. 3/12/99)

SEC. 1226. SOIL ANALYSIS REPORT.

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

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

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

(3) The results of the soil analyses;

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

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

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

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

(c) **No Wastes Present.** If the soil sampling and analysis report indicates that there are no hazardous wastes present in the soil, the Director shall provide the applicant and the Director of Building Inspection with written notification that the applicant has complied with the requirements of this Article. (Added by Ord. 35-99, App. 3/12/99)

SEC. 1227. KNOWN HAZARDOUS WASTE SITE; HUNTERS POINT SHIPYARD PARCEL A.

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

(b) Applicant's activities on Parcel A of the Hunters Point Shipyard, as defined in Article 31, are governed by Article 31 of the Health Code and not by this Article. (Added by Ord. 35-99, App. 3/12/99)

SEC. 1228. APPLICANT'S RESPONSIBILITY UPON DISCOVERY OF HAZARDOUS WASTES.

Unless Section 1227 is applicable, if the soil sampling and analysis report indicates that hazardous wastes are present in the soil, the applicant shall submit a site mitigation report prepared by a qualified person to the Director.

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

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

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

(2) A statement signed by the person who prepared the report certifying that the person is a qualified person within the meaning of this Section and that in his or her judgment either no mitigation is required or the mitigation measures identified, if completed, will mitigate the

significant environmental or health and safety risks caused by or likely to be caused by the hazardous wastes in the soil;

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

(4) Complete the certification required by Section 1229. (Added by Ord. 35-99, App. 3/12/99)

SEC. 1229. CERTIFICATION.

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

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

(2) If Section 1228 is applicable:

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

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

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

"The Applicant recognizes that it has a nondelegable duty to perform site mitigation; that it, and not the City, is responsible for site mitigation; that it, not the City, attests to and is responsible for the accuracy the representations made in the certification, and that it will continue to remain liable and responsible, to the extent such liability or responsibility is imposed by State and federal law, for its failure to perform the site mitigation."
(Added by Ord. 35-99, App. 3/12/99)

SEC. 1230. NOTIFICATION TO DIRECTOR OF BUILDING INSPECTION.

After receipt of the certification required by Section 1229, the Director shall provide the applicant and the Director of Building Inspection with written notification that the applicant has complied with the requirements of this Article. (Added by Ord. 35-99, App. 3/12/99)

SEC. 1231. MAINTENANCE OF REPORT BY DIRECTOR.

The site history, soil analysis report certification and related documents shall become a part of the file maintained by the Department. (Added by Ord. 35-99, App. 3/12/99)

SEC. 1232. RULES AND REGULATIONS.

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

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

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

(1) Minimum standards for acceptable site histories. The minimum standards shall be designed to assist interested persons including, but not limited to, the Director of Building Inspection, other state and local public agencies and certified testing laboratories, to evaluate whether analyses, other than those required by Section

1225(a)(1) through (a)(9), must be conducted to detect the presence in the soil of hazardous wastes and to determine what analyses are appropriate.

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

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

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

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

(6) Waiver from Requirements for Analyses. The exclusion of hazardous wastes from the analysis requirements set forth in Section 1225 upon a determination that the hazardous waste does not pose a significant present or potential hazard to human health and safety or to the environment. (Added by Ord. 35-99, App. 3/12/99)

SEC. 1233. NOTIFICATION TO BUYER.

The Director shall prepare and maintain for public distribution a summary of the requirements of this Article. The seller or the seller's agent involved in the sale or exchange of any real property located bayward of the high-tide line as indicated on the Historic San Francisco Maps as described in Article 20 of the Public Works Code and as reflected on the map prepared and maintained for public distribution by the Director and in those areas designated by the Director pursuant to Section 1223 shall provide a copy of the summary to the buyer or buyers and shall obtain a written receipt from the buyer or buyers acknowledging receipt of the summary. Failure to give notice as required by this Section shall not excuse or exempt the buyer of the property from compliance with the requirements of this Article. (Added by Ord. 35-99, App. 3/12/99)

SEC. 1234. NONASSUMPTION OF LIABILITY.

In undertaking to require certain building or grading permits to include soil analyses for the presence of hazardous wastes, the City and County of San Francisco is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing on itself or on its officers and employees, any obligation for breach of which it is liable for money damages to any person who claims that such breach proximately caused injury. (Added by Ord. 35-99, App. 3/12/99)

SEC. 1235. CONSTRUCTION ON CITY PROPERTY.

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

departments, boards, commissions and agencies to insure that these requirements are met. (Added by Ord. 35-99, App. 3/12/99)

SEC. 1236. SEVERABILITY.

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Article or any part thereof, is for any reason to be held unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Section or any part thereof. The Board of Supervisors hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, causes or phrases be declared unconstitutional or invalid or ineffective. (Added by Ord. 35-99, App. 3/12/99)

SEC. 1237. FEES.

The Director is authorized to charge the following fees to defray the costs of document processing and review, consultation with applicants, and administration of this Article: (1) an initial fee of $390, payable to the Department, upon filing a site history report with the Department; and (2) an additional fee of $130 per hour for document processing and review and applicant consultation exceeding three hours or portion thereof, payable to the Department, upon filing of the certification required pursuant to Section 1229. (Added by Ord. 35-99, App. 3/12/99)

ARTICLE 23: VIDEO DISPLAY TERMINAL WORKER SAFETY

SEC. 1301. FINDINGS.

(a) The Board of Supervisors of the City and County of San Francisco finds and declares that it shall be the public policy of the City and County of San Francisco to provide public and private sector employees who operate video display terminals within the City and County of San Francisco with a safe and healthy work environment.

(b) Investigations conducted by the National Institute for Occupational Safety and Health of video display terminal (VDT) operators in response to complaints of headaches, general malaise, eyestrain and other visual and musculoskeletal problems resulted in recommendations for VDT workstation design, VDT work breaks and pre-placement and periodic visual testing to reduce musculoskeletal and vision complaints among VDT users.

(c) Various world-wide studies have demonstrated elevated musculoskeletal discomforts and disorders in VDT operators as compared with non-VDT workers. Statistics from these studies show a correlation between VDT use and shoulder-neck discomfort/pain, wrist tendonitis, and carpal tunnel syndrome. Statistics also show a higher number of vision complaints among VDT operators compared to other workers. Research has shown that inadequate workstation adjustment, lack of operator knowledge of adjustments, and long, uninterrupted use of VDTs are associated with musculoskeletal disorders and vision complaints. The consensus of the National Institute for Occupational Safety and Health, the World Health Organization and the American National Standards Institute is that adjustable VDT workstations in combination with training and proper adjustment of the workstation and periodic breaks from VDT use during the work day substantially contribute to suitable working postures and reduce vision complaints, thereby providing a safer and healthier work environment for VDT operators.

(d) This Board of Supervisors further declares that, although some employees and manufacturers have recognized and implemented safeguards in equipment and workstation design and work routine in order to better protect the health and well-being of employees who operate VDTs on a regular basis, many VDT operators remain, as yet, unprotected. The Board of Supervisors finds that by providing for adjustable workstations and education and training covering workstation design and adjustment, work routine, and the causes of and treatments for health effects association with VDT use, employers will furnish a safer and healthier work place for VDT operators. (Added by Ord. 405-90, App. 12/27/90)

SEC. 1302. DEFINITIONS.

For purposes of this Article:

(a) "Department" means the Department of Public Health of the City and County of San Francisco.

(b) "Director" means the Director of the Department of Public Health of the City and County of San Francisco or his or her designee.

(c) "Employer" means any person, partnership, firm, association or corporation, and any agent of such business, located or doing business within the City and County of San Francisco, except state or federal government entities, but including the City and County of San Francisco, who has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year. "Employee" as used in this Article means any individual who is required or directed by an employer to engage in any employment within the City and County of San Francisco.

(d) "Operator" means an employee who may be expected because of the employee's duties to use video display terminal equipment four hours or more, inclusive of breaks, per shift.

(e) "Terminal" or "video display terminal (VDT)" means any electronic video screen data presentation machine, commonly denominated as video display terminals (VDT) including but not limited to cathode-ray tubes (CRT). Nothing in this Article may be construed to apply to televisions, cash registers, memory typewriters, oscilloscope screens or fixed console computer aided design drafting (CADD) hardware equipment. (Added by Ord. 405-90, App. 12/27/90; amended by Ord. 17-91, App. 1/18/91)

Sec. 1303.
(Added by Ord. 405-90, App. 12/27/90; repealed by Ord. 59-03, File No. 030044, App. 4/11/2003)

SEC. 1304. WORKSTATION STANDARDS.

(a) Within 12 months of the effective date of this Article 23, every employer, when purchasing VDT workstations or equipment, shall provide an operator who may be expected because of the employee's duties to routinely perform repetitive keyboard motions four hours or more, inclusive of breaks, per shift, with user-adjustable workstations and chairs that meet the following minimum standards:

(1) Seating for the workstation shall conform to the provisions of the American National Standard for Human Factors Engineering of Visual Display Terminal Workstations, ANSI/SFS Standard No. 100-1988, Section 8.7 "Seating," or meet the requirements of Subsections (a)(1)(A) through (a)(1)(D) as follows:

(A) Seat pans and backrests of chairs shall be upholstered with moisture absorbing material. The upholstery shall be compressible at a minimum in the range of approximately one-half to one inch.

(B) Seat pans shall be adjustable for height and angle.

(C) Backrests shall be adjustable for height and to a position behind and forward of the vertical position.

(D) Chairs shall be capable of being swivelled by the user.

(2) Arm rests, wrist rests and foot rests shall be provided upon the request of the operator. Wrist rests shall enable the operator to maintain a neutral position of the wrist while at the keyboard, and shall be padded and without sharp edges.

(3) The adjustment mechanism for adjustable chair seat pans shall be operable by the user from a seated position. The adjustment mechanism for adjustable chair backrests shall be easily operable by the user.

(4) The keyboard shall be detachable from the terminal.

(5) The terminal display support shall be adjustable so that the entire primary viewing area of the terminal is between zero and 60 degrees below the horizontal plane passing through the eyes of the operator. The terminal keyboard, in combination with the seating and the worksurface, shall be adjustable so that the operator, while seated in a normal, upright position, is able to operate the keyboard with his or her forearms, wrists and hands in a position approximately parallel to the floor. The height of the worksurface shall be such as to provide adequate clearance under the worksurface to accommodate the operator's legs in a normal upright seated position.

(b) Within 12 months of the effective date of this Article 23, every employer, when purchasing VDT workstations or equipment, shall provide

an operator who may be expected because of the employee's duties to use video display terminal equipment four hours or more, inclusive of breaks, per shift, with a workstation that meets the following minimum standards:

(1) Workstations shall be illuminated with lights arranged to avoid visual glare and discomfort. The illumination level shall be within 200 - 500 lux. Task lighting shall be made available upon the request of the operator.

(2) Glare shall be eliminated through methods that include but are not limited to shielding windows with shades, curtains or blinds, positioning the terminal so that the terminal screen is at a right angle to the window producing the glare, fitting video display screens with antiglare screens and providing keyboards with tops finished in a manner so as to minimize reflection.

(3) A document holder adjustable for placement angle and height shall be provided upon the request of the operator when a document holder is appropriate for the performance of the operator's duties.

(4) Video display screens shall be clean, clear, and free of perceptible flicker to the operator.

(5) Direct noise from impact printers shall be reduced to improve ease of communication by placing covers over the printers or by isolating the printers from the rest of the work environment.

(c) As used in this Article, "routinely perform repetitive keyboard motions" shall not be interpreted to include only brief, intermittent keyboard motions that are ancillary to the employee's performance of other work tasks.

(d) Within 30 months of the effective date of this Article 23, every employer shall (1) upgrade existing VDT workstations and equipment that the employer provides to any operator, as defined in Section 1304(a), as necessary to comply with the minimum standards specified in Section 1304(a)(1) through (a)(5); and (2) upgrade existing VDT workstations and equipment that the employer provides to any operator, as defined in Section 1304(b), as necessary to comply with the minimum standards specified in Section 1304(b)(1) through (b)(5); provided, however, that the upgrading required by Sections 1304(a) and (b) combined shall not require the employer to expend more than $250 per upgraded VDT workstation.

(e) Within 48 months of the effective date of this Article 23, for any existing equipment, every employer shall (1) upgrade or replace VDT workstations and equipment that the employer provides to any operator, as defined in Section 1304(a), as necessary to comply with the minimum standards specified in Section 1304(a)(1) through (a)(5); and (2) upgrade or replace VDT workstations and equipment that the employer provides to any operator, as defined in Section 1304(b), as necessary to comply with the minimum standards specified in Section 1304(b)(1) through (b)(5). (Added by Ord. 405-90, App. 12/27/90; amended by Ord. 17-91, App. 1/18/91)

SEC. 1305. ALTERNATIVE WORK.

(a) Within 24 months of the effective date of this ordinance, every employer shall provide an operator who may be expected because of the employee's duties to routinely perform repetitive keyboard motions four hours or more, inclusive of breaks, per shift, with a minimum of a 15-minute, aggregate alternative work break during or immediately after every two hours of routinely performing repetitive keyboard motions, except where reasonable alternative work cannot be practicably provided.

(b) The term "alternative work break" as used in this section includes, but is not limited to, performance of work other than operation of a VDT, a rest break from work, a lunch break, or any combination of the above. However, nothing in this section shall be construed to in any way modify, increase or decrease any requirement for rest breaks or lunch breaks from work provided for by any federal or state law or regulation, or to require alternative work breaks inconsistent with the terms of any pertinent collective bargaining agreements or other employment contracts, in effect. (Added by Ord. 405-90, App. 12/27/90; amended by Ord. 17-91, App. 1/18/91)

Sec. 1306.
(Added by Ord. 405-90, App. 12/27/90; repealed by Ord. 59-03, File No. 030044, App. 4/11/2003)

SEC. 1307. EMPLOYEE EDUCATION AND TRAINING.

The Director shall adopt regulations setting forth an employer's duties to furnish operators and their supervisors with information and training about health and safety concerns associated with the use of video display terminals. The regulations shall be consistent with the following guidelines.

(a) The information and training furnished to operators shall at a minimum include:

(1) Known and suspected health effects and symptoms or health concerns which published scientific research has found to be associated with VDT work, including musculoskeletal strain, cumulative trauma disorders such as carpal tunnel syndrome, vision effects, possible reproductive effects and psychological stress;

(2) Known and suspected causes of VDT-related health effects including poorly designed work stations, long periods of physical immobility, poorly adjusted furniture, awkward postures, poor visual correction, inappropriate levels of lighting, excessive glare, and excessive or continuous keyboard activity;

(3) Protective measures which may be taken to reduce or alleviate health effects and symptoms including:

(A) Ergonomic principles regarding appropriate positioning of furniture, accessories (such as foot rests, document holders and wrist rests) and displays and the importance of maximum flexibility in workstation design;

(B) The importance of regular breaks from VDT work in alleviating musculoskeletal and visual strain;

(C) Mechanisms for reducing glare and excessive levels of room illumination, including indirect or shielded overhead lighting, window shades or blinds, proper placement of terminals in relation to glare sources, and glare screens;

(D) Instruction in adjusting display for maximum contrast and resolution;

(E) The role of vision examinations in identifying visual problems that may be exacerbated or precipitated by VDT use and determining the need for special visual correction for VDT work;

(F) Hands-on instruction in making appropriate adjustments to table, chair, display and accessories;

(G) Eye and body exercises helpful in alleviating musculoskeletal and visual strain.

(4) A review of the latest scientific research in radiation emissions associated with VDT use, including a summary of research and published standards for non-ionizing radiation emissions and remedies for reducing potential radiation exposure such as use of non-radiation producing display technology.

(b) The information and training shall describe the contents of this ordinance and the employee's rights under it.

(c) Employers shall provide the information to current operators and supervisors within six months of the effective date of the Director's regulations.

(d) Beginning six months after the effective date of the Director's regulations, employers shall provide new operators with the information and training within the first 30 days of employment.

(e) Employers shall provide the information to operators and supervisors on an annual basis.

(f) Employers shall maintain records identifying those operators provided with information and training under this ordinance. (Added by Ord. 405-90, App. 12/27/90)

SEC. 1308. EMPLOYEE RIGHTS.

No employer shall discharge, threaten with discharge, demote, suspend, or alter an employee's pay, position, seniority or other benefits, or in any other manner discriminate against any employee because such employee has (1) filed any oral or written complaint with the Department, the employer, or the employee's representative concerning the employee's rights under this ordinance, (2) instituted or caused to be instituted any proceeding under or relating to the employee's rights under this ordinance or has testified or is

about to testify in any such proceeding, or (3) exercised on behalf of the employee or others any rights afforded the employee under this ordinance. (Added by Ord. 405-90, App. 12/27/90)

SEC. 1309. VARIANCE AND EXEMPTION PROCEDURES.

(a) **Determination.** The Director of the Bureau of Toxics, Health and Safety Services in the Department of Public Health shall have authority to approve:

(1) A variance from a specific workstation standard, or rule or regulation adopted by the Director pursuant to this Article, upon a showing by the employer that an alternative program, method, practice, means, device or process will provide equal or superior safety for operators; and

(2) An exemption from a specific workstation standard, or rule or regulation adopted by the Director pursuant to this Article, upon a showing by the employer that it is technologically infeasible to comply with the workstation standard or rule or regulation for which the exemption is sought because the nature of the employer's business necessitates the use of specialized VDT or workstation equipment which is not readily available in conformance with the standard, rule or regulation, and the use of conforming equipment would adversely affect the task or work operations. An exemption may be granted for a period of up to two years.

(b) **Application.** The employer of the place of employment for which the variance or exemption is sought may initiate a variance or exemption action by filing an application with the Department. An employer may file a single application and pay a single application fee for all variances and exemptions that the employer may seek at any one time at any one place of employment. The application shall be made in writing upon forms prescribed by the Department and shall contain or be accompanied by all information required to assure the presentation of pertinent facts for proper consideration of the variance or exemption. The filing of the application for a variance or exemption shall stay the applicability of the workstation standard, rule or regulation for which the variance or exemption is sought. Before accepting any application for filing, the Department shall charge and collect an application fee. [See Section 1310.]

(c) **Hearing.** The Director of the Bureau of Toxics, Health and Safety Services (hereinafter referred to in this Article as "Bureau Director") shall hold a hearing on the application and shall hear the employer and other interested parties. The Bureau Director shall cause a notice of the time and place of the variance or exemption hearing to be mailed to the employer by certified mail at the address specified in the application at least 10 days prior to said hearing. The Bureau Director shall act upon each application within 90 days of receipt by the Department of the completed application. This time limit may be extended by written agreement executed by the Bureau Director and the applicant.

(d) **Variance Findings.** No variance shall be granted unless the Bureau Director finds and specifies in a written decision that in granting the variance, an equivalent level of safety will be provided through use of an alternative program, method, practice, means, device or process as is provided by the workstation standard or rule or regulation for which the variance is sought.

(e) **Exemption Findings.** No exemption shall be granted unless the Bureau Director finds and specifies in a written decision that it is technologically infeasible for the employer to comply with a workstation standard or a rule or regulation because the nature of the employer's business necessitates the use of specialized VDT or workstation equipment which is not readily available in conformance with the standard, rule or regulation for which the exemption is sought, and the use of conforming equipment would adversely affect the task or work operations.

(f) **Notice to Operators.** Immediately upon receipt of the notice of hearing, the employer shall provide notice of the application and hearing to affected operators and file a proof of service of the notice with the Department.

(1) If affected operators are not represented by an authorized employee representative, the employer shall post a copy of the notice of the

hearing and a statement specifying where a copy of the variance or exemption application may be examined, at the place or places where notices to employees are usually posted.

(2) If affected operators are represented by an authorized employee representative, the employer shall provide a copy of the notice of the hearing and a statement specifying where a copy of the application may be examined, to the employee representative by postage-prepaid first class mail or by personal delivery.

(3) Proof of service shall be accomplished by filing an affidavit or declaration under penalty of perjury with the Department, certifying to the time and manner in which the notice was given.

(g) **Decision.** Upon issuing the written decision either granting or denying the variance or exemption in whole or in part, the Bureau Director shall forthwith transmit a copy of the decision to the employer by certified mail at the address specified in the application. It shall be a condition of the order that the employer shall give notice of the decision to affected operators by the same means used to inform them of the application and notice of hearing. The decision of the Bureau Director shall be final and shall become effective as stated therein, except upon the filing of a valid appeal to the Director of Public Health.

(h) **Record.** A record shall be kept of the pertinent information presented at the hearing on the variance or exemption and such record shall be maintained as part of the permanent public records of the Department of Public Health.

(i) **Appeal.** Within 30 days from the date the variance or exemption decision is mailed to the employer, the employer, affected operators or authorized employee representatives of the affected operators may appeal the decision, in writing, to the Director, setting forth in detail the ground or grounds for the appeal. Before accepting any application for appeal, the Department shall charge and collect an application fee. [See Section 1310.]

(j) **Hearing on Appeal.** The Director shall set a time and place for the hearing on the appeal and cause a notice of the time and place of the hearing to be mailed to the applicant by certified mail at the address specified in the application not later than 10 working days from the date the appeal was received by the Director. The hearing shall be conducted within 30 days from the date the appeal was received by the Director. The Director shall hear the applicant and other interested parties.

(k) **Notice of Appeal to Operators, Employee Representatives, Employers.** If the applicant on appeal is the employer, the applicant shall provide notice of the appeal application and hearing to affected operators as provided in Subsection (f), above. If the applicant is an affected operator or authorized employee representative, the applicant shall provide notice of the appeal and hearing to the employer by postage-prepaid first class mail or by personal delivery. Proof of service shall be accomplished by filing an affidavit or declaration under penalty of perjury with the Department, certifying to the time and manner in which the notice was given.

(l) **Disposition of Appeal.** After the hearing on the appeal, the director may affirm the original decision, may reverse the original decision or may modify the original decision. The Director shall forthwith transmit a copy of the decision to the applicant on appeal by certified mail at the address specified in the application. It shall be a condition of the order that the applicant shall give notice of the decision to affected operators, authorized employee representatives or the employer, as applicable, by the same means used to inform them of the appeal application and hearing.

(m) **Record of Appeal.** A record shall be kept of the pertinent information presented at the hearing on the appeal and such record shall be maintained as part of the permanent public records of the Department. (Added by Ord. 405-90, App. 12/27/90)

SEC. 1310. FEES.

(a) **VDT Variance or Exemption Application Fee.** Applicants for a variance or an exemption from the requirements of the video display terminals ordinance shall pay a filing fee of $175 to the Department of Public Health.

(b) **Variance or Exemption Appeal Fee.** Applicants on appeal of a variance or exemption decision from the requirements of the video display terminals ordinance shall pay a filing fee of $175 to the Department of Public Health. (Added by Ord. 302-91, App. 8/6/91)

SEC. 1311. RIGHT TO ENTRY AND INSPECTION.

In order to carry out the purposes and provisions of this Article, the Director shall have the right at any reasonable time, upon the presentation of proper credentials, to enter upon or into the premises of any employer, as defined in this Article, who employs one or more VDT operators to inspect said premises for compliance with this Article. If the owner or occupant of the premises denies entry, the Director shall obtain a proper inspection warrant or other remedy provided by law to secure entry. (Added by Ord. 405-90, App. 12/27/90)

SEC. 1312. AUTHORITY TO ADOPT RULES AND REGULATIONS.

(a) The Director may adopt and from time to time amend reasonable rules, regulations and guidelines consistent with and implementing the provisions and intent of this Article. Said rules and regulations shall be approved by the Health Commission at a public hearing. In addition to the notice required by law, before the Health Commission approves the issuance or amendment of any rule or regulation, the director shall provide a 30-day public comment period by providing published notice in an official newspaper of general circulation in the City and County of San Francisco of the intent to issue or amend the rule or regulation. The Secretary of the Health Commission shall send written notice, at least 15 days prior to the hearing, to any interested party who sends a written request to the Health Commission for notice of hearings on VDT rules or regulations. (Added by Ord. 405-90, App. 12/27/90)

SEC. 1313. ENFORCEMENT.

(a) The Director may enforce the provisions of this Article against violations by either of the following actions:

(1) Serving notice requiring the correction of any violation of this Article;

(2) Calling upon the City Attorney to maintain an action for injunction to enforce the provisions of this Article, to cause the correction of any such violation, and for assessment and recovery of a civil penalty for such violation.

(b) Any employer who violates this Article shall be liable for a civil penalty, not to exceed $500, which penalty shall be assessed and recovered in a civil action brought in the name of the People of the City and County of San Francisco in any court of competent jurisdiction. Each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such. Any penalty assessed and recovered in an action brought pursuant to this paragraph shall be paid to the Treasurer of the City and County of San Francisco.

(c) In undertaking the enforcement of this ordinance, the City and County of San Francisco is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury. (Added by Ord. 405-90, App. 12/27/90)

SEC. 1314. CONFLICT WITH OTHER LAWS.

(a) By adopting this ordinance, the City and County of San Francisco does not intend to authorize any activity that federal or state law or regulation prohibits, to prohibit any activity that federal or state law or regulation authorizes, or to duplicate any federal or state law or regulation except to the extent allowed by law.

(b) This ordinance shall be void upon the enactment or adoption of any California or federal law having preemptive effect on the regulation of VDTs in the workplace. (Added by Ord. 405-90, App. 12/27/90)

SEC. 1315. SEVERABILITY.

If any provision of this Article, or the application of any such provision to any person or circumstances, shall be held invalid, the remainder of this Article, to the extent it can be given effect, or the application of those provisions to persons or circumstances other than those to which it is held invalid, shall not be affected thereby, and to this end the provisions of this Article are severable. (Added by Ord. 405-90, App. 12/27/90)

ARTICLE 24: CHLOROFLUOROCARBON RECOVERY AND RECYCLING

SEC. 1401. FINDINGS AND PURPOSE.

The Board of Supervisors finds that the release of chlorofluorocarbon (CFC) into the environment may endanger public health and welfare by causing or contributing to significant depletion of stratospheric ozone. The Environmental Protection Agency has determined that this depletion will result in health and environmental harm, including increased incidence of skin cancer and cataracts, suppression of the immune response system, and damage to crops and aquatic organisms. (Federal Register, August 12, 1988, p. 30566.) The findings adopted under Section 469 of the San Francisco Health Code on stratospheric ozone depletion, health effects and global warming due to releases of CFCs are therefore incorporated herein.

The Board of Supervisors finds that repair, replacement and dismantling of mobile air-conditioners in automobiles and trucks are major sources of CFC releases. As part of the repair, replacement and dismantling procedures, CFCs are purged from these systems to the atmosphere. After repair, mobile air conditioners are recharged with newly manufactured CFC supplied in small containers, available at retail stores in San Francisco. When additional repairs are needed, this CFC is purged from the system. Due to this cycle, manufactured CFCs are continually released to the environment. The Environmental Protection Agency has determined that approximately 25 percent of domestically consumed CFCs are used in automobiles, making this industry the largest single user of these chemicals. (Federal Register, August 12, 1988, p. 30616.)

The Board of Supervisors finds that a prohibition on the release of CFCs by businesses and government agencies that install, repair or dismantle mobile air-conditioners would be a significant benefit to the health and welfare of the people of San Francisco. The Board of Supervisors further finds that measures which lower the supply of CFC for sale in San Francisco, and which break the cycle of recharge and release from mobile air- conditioning systems, will significantly contribute to public health and welfare.

The Board of Supervisors finds, therefore, that this legislation requiring permits, inspections and installation of CFC recovery equipment for businesses which release CFCs as part of their work on mobile air- conditioning systems, and prohibiting the sale of small CFC containers, is an essential step for limiting the future release of CFCs to the environment. (Added by Ord. 279-91, App. 7/3/91)

SEC. 1402. DEFINITIONS.

As used in Sections 1401 through 1413 inclusive, the following words and terms shall have the following meanings:

(a) "Approved CFC recycling equipment" means equipment certified by the Administrator of the Environmental Protection Agency pursuant to Section 609(b) of the Clean Air Act, 42

U.S.C. Section 7671h(b), or equipment which has been certified by Underwriters Laboratories or another independent standards testing authority, as meeting the standards of the Society of Automotive Engineers for equipment for the extraction and reclamation of refrigerants from motor vehicle air conditioners, including but not limited to SAE standard J-1990. Equipment purchased before the commencement of certification by Underwriters Laboratories or another independent testing organization shall be considered approved if it is substantially identical to equipment certified under the previous sentence.

(b) "Chlorofluorocarbon(s)" or "CFC(s)" means the family of substances containing carbon, fluorine and chlorine that have no hydrogen atoms and no double bonds, and which includes, but is not limited to, trichlorofluoromethane (CFC-11), dichlorofluoromethane (CFC-12), trichlorotrifluoromethane (CFC-113), dichlorotetrafluoroethane (CFC-114), and monochloropentafluoroethane (CFC-115). The term shall also include any substance listed under Section 602 of the Clean Air Act, 42 U.S.C. Section 7671(a).

(c) "Department" means the San Francisco Department of Public Health.

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

(e) "Establishment" means a single business or government operation conducted on the same or contiguous parcels of property under the same ownership or entitlement to use, and the building or buildings, appurtenant structures, and surrounding land area used by the operation at that location or site.

(f) "Motor vehicle" means any vehicle which is self-propelled, such as automobiles, trucks, and buses, and includes public transportation vehicles operated by the San Francisco Municipal Railway.

(g) "Motor vehicle air-conditioning system" means mechanical vapor compression refrigeration equipment used to cool the driver or passenger compartment of any motor vehicle.

(h) "Permit" means a document issued by the Director which authorizes a person or establishment to operate approved CFC recycling equipment in order to install, service, repair, dismantle or dispose of motor vehicle air-conditioning systems.

(i) "Person" means an individual, trust, firm, joint stock company, corporation, including a government corporation, partnership, association, city, county, city and county, district, the State, including any department or agency thereof to the extent authorized by State law, or the United States to the extent authorized by federal law.

(j) "Release" means any leaking, pumping, venting, emptying, or discharging of CFCs to the environment by persons subject to this Article, except as authorized by a permit. (Added by Ord. 279-91, App. 7/3/91)

SEC. 1403. AUTHORITY TO ADOPT RULES AND REGULATIONS.

The Director may adopt and from time to time amend reasonable rules, regulations and guidelines consistent with and implementing the provisions of this Article. Prior to adoption of any rule or regulation under this Article, the Director shall provide a 30-day public comment period by providing published notice in an official newspaper of general circulation in the City and County of San Francisco of the intent to issue or amend the rule or regulation. Rules and regulations shall be approved by the Health Commission at a public hearing. In addition to the notices required by law, the Secretary of the Health Commission shall send written notice, at least 15 days prior to the hearing, to any interested party who sends a written request to the Health Commission for notice of hearings on hazardous waste regulation. Regulations promulgated by the Director and approved by the Health Commission shall be maintained in the Office of the Clerk of the Board of Supervisors. (Added by Ord. 279-91, App. 7/3/91)

SEC. 1404. PROHIBITION ON SALE OF CFC CONTAINERS.

No person shall sell, transfer, or deliver any CFC suitable for use as a refrigerant in a motor

vehicle air-conditioning system in a container which contains less than 20 pounds of such refrigerant, except to a person or establishment issued either a permit under Section 1406 of this Article, or a certification in compliance with federal law. (Added by Ord. 279-91, App. 7/3/91)

SEC. 1405. PROHIBITION ON RELEASE OF CFC AND OPERATION WITHOUT PERMIT.

(a) No person engaged in the profession, trade or business of installation, repair, or dismantling of motor vehicles, shall install, repair or dismantle any motor vehicle air-conditioning system except in compliance with a permit issued by the Director.

(b) No person engaged in the profession, trade or business of installation, repair, or dismantling of motor vehicles, shall dispose of or cause the disposal of any motor vehicle air-conditioning system without first extracting CFC refrigerants in compliance with a permit issued by the Director.

(c) No person subject to Sections 1405(a) or 1405(b) shall:

(1) Intentionally release CFCs to the environment; or

(2) Add CFC refrigerant to any motor vehicle air conditioning system without first checking the system for leaks and ensuring that no detectable leaks exist.

(d) Failure of any person subject to this Section to ensure the integrity of a motor vehicle air- conditioning system before adding refrigerant, other than as a means solely for identifying the location of any leaks, shall constitute an intentional release.

(e) For purposes of this Article, the owner or operator of an establishment at which motor vehicle air-conditioning systems are installed, repaired, or dismantled shall be considered a person engaged in the profession, trade or business of installation, repair, or dismantling of motor vehicles. (Added by Ord. 279-91, App. 7/3/91)

SEC. 1406. PERMIT REQUIREMENTS.

(a) Permits shall require that all installation, repair, dismantling, or disposal of motor vehicle air-conditioning systems be performed by persons trained in accordance with Section 1406(c), using approved CFC recycling equipment in conformity with such training to prevent the release of CFCs.

(b) Every person subject to Section 1405(a) or 1405(b) shall file an application for a permit within 90 days of the effective date of this Article or of commencing operations, whichever is later. Permit applications may be filed by the owner or operator of an establishment to include one or more employees, but a separate permit application shall be filed for each establishment at which persons subject to Section 1405 are employed. The application shall be accompanied by the appropriate fees as set forth in this Article. The application form shall require a description of the approved CFC recycling equipment used by the applicant, a certification that such equipment is in proper operating condition, and such other information as the Director deems relevant. Application forms shall be provided by the Department upon request of the applicant.

(c) The permit applicant shall provide written certification that the applicant and each establishment employee engaged in the installation, repair, dismantling, or disposal of motor vehicle air-conditioning systems, has completed a training course in the standards for proper use of approved CFC recycling equipment, and in the standards for recovery and recycling of used CFCs from motor vehicle air-conditioners, which standards shall be at least as stringent as the Society of Automotive Engineers standard SAE J-1989.

(d) Upon receipt of a completed application and fees, the Director may inspect the equipment or establishment described in the application, or request additional information from the applicant. The Director shall not issue a permit until satisfied that the applicant has met the requirements of this Article.

(e) Permits shall be valid for one year from the date of issuance and are not transferable. Applicants for permit renewal shall file a new application as provided under Sections 1406(b) and 1406(c). The permittee shall file the permit renewal application with the Director no later than 15 days before the expiration date of the previous permit.

(f) Permits shall require the permittee to notify the Director in writing within 14 days after:

(1) The purchase or installation of any approved CFC recycling system other than the system described in the previous permit application; and

(2) Hiring or employing any person to use approved CFC recycling systems other than persons with training certification approved in the previous permit application.

Upon receipt of the permittee's notice, the Director may require a new permit application, modify the permit, or issue such orders as may be necessary to limit the use of approved CFC recycling systems to persons trained in accordance with this Article.

(g) Permits shall be prominently displayed on the premises of every establishment subject to this Article. (Added by Ord. 279-91, App. 7/3/91; amended by Ord. 174-04, File No. 040732, App. 7/22/2004)

SEC. 1407. VIOLATIONS.

In addition to any other provisions of this Article, the following acts or omissions shall constitute a violation of this Article:

(a) Fraud, willful misrepresentation, or any willfully inaccurate or false statement in a permit application, or permit renewal application;

(b) Fraud, willful misrepresentation, or any willfully inaccurate or false statement in any report or document required by an order issued pursuant to Section 1409;

(c) Failure to comply with a permit or any order issued by the Director. (Added by Ord. 279-91, App. 7/3/91)

SEC. 1408. CIVIL PENALTIES.

The owner or operator of any establishment at which violations of this Article occur, and any person who violates the provisions of this Article, shall be liable for a civil penalty not to exceed $500 per violation per day. Penalties shall be assessed and recovered in a civil action brought in the name of the People of the City and County of San Francisco in any court of competent jurisdiction. (Added by Ord. 279-91, App. 7/3/91)

SEC. 1409. ENFORCEMENT.

The Director is authorized to enforce all provisions of this Article, and may take any one or a combination of the following actions:

(a) Serve notice requiring correction of violations of this Article upon any person, including the owner or operator of the establishment where a violation occurred and any permittee that is the subject of the violation. Corrective action may be required immediately or upon a schedule specified by the Director. A notice may require immediate cessation of violation of Section 1405, and the posting of such notice at the establishment.

(b) After notice and hearing, issue an order to cease violation. The order shall be served personally or by certified mail on the owner or operator of the establishment where a violation occurred, and on any other person responsible for violation of this Article.

(c) After notice and hearing, upon a finding of violation, revoke, suspend or modify any permit.

(d) With the consent of the violator, or the owner or operator of an establishment at which violations occurred, issue and collect civil penalties in settlement of violation orders in amounts not to exceed the limits of Section 1408 for each day and each violation, and not to exceed $5,000 in total, provided that all violations have been corrected or are included in a final compliance order.

(e) Request the City Attorney to maintain an action for injunction to restrain or correct violations, to enforce a violation order, and to

recover civil penalties. The Director is not required to assess and attempt to settle any violation prior to commencement of a civil action.

(f) Upon the presentation of proper credentials, enter and inspect at any reasonable time, any establishment at which persons are engaged in the business, trade or profession of installation, repair, dismantling, or disposal of motor vehicles. If the owner or occupant of the premises denies entry, the Director shall obtain a proper inspection warrant or other remedy provided by law to secure entry.

(g) Request the Chief of Police and authorized agents to assist in the enforcement of this Article. (Added by Ord. 279-91, App. 7/3/91)

SEC. 1410. HEARINGS.

(a) Whenever notice and a hearing is required by Section 1409 of this Article, the notice shall be sent by certified mail to the permittee, the person alleged to have violated this Article, and the owner or operator of the establishment at which the violation occurred. Notice to the owner of the establishment shall be sufficient where other parties cannot be located by the Director.

(b) The notice shall set forth the time and place of the hearing, the ground or grounds upon which the enforcement action is based, and a brief statement of the factual matters in support thereof. The notice shall be mailed at least 15 days prior to the hearing date.

(c) In any hearing under this Article, all parties involved shall have the right to offer testimonial, documentary, and tangible evidence bearing on the issues, to see and copy all documents and other information the City relies on in the proceeding, to be represented by counsel, and to confront and cross-examine witnesses against them. Any hearing under this Article may be continued by the person conducting the hearing for a reasonable time for the convenience of a party or witness. (Added by Ord. 279-91, App. 7/3/91)

SEC. 1411. INSPECTION AND ADMINISTRATION FEES.

(a) In administering the provisions of this Article the Director shall require permittees, permit applicants, and other persons subject to this Article to pay inspection and administrative fees to cover:

(1) The Department's costs of processing applications and permits, including inspections necessary for permit issuance; and

(2) The cost of any inspection conducted by the Department when it has reason to believe a person is not in compliance with this Article.

(b) When two or more establishments subject to the requirements of Section 1406 are located on the same premises and not contiguous to each other and are owned or operated by one person, a separate inspection and administration fee shall be required for each establishment.

(c) When the real property where the establishment subject to Section 1406 is owned by a person other than the operator, it is the operator's duty to pay inspection and administration fees. However, in the event the operator fails to pay any inspection and administration fee as provided for in this Article, the City and County may impose a lien as set forth in Section 1412 of this Article. (Added by Ord. 279-91, App. 7/3/91)

SEC. 1412. FEE SCHEDULE.

(a) The Department shall collect the following fees:

(1) $79 for fiscal year 2004 (beginning July 1, 2004), $83 for fiscal year 2005 (beginning July 1, 2005), $88 for fiscal year 2006 (beginning July 1, 2006) for processing permit applications and associated administration activities undertaken by the Department; and

(2) $137 for fiscal year 2004 (beginning July 1, 2004), $145 for fiscal year 2005 (beginning July 1, 2005), $153 for fiscal year 2006 (beginning July 1, 2006) per hour or each portion thereof for inspections and associated administrative activities, including enforcement activities pursuant to Section 1409.

(b) A notice of payment due shall be sent by the Department to the permittee, the violator, and the owner of the property, advising as to the amount of any fee and containing the following information:

(1) The date and location of the Department's inspection;

(2) The amount of the fee;

(3) A statement advising the addressee that he or she is liable under this Article for the fee in the amount indicated in the notice and that payment to the City is due within 30 days of the mailing date of the notice;

(4) A statement advising the addressee that a penalty of 10 percent plus interest at the rate of one percent per month on the outstanding balance shall be added to the costs from the date that payment is due under Subsection (b)(3);

(5) A statement advising the owner of the establishment that if payment of the costs is not received within 90 days of the mailing date, a lien may be imposed on the property of the owner which is an establishment subject to the provisions of this Article; and

(6) A statement that the addressee or property owner may appeal the fee determination contained in the notice of payment due to the Director. Said appeal must be filed in writing with the Department no later than 30 days after the date the notice of payment due is issued. The Director's decision on the appeal shall be final.

(c) If full payment of the costs is not received within 30 days after the notice of payment due was sent, a second notice of payment due shall be sent by the Department to the addressees of the previous notice. The second notice shall state that the generator and property owner are liable for the payment of the costs indicated on the notice.

(d) If full payment of the costs is not received within 30 days after the second notice of payment due was sent, a third (and final) notice of payment due shall be sent by the Department. The third notice shall state that addressees are liable for the payment of the costs indicated on the notice and that if payment of such costs is not received within 30 days of the mailing date of the third notice, a lien may be imposed on the subject property pursuant to the provisions of this Article.

(e) If payment is not received within 30 days after mailing the third notice, the Department shall initiate lien proceedings pursuant to the provisions of Article XX of Chapter 10 of the San Francisco Administrative Code.

(f) Beginning with fiscal year 2007-2008, no later than April 15 of each year, the Controller shall adjust the fees provided in this Article to reflect changes in the relevant Consumer Price Index, without further action by the Board of Supervisors. In adjusting the fees, the Controller may round these fees up or down to the nearest dollar, half-dollar or quarter-dollar. The Director shall perform an annual review of the fees scheduled to be assessed for the following fiscal year and shall file a report with the Controller no later than May 1st of each year, proposing, if necessary, an adjustment to the fees to ensure that costs are fully recovered and that fees do not produce significantly more revenue than required to cover the costs of operating the program. The Controller shall adjust fees when necessary in either case. (Added by Ord. 279-91, App. 7/3/91; amended by Ord. 322-00, File No. 001917, App. 12/28/2000; Ord. 174-04, File No. 040732, App. 7/22/2004)

SEC. 1413. SEVERABILITY.

If any provision of this Article, or the application of any such provision to any person or circumstances, shall be held invalid, the remainder of this Article, to the extent it can be given effect, or the application of those provisions to persons or circumstances other than those to which it is held invalid, shall not be affected thereby, and to this end the provisions of this Article are severable. (Added by Ord. 279-91, App. 7/3/91)

ARTICLE 25: MEDICAL WASTE GENERATOR REGISTRATION, PERMITTING, INSPECTIONS AND FEES

SEC. 1501. FINDINGS AND INTENT.

(a) The California Medical Waste Management Act, California Health and Safety Code, Division 20, Chapter 6.1, authorizes the California State Department of Health Services and local public health departments to register, permit, inspect and collect fees from facilities that generate medical waste to determine whether those facilities store, treat and dispose of those wastes in a manner that complies with the medical waste requirements of state law.

(b) The Board of Supervisors finds that public health and the environment in the City and County of San Francisco will be significantly enhanced by authorizing the Director of Public Health to implement and enforce a medical waste management program as set forth in Section 25034.3 of the California Health and Safety Code.

(c) It is the intent of the Board of Supervisors that, when necessary for the protection of public health, and as authorized under Section 25018 of the Health and Safety Code, the medical waste management program of the City and County of San Francisco shall be more stringent than state law whenever required by this ordinance or by the Director. (Added by Ord. 375-92, App. 12/23/92)

SEC. 1502. DEFINITIONS.

The following definitions are applicable to this Article 25.

(a) "Act" means the Medical Waste Management Act, Chapter 6.1, Division 20, California Health and Safety Code.

(b) "Biohazard bag" means a disposable red bag which is impervious to moisture and has a strength sufficient to preclude ripping, tearing, or bursting under normal conditions of usage and handling of the waste-filled bag. A biohazard bag shall be constructed of material of sufficient single thickness strength to pass the 165-gram dropped dart impact resistance test as prescribed by Standard D 1709-85 of the American Society for Testing and Materials and certified by the bag manufacturer.

(c) "Biohazardous waste" means any of the following:

(1) Laboratory waste, including, but not limited to, all of the following:

(A) Human or animal specimen cultures from medical and pathological laboratories,

(B) Cultures and stocks of infectious agents from research and industrial laboratories,

(C) Wastes from the production of bacteria, viruses, or the use of spores, discarded live and attenuated vaccines, and culture dishes and devices used to transfer, inoculate, and mix cultures;

(2) Waste containing any microbiologic specimens sent to a laboratory for analysis;

(3) Human surgery specimens or tissues removed at surgery or autopsy, which are suspected by the attending physician, surgeon or dentist of being contaminated with infectious agents known to be contagious to humans. Human surgery specimens or tissues which have been fixed with formaldehyde or other fixatives are not biohazardous waste;

(4) Animal parts, tissues, fluids, or carcasses suspected by the attending veterinarian of being contaminated with infectious agents known to be contagious to humans;

(5) Waste, which at the point of transport from the generator's site, at the point of disposal, or thereafter, contains recognizable fluid blood, fluid blood products, containers, or equipment containing blood that is fluid or blood from animals known to be infected with diseases which are highly communicable to humans;

(6) Waste containing discarded materials contaminated with excretion, exudate, or secretions from humans who are required to be isolated by the infection control staff, the attending physician or surgeon, the attending veterinarian, or the Director, to protect others from highly communicable diseases or isolated animals known to be infected with diseases which are highly communicable to humans.

(d) "Common storage facility" means any on-site designated accumulation area maintained in accordance with this Chapter, used by small quantity generators otherwise operating independently, for the storage of medical waste for collection by a hazardous waste hauler.

(e) "Common storage facility permit" means a permit issued by the Director regulating the operation of a common storage facility.

(f) "Container" means the bag or rigid container in which medical waste is placed prior to transporting for purposes of storage or treatment.

(g) "Department" means the California Department of Health Services, Environmental Health Division.

(h) "Director" means the Director of Public Health or his designee, including any agents or registered environmental health specialists appointed by the Director.

(i) "Hazardous waste hauler" means a person registered as a hazardous waste hauler pursuant to Division 20, Chapter 6.5, Articles 6 (commencing with Section 25160) and 6.5 (commencing with Section 25167.1) of the California Health and Safety Code, and Chapter 30 (commencing with Section 66001) of Division 4 of Title 22 of the California Code of Regulations.

(j) "Highly communicable diseases" means diseases, such as those caused by organisms classified by the Federal Centers for Disease Control as Biosafety Level IV organisms, which, in the opinion of the Director, the infection control staff, the department, attending physician, surgeon, or attending veterinarian, merit special precautions to protect staff, patients, and other persons from infection. "Highly communicable diseases" does not include diseases such as the common cold, influenza, or other diseases not representing a significant danger to nonimmunocompromised persons.

(k) "Household waste" means any material, including garbage, trash, and sanitary wastes in septic tanks and medical waste, which is derived from households, farms or ranches.

(l) "Infectious agent" means a type of microorganism, bacteria, mold, parasite, or virus which normally causes, or significantly contributes to the cause of, increased morbidity or mortality of human beings.

(m) "Large quantity generator" means a medical waste generator that generates 200 or more pounds per month of medical waste.

(n) (1) "Medical waste" means waste which meets both of the following requirements:

(A) The waste is composed of waste which is generated or produced as a result of any of the following:

(i) Diagnosis, treatment, or immunization of human beings or animals,

(ii) Research pertaining to the activities specified in subparagraph (i),

(iii) The production or testing of biologicals;

(B) The waste is any of the following:

(i) Biohazardous waste,

(ii) Sharps waste.

(2) Medical waste may contain infectious agents.

(3) For purposes of this subsection, "biologicals" means medicinal preparations made from living organisms and their products, including, but not limited to, serums, vaccines, antigens and antitoxins.

(4) Medical waste which has been treated in accordance with Section 1511 and which is not otherwise hazardous, shall be considered solid waste as defined in Section 40191 of the California Public Resources Code, and not medical waste. Sharps waste rendered noninfectious pursuant to Paragraph (a)(4) of Section 1511 may be disposed of as solid waste if the waste is not otherwise hazardous.

(5) Medical waste does not include any of the following:

(A) Waste containing microbiological cultures used in food processing and biotechnology and any containers or devices used in the preparation and handling of these cultures, that is not considered to be an infectious agent pursuant to Subsection 1502(j);

(B) Urine, feces, saliva, sputum, nasal secretions, sweat, tears, and vomitus, unless they contain fluid blood, except as defined in Paragraph (c)(6) of Section 1502;

(C) Waste which is not biohazardous, such as paper towels, paper products, articles containing nonfluid blood, and other medical solid waste products commonly found in the facilities of medical waste generators;

(D) Hazardous waste, radioactive waste, or household waste;

(E) Waste generated from normal and legal veterinarian agricultural, and animal livestock management practices on a farm or ranch.

(o) "Medical waste generator" means any person, whose act or process produces medical waste and includes, but is not limited to, a provider of health care as defined in Subdivision (a) of Section 56.05 of the Civil Code. All of the following are examples of businesses which generate medical waste:

(1) Medical and dental offices, clinics, hospitals, surgery centers, laboratories, research laboratories, other health facilities required to be licensed pursuant to Division 2 (commencing with Section 1200), and unlicensed facilities;

(2) Veterinary offices, clinics, and hospitals;

(3) Pet shops.

(p) "Medical waste management plan" means a document which is completed by generators of medical waste pursuant to Sections 1504 and 1508, on forms prescribed by the Director.

(q) "Medical waste permit" means a permit issued by the Director to a medical waste treatment facility.

(r) "Medical waste registration" means a registration issued by the Director to a medical waste generator.

(s) "Medical waste treatment facility" means all land and structures, and other adjacent land, including appurtenances or improvements thereon, used for treating medical waste or for associated handling and storage of medical waste. "Adjacent," for purposes of the preceding sentence, means real property within 400 yards from the property boundary of the existing medical waste treatment facility. Medical waste treatment facilities are those facilities treating waste pursuant to Paragraphs (a)(1) or (a)(3) of Section 1511. A medical waste treatment method approved pursuant to Paragraph (a)(4) of Section 1511 may be designated as a medical waste treatment facility by the Director if approved by the Department.

(t) "Mixed waste" means mixtures of medical and nonmedical waste. Mixed waste is medical waste, except for all of the following:

(1) Medical waste and hazardous waste is hazardous waste and is subject to regulation as specified in the statutes and regulations applicable to hazardous waste;

(2) Medical waste and radioactive waste is radioactive waste and is subject to regulation as specified in the statutes and regulations applicable to radioactive waste;

(3) Medical waste, hazardous waste, and radioactive waste is radioactive mixed waste and is subject to regulation as specified in the statutes and regulations applicable to hazardous waste and radioactive waste.

(u) "Off-site" means any location which is not on-site.

(v) "On-site," unless otherwise specified, means a medical waste treatment facility or a common storage facility on the same or adjacent property as the generator of the medical waste being treated or stored. "Adjacent," for purposes of the preceding sentence, means real property within 400 yards from the property boundary of the medical waste generator.

(w) "Person" means an individual, trust, firm, joint stock company, business concern, corporation, including but not limited to, a government corporation, partnership, and association. "Person" also includes any city, county, district, commission, the State or any division, agency, or political subdivision thereof, the Regents of the University of California, any interstate body, and the Federal Government or any Department or agency thereof to the extent permitted by law.

(x) "Sharps container" means a rigid puncture-resistant container which, when sealed, is leak resistant and cannot be reopened without great difficulty.

(y) "Sharps waste" means any device having acute rigid corners, edges, or protuberances capable of cutting or piercing, including, but not limited to, all of the following:

(1) Hypodermic needles, syringes, blades, and needles with attached tubing;

(2) Broken glass items, such as Pasteur pipettes and blood vials contaminated with other medical waste.

(z) "Small quantity generator" means a medical waste generator that generates less than 200 pounds per month of medical waste.

(aa) "Storage" means the holding of medical wastes at a designated accumulation area, as specified in Section 1510.

(bb) "Tracking document" means a medical waste tracking document prescribed by the Director or substantially similar thereto, which contains the following information regarding each load of medical waste being transported off-site:

(1) The name, address, and telephone number of the hazardous waste hauler, unless the medical waste is being transported pursuant to a Section 1506 hauling exemption;

(2) The type and quantity of medical waste transported;

(3) The name of the medical waste generator;

(4) The name, address, telephone number, and the signature of the authorized representative of the permitted treatment or transfer station receiving the medical waste.

(cc) "Transfer station" means any off-site location where medical waste is loaded, unloaded, or stored during the normal course of transportation of the medical waste. "Transfer station" does not include common storage facilities, large quantity generators used for consolidation of medical waste, or on-site treatment facilities. Transfer stations shall be permitted by the Department pursuant to the Act and this Article.

(dd) "Treatment" means any method, technique, or process designed to change the biological character or composition of any medical waste so as to eliminate its potential for causing disease, as specified in Section 1511. (Added by Ord. 375-92, App. 12/23/92)

SEC. 1503. AUTHORITY TO ADOPT RULES AND REGULATIONS.

(a) **Program Implementation.** The Director is authorized to implement and administer a medical waste management program as ap-

proved pursuant to the California Health and Safety Code. The Director may adopt and from time to time amend reasonable rules, regulations and guidelines consistent with and implementing the provisions of this Article. Prior to adoption of any rule or regulation under this Article, the Director shall provide a 30-day public comment period by providing published notice in an official newspaper of general circulation in the City and County of San Francisco of the intent to issue or amend the rule or regulation. Rules and regulations shall be approved by the Health Commission at a public hearing. In addition to the notices required by law, the Secretary of the Health Commission shall send written notice, at least 15 days prior to the hearing, to any interested party who sends a written request to the Health Commission for notice of hearings on medical waste regulation. Regulations promulgated by the Director and approved by the Health Commission shall be maintained in the office of the Clerk of the Board of Supervisors.

(b) **Hearings on Permits and Administrative Orders.** Whenever notice and a hearing are required for the Director's action on a permit, or for issuance of an administrative order, such notice shall be sent by certified mail to the permit applicant, permittee, property owner or facility operator. Notice of a hearing shall also be given by publication in a newspaper of general circulation in the City for at least two days and not less than 10 days prior to the date of such hearing. Any hearing under this Article may be continued by the person conducting the hearing for a reasonable time for the convenience of a party or a witness.

(1) The notice of hearing shall set forth the time and place of the hearing, the ground or grounds upon which the action is based, the pertinent code section or sections, and a brief statement of the factual matters in support thereof. The notice shall be given at least 15 days prior to the hearing date.

(2) In any hearing under Sections 1509 or 1512, all parties involved shall have the right to offer testimonial, documentary, and tangible evidence bearing on the issues, to see and copy all documents and other information the City relies on in the proceeding, and to be represented by counsel. (Added by Ord. 375-92, App. 12/23/92)

SEC. 1504. REGISTRATION REQUIREMENTS FOR SMALL QUANTITY GENERATORS.

(a) **On-Site Treatment Registration.** Each small quantity generator using on-site steam sterilization, incineration, or microwave technology to treat medical waste shall register with the Director.

(1) Small quantity generators using on-site treatment, as specified in Subsection (a), which operate as a business in the same building, or which are associated with a group practice in the same building, may register as one generator.

(2) Small quantity generators using on-site treatment, as specified in Subsection (a), operating as specified in Paragraph (a)(1) in different buildings on the same or adjacent property, or as approved by the Director, may register as one generator.

(3) "Adjacent," for purposes of paragraph (a)(2), means real property within 400 yards from the property boundary of the primary registration site.

(b) **Registration Deadline.** Small quantity generators subject to Subsection 1504(a) shall register with the Director and pay the required fee no later than 120 days after the effective date of this Article. In those cases where the generation of medical waste begins after the effective date of this Article, registration shall be completed pursuant to this Article prior to commencement of the generation of medical waste.

(c) **Registration by Filing Management Plan.** Any small quantity generator required to register with the Director pursuant to this Section shall file with the Director a medical waste management plan, on forms prescribed by the Director containing, but not limited to, all of the following:

(1) The name of the person responsible for operation of the small quantity generator, or with direct responsibility for management of medical waste;

(2) The business address of the person specified in Paragraph (1);

(3) The type of business;

(4) The types, and the estimated average monthly quantity, of medical waste generated;

(5) The type of treatment used on-site;

(6) The name and business address of the hazardous waste hauler used by the generator for backup treatment and disposal, for waste for which the on-site treatment method is not appropriate due to the hazardous or radioactive characteristics of the waste, or the name of the hazardous hauler used by the generator to have untreated medical waste removed for treatment and disposal;

(7) A statement indicating that the generator is hauling the medical waste generated in his or her business pursuant to Section 1506 and the name and any business address of the treatment and disposal facilities to which the waste is being hauled, if applicable;

(8) The name and business address of the hazardous waste hauler service provided by the building management to which the building tenants may subscribe or are required by the building management to subscribe and the name and business address of the treatment and disposal facilities used, if applicable;

(9) A statement certifying that the information provided is complete and accurate.

(d) **Inspection and Additional Permitting Requirements.** Small quantity generators required to register under Subsection 1504(a) are subject to biennial inspection of the on-site treatment facility by the Director and may be subject to the permitting requirements of Section 1509 for on-site medical waste treatment facilities as determined by the Director. The inspection and permitting requirements of this paragraph do not apply when on-site steam sterilization is not used for the treatment or disposal of medical waste.

(e) **Duration of Registration; Renewal and Update of Information.** Each small quantity generator registration issued by the Director under Subsection 1504(a) shall be valid for two years. Applications for renewal of the registration shall be filed with the Director on or before the expiration date. Small quantity generators shall submit an updated application form within 30 days of any change in the medical waste management plan information specified in Paragraphs (c)(1) to (c)(9) of this Section.

(f) **Recordkeeping Requirements.** Any medical waste generator required to register pursuant to this Section shall maintain individual treatment and tracking records, including tracking documents if applicable, for three years, or for the period specified in the Director's regulations, and shall report or submit to the Director, upon request, both of the following:

(1) Treatment operating records;

(2) An emergency action plan complying with regulations adopted by the State of California, pursuant to the Act.

(g) **Containment and Storage Requirements.** Containment and storage of medical waste shall be in accordance with Section 1510.

(h) **Treatment Requirements.** Treatment of medical waste shall be in accordance with Section 1511.

(i) **Fees For Small Quantity Generator Registration.** The registration and inspection fee for small quantity generators required to register under Subsection 1504(a) is $321 for fiscal year 2004 (beginning July 1, 2004), $398 for fiscal year 2005 (beginning July 1, 2005), $482 for fiscal year 2006 (beginning July 1, 2006). (Added by Ord. 375-92, App. 12/23/92; amended by Ord. 176-04, File No. 040734, App. 7/22/2004)

SEC. 1505. REQUIREMENTS FOR NONREGISTRANT SMALL QUANTITY GENERATORS.

(a) **Recordkeeping by Nonregistrants.** Small quantity generators who are not required to register pursuant to this Article shall maintain on file in their office all of the following:

(1) An information document stating how the generator contains, stores, treats, and disposes of any medical waste generated through any act or process of the generator. The informa-

tion document may be prepared using the medical waste management plan form prescribed by the Director pursuant to Subsection 1504(d);

(2) Records of any medical waste transported off-site for treatment and disposal, including the quantity of waste transported, the date transported, and the name of the hazardous waste hauler or individual hauling the waste pursuant to Subsection 1506(b). The small quantity generator shall maintain these records for not less than two years.

(b) **Nonregistrant Fee and Notification.** Every small quantity generator subject to Subsection 1505(a) shall mail a copy of the information document specified in Paragraph (a)(1) to the Director no later than 120 days after the effective date of this Article. In those cases where the generation of medical waste begins after the effective date of this Article, the information document shall be mailed to the Director within 30 days of commencement of the generation of medical waste.

(1) The information document shall be accompanied by a one-time fee of $95 for fiscal year 2004 (beginning July 1, 2004), $117 for fiscal year 2005 (beginning July 1, 2005), $142 for fiscal year 2006 (beginning July 1, 2006).

(2) A new information document and fee shall be submitted only if the generator moves to a new location more than 400 yards from the boundary of the location specified in the previous information document. (Added by Ord. 375-92, App. 12/23/92; amended by Ord. 176-04, File No. 040734, App. 7/22/2004)

SEC. 1506. MEDICAL WASTE HAULERS.

(a) **Transportation of Waste.** Except as otherwise exempted pursuant to Subsection 1506(b), all medical waste shall be transported off-site by a hazardous waste hauler in leak-resistant and fully enclosed rigid containers in vehicle compartments. Medical waste shall be transported off-site only to a permitted medical waste treatment facility, a permitted transfer station, or a permitted large quantity generator for the purpose of consolidation before treatment and disposal pursuant to this Article and the Act; provided that, no large quantity generator shall accept off-site medical waste for purposes of consolidation before treatment and disposal without written permission from the Director or as provided in a permit under this Article.

(1) No person shall transport medical waste in the same vehicle with other waste unless the medical waste is separately contained in rigid containers or kept separate by barriers from other waste, unless all of the waste is to be handled as medical waste under this Article.

(2) Any persons manually loading or unloading containers of medical waste shall be provided by their employer at the beginning of each shift with, and shall be required to wear, clean and protective gloves and coveralls, changeable lab coats, or other protective clothing.

(b) **Application for Exemption.** Small quantity generators may apply to the Director for an off-site limited-quantity hauling exemption, if the generator meets all of the following requirements:

(1) The generator generates less than 20 pounds of medical waste per week, transports less than 20 pounds of medical waste at any one time, and has a management plan pursuant to Subsection 1504(d) or an information document pursuant to Subsection 1505(b) on file in the Director's office.

(2) The generator transports the waste himself or herself, or directs a member of his or her staff to transport the waste, to a permitted medical waste treatment facility or a permitted transfer station before consolidation or treatment and disposal.

(3) The generator maintains a tracking document.

(A) Any person transporting medical waste off-site in a vehicle shall have a tracking document in his or her possession while transporting the waste.

(B) The original tracking document shall be provided to the facility receiving the medical waste.

(c) **Issuance of Hauling Exemption; Fee.** The Director may issue or modify small quantity generator hauling exemptions with such condi-

tions as necessary to protect public health and welfare. Every applicant for an exemption shall pay a fee of $107 for fiscal year 2004 (beginning July 1, 2004), $133 for fiscal year 2005 (beginning July 1, 2005), $161 for fiscal year 2006 (beginning July 1, 2006); in addition to the small quantity generator registration fee under Section 1504 or the nonregistrant fee under Section 1505. (Added by Ord. 375-92, App. 12/23/92; amended by Ord. 176-04, File No. 040734, App. 7/22/2004)

SEC. 1507. PERMIT REQUIREMENTS FOR COMMON STORAGE FACILITIES.

(a) **Permit Requirement.** Every common storage facility shall have a permit issued by the Director. A permit for any common storage facility may be obtained by any one of the following:

(1) A provider of health care as defined in Section 56.05(d) of the Civil Code;

(2) The hazardous waste hauler responsible for collection of medical waste from the common storage facility;

(3) The property owner;

(4) The property management firm responsible for providing tenant services to the medical waste generators.

(b) **Permit Application Deadlines.** Any person under Subsection 1507(a) responsible for the operation of a common storage facility shall apply for a permit from the Director within 120 days of the effective date of this Article, where the storage of medical waste in the common storage facility began prior to that date. In those cases where the storage of medical waste begins after the effective date of this Article, a permit application shall be submitted to the Director and issued prior to commencement of storage of medical waste in the common storage facility. The Director is authorized to take enforcement action against unpermitted common storage facilities under Section 1512.

(c) **Permit Issuance and Denial Process.** The Director shall issue, renew, modify or deny common storage facility permits after notice and an opportunity for a hearing under Section 1503. The Director shall hold a hearing upon request of the applicant or any interested person. Permit application forms shall be prescribed by the Director.

(d) **Fee for Common Storage Facility Permits.** The annual permit fee for a common storage facility permitted pursuant to this Section is the amount specified in the following schedule:

(1) For storage facilities serving 10 or fewer generators, the permit fee is $268 for fiscal year 2004 (beginning July 1, 2004), $333 for fiscal year 2005 (beginning July 1, 2005), $403 for fiscal year 2006 (beginning July 1, 2006).

(2) For storage facilities serving 11 to 49 generators, the permit fee is $428 for fiscal year 2004 (beginning July 1, 2004), $531 for fiscal year 2005 (beginning July 1, 2005), $643 for fiscal year 2006 (beginning July 1, 2006).

(3) For storage facilities serving 50 or more generators, the permit fee is $536 for fiscal year 2004 (beginning July 1, 2004), $664 for fiscal year 2005 (beginning July 1, 2005), $803 for fiscal year 2006 (beginning July 1, 2006). (Added by Ord. 375-92, App. 12/23/92; amended by Ord. 176-04, File No. 040734, App. 7/22/2004)

SEC. 1508. REGISTRATION REQUIREMENTS FOR LARGE QUANTITY GENERATORS.

(a) **Registration Requirements.** Each large quantity generator, except as specified in paragraphs (1) and (2), shall register with the Director. Large quantity generators owning or operating an on-site medical waste treatment facility shall also apply for a permit for that treatment facility pursuant to Section 1509.

(1) Large quantity generators operating as a business in the same building, or which are associated with a group practice in the same building, may register as one generator.

(2) Large quantity generators as specified in Paragraph (1), operating in different buildings on the same or adjacent property, or as approved by the Director, may register as one generator.

(3) "Adjacent" for purposes of Paragraph (2), means real property within 400 yards from the property boundary of the primary registration site.

(b) **Registration Deadline.** Large quantity generators subject to Subsection 1508(a) shall register with the Director and pay the required fee no later than 120 days after the effective date of this Article. In those cases where the generation of medical waste begins after the effective date of this Article, registration shall be completed prior to commencement of the generation of medical waste.

(c) **Registration by Filing Management Plan.** Any large quantity generator required to register pursuant to Subsection 1508(a) shall file with the Director a medical waste management plan, on forms prescribed by the Director containing, but not limited to, all of the following:

(1) The name of the person responsible for operation of the large quantity generator, or with direct responsibility for management of medical waste;

(2) The business address and telephone number of the person in Paragraph (1);

(3) The type of business;

(4) The types, and the estimated average monthly quantity, of medical waste generated;

(5) The type of treatment used on-site, if applicable. For generators with on-site medical waste treatment facilities, including incinerators or steam sterilizers or other treatment facilities as determined by the Director, the treatment capacity of the on-site treatment facility;

(6) The name and business address of the hazardous waste hauler used by the generator to have untreated medical waste removed for treatment, if applicable;

(7) The name and business address of the hazardous waste hauler service provided by the building management to which the building tenants may subscribe or are required by the building management to subscribe, if applicable;

(8) The name and business address of the off-site medical waste treatment facility to which any medical waste is being hauled, if applicable;

(9) An emergency action plan complying with regulations adopted by the Director and approved by the department, if applicable;

(10) A statement certifying that the information provided is complete and accurate.

(d) **Inspections.** Every large quantity generator shall be subject to at least annual inspection by the Director.

(e) **Duration of Registration; Renewal and Update of Information.** Each large quantity generator registration issued by the Director shall be valid for one year.

(1) An application for renewal of the registration shall be filed with the Director not less than 90 days prior to the expiration date. Failure to meet this requirement shall result in assessment of a late fee.

(2) Every large quantity generator shall submit an updated application form within 30 days of any change in the medical waste management plan information specified in Subsection (c) above.

(f) **Recordkeeping Requirements.** Any large quantity generator required to register pursuant to this Section shall maintain individual treatment and tracking records, including tracking documents if applicable, for three years or for the period specified in the Director's regulations.

(g) **Containment and Storage Requirements.** Containment and storage of medical waste shall be in accordance with Section 1511.

(h) **Waste Treatment Requirements.** Treatment of medical waste shall be in accordance with Section 1511.

(i) **Annual Fee For Large Quantity Generators.** The registration and annual fee for large quantity generators shall be set in following amounts:

(1) A general acute care hospital, as defined in Subdivision (a) of Section 1250, Division 2, Chapter 2 of the Health and Safety Code, which has one or more beds, but not more than 99 beds, shall pay $643 for fiscal year 2004 (beginning July 1, 2004), $797 for fiscal year 2005 (beginning July 1, 2005), $964 for fiscal year 2006 (beginning July 1, 2006); a facility with 100 or

more beds, but not more than 199 beds, shall pay $964 for fiscal year 2004 (beginning July 1, 2004), $1195 for fiscal year 2005 (beginning July 1, 2005), $1446 for fiscal year 2006 (beginning July 1, 2006); a facility with 200 or more beds, but not more than 250 beds shall pay $1285 for fiscal year 2004 (beginning July 1, 2004), $1594 for fiscal year 2005 (beginning July 1, 2005), $1928 for fiscal year 2006 (beginning July 1, 2006); and a facility with 251 or more beds shall pay $1821 for fiscal year 2004 (beginning July 1, 2004), $2258 for fiscal year 2005 (beginning July 1, 2005), $2732 for fiscal year 2006 (beginning July 1, 2006).

(2) A specialty clinic, providing surgical, dialysis, or rehabilitation services, as defined in Subdivision (b) of Section 1204, Division 2, Chapter 1 of the Health and Safety Code, shall pay $750 for fiscal year 2004 (beginning July 1, 2004), $930 for fiscal year 2005 (beginning July 1, 2005), $1125 for fiscal year 2006 (beginning July 1, 2006);

(3) A skilled nursing facility, as defined in Subdivision (c) of Section 1250, Division 2, Chapter 2 of the Health and Safety Code, which has one or more beds, but not more than 99 beds shall pay $321 for fiscal year 2004 (beginning July 1, 2004), $398 for fiscal year 2005 (beginning July 1, 2005), $482 for fiscal year 2006 (beginning July 1, 2006); a facility with 100 or more beds, but not more than 199 beds shall pay $428 for fiscal year 2004 (beginning July 1, 2004), $531 for fiscal year 2005 (beginning July 1, 2005), $643 for fiscal year 2006 (beginning July 1, 2006); and a facility with 200 or more beds shall pay $536 for fiscal year 2004 (beginning July 1, 2004), $664 for fiscal year 2005 (beginning July 1, 2005), $803 for fiscal year 2006 (beginning July 1, 2006).

(4) An acute psychiatric hospital, as defined in Subdivision (b) of Section 1250, Division 2, Chapter 2 of the Health and Safety Code, shall pay $750 for fiscal year 2004 (beginning July 1, 2004), $930 for fiscal year 2005 (beginning July 1, 2005), $1125 for fiscal year 2006 (beginning July 1, 2006).

(5) An intermediate care facility, as defined in Subdivision (d) of Section 1250, Division 2, Chapter 2 of the Health and Safety Code, shall pay $750 for fiscal year 2004 (beginning July 1, 2004), $930 for fiscal year 2005 (beginning July 1, 2005), $1125 for fiscal year 2006 (beginning July 1, 2006).

(6) A primary care clinic, as defined in Section 1200.1, Division 1, Chapter 1 of the Health and Safety Code, shall pay $750 for fiscal year 2004 (beginning July 1, 2004), $930 for fiscal year 2005 (beginning July 1, 2005), $1125 for fiscal year 2006 (beginning July 1, 2006).

(7) A licensed clinical laboratory, as defined in Paragraph (3) of Subdivision (a) of Section 1206, of the Business and Professions Code, shall pay $321 for fiscal year 2004 (beginning July 1, 2004), $398 for fiscal year 2005 (beginning July 1, 2005), $482 for fiscal year 2006 (beginning July 1, 2006).

(8) A health care service plan facility, as defined in Subdivision (f) of Section 1345, Division 2, Chapter 2.2 of the Health and Safety Code, shall pay $750 for fiscal year 2004 (beginning July 1, 2004), $930 for fiscal year 2005 (beginning July 1, 2005), $1125 for fiscal year 2006 (beginning July 1, 2006).

(9) A veterinary clinic or veterinary hospital shall pay $321 for fiscal year 2004 (beginning July 1, 2004), $398 for fiscal year 2005 (beginning July 1, 2005), $482 for fiscal year 2006 (beginning July 1, 2006).

(10) A large quantity generator medical office shall pay $321 for fiscal year 2004 (beginning July 1, 2004), $398 for fiscal year 2005 (beginning July 1, 2005), $482 for fiscal year 2006 (beginning July 1, 2006). (Added by Ord. 375-92, App. 12/23/92; amended by Ord. 176-04, File No. 040734, App. 7/22/2004)

SEC. 1509. PERMIT REQUIREMENTS FOR ON-SITE MEDICAL WASTE TREATMENT FACILITIES.

(a) **Permit Requirement; Inspections.** All on-site medical waste treatment facilities shall be permitted and inspected by the Director pursuant to this Section.

(b) **Permit Application Deadlines.** Within 120 days of the effective date of this Article, each person owning or operating a medical waste treatment facility shall apply for a permit pursuant to this Section. If the medical waste treatment facility begins operation after the effective date of this Article, the permit shall be obtained pursuant to this Section prior to commencement of the treatment facility's operation. Registered small quantity generators shall obtain a permit if required by the Director pursuant to Subsection 1504(e).

(c) **Medical Waste from Adjacent Small Quantity Generators.** A health care facility accepting medical waste for treatment from small quantity generators located on property adjacent to the facility shall be classified as an on-site treatment facility. The word "adjacent" as used in this subsection means real property within 400 yards of the property boundary of the health care facility accepting medical waste for treatment.

(d) **Permit Application.** Any person required to obtain a permit pursuant to this Section shall file an application on forms prescribed by the Director, containing, but not limited to, all of the following information:

(1) The name of the applicant;

(2) The business address of the applicant;

(3) The type of treatment provided, the treatment capacity of the facility, a characterization of the waste treated at this facility, and the estimated average monthly quantity of waste treated at the facility;

(4) A disclosure statement, as provided in Section 25112.5 of the California Health and Safety Code;

(5) Evidence satisfactory to the Director that the operator of the medical waste treatment facility has the ability to comply with this Article and other requirements of State or local law;

(6) Any other information required by the Director for the administration or enforcement of this Article.

(e) **Issuance or Renewal of Permit; Grounds for Denial.**

(1) Prior to issuing or renewing a permit under this Section, the Director shall review the compliance history of the applicant, under any local, state, or federal law or regulation governing the control of medical waste or pollution.

(2) The Director shall, pursuant to this Section, deny a permit, or specify additional permit conditions, to ensure compliance with applicable laws and regulations, if the Director determines that in the three- year period preceding the date of application the applicant has violated laws or regulations identified in Paragraph (1) at a facility owned or operated by the applicant, and the violations demonstrate a recurring pattern of noncompliance or pose, or have posed, a significant risk to public health and safety or to the environment.

(3) In addition to any other information required to be submitted for the permitting of a facility pursuant to this Section, an applicant who has owned or operated a facility regulated by the Director shall provide a description of all violations described in Paragraph (1), which occurred at any facility permitted and owned or operated by the applicant in the City and County of San Francisco in the three years prior to the date of application.

(4) In making the determination of whether to deny a permit or to specify additional permit conditions pursuant to Paragraph (2), the Director shall take both of the following into consideration:

(A) Whether a permit denial or permit condition is appropriate or necessary given the severity of the violation;

(B) Whether the violation has been corrected in a timely fashion.

(f) **Recordkeeping Requirements.**

(1) The Director shall evaluate, inspect, and review the records of on-site medical waste treatment facilities for compliance with this Article. Commencing on the thirtieth day after the effective date of this Article, all persons operating an on- site medical waste treatment facility shall

maintain individual records for a period of three years and shall report or submit to the Director upon request, all of the following information:

(A) The type of treatment facility and its capacity;

(B) All treatment facility operating records;

(C) If applicable, copies of the tracking documents for all medical waste it receives for treatment from off-site generators or from hazardous waste haulers.

(g) **Duration, Renewal and Transfer of Permits.**

(1) A medical waste permit issued by the Director to a medical waste treatment facility shall be valid for five years.

(2) An application for renewal of the permit shall be filed with the Director not less than 90 days prior to the expiration date. If a permittee fails to make a timely application for renewal, the medical waste permit shall expire on the expiration date.

(3) A medical waste permit may be renewed if the Director finds the permittee has been in substantial compliance with this Article and any regulations adopted pursuant hereto during the preceding permitted period, or that the permittee corrected previous violations in a timely manner.

(4) Upon approval of the Director, a permit may be transferred from one subsidiary to another subsidiary of the same corporation, from a parent corporation to one of its subsidiaries or from a subsidiary to a parent corporation.

(h) **Termination of Permit Prior to Expiration Date.** A person required to obtain a medical waste permit shall at all times, possess a valid permit for each facility in operation. A medical waste permit shall terminate prior to its expiration date if suspended or revoked pursuant to Section 1512 or, notwithstanding Section 1512, if either of the following occurs:

(1) The permittee sells or otherwise transfers the facility except as specified in Paragraph (g)(4) of this Section;

(2) The permittee surrenders the permit to the Director because the permittee ceases operation.

(i) **Permit Issuance Procedures.**

(1) Permits shall be issued, renewed, denied or modified only after notice and a hearing pursuant to Subsection 1503(b).

(2) The Director shall issue a medical waste permit upon evaluation, inspection, or records review of the applicant if the applicant is in substantial compliance with this Article and the applicant has corrected any previous violations. A decision to issue or not to issue the permit shall be made by the Director within 120 days of the time that the application is filed, unless waived by the applicant.

(j) **Permit Provisions.** When issuing, renewing, or revising any treatment facility permit, the Director may prohibit or condition the handling or treatment of medical waste to protect public health and safety.

(k) **Fees for Medical Waste Treatment Facilities.**

(1) The annual permit fee for an on-site treatment facility shall be set at the following amount:

(A) The fee for an autoclave is $321 for fiscal year 2004 (beginning July 1, 2004), $398 for fiscal year 2005 (beginning July 1, 2005), $482 for fiscal year 2006 (beginning July 1, 2006).

(B) The fee for an incinerator or other approved technology is $340.

(C) The Director shall charge an application fee for an on-site treatment facility equal to $142 for fiscal year 2004 (beginning July 1, 2004), $155 for fiscal year 2005 (beginning July 1, 2005), $167 for fiscal year 2006 (beginning July 1, 2006) for each hour spent processing the application. (Added by Ord. 375-92, App. 12/23/92; amended by Ord. 176-04, File No. 040734, App. 7/22/2004)

SEC. 1510. CONTAINMENT AND STORAGE REQUIREMENTS.

(a) **Medical Waste Requirements.** Every person subject to this Article shall comply with the following requirements to containerize or store medical waste:

(1) Medical waste shall be contained separately from other waste at the point of origin in the generating facility. Sharps containers may be placed in biohazard bags or in containers with biohazard bags.

(2) Biohazardous waste shall be contained in a red biohazard bag in accordance with this Section, conspicuously labeled with the words "Biohazardous Waste" or with the international biohazard symbol and the word "BIOHAZARD."

(3) Sharps waste shall be contained in a sharps container pursuant to Subsections 1510(b) and (c).

(b) **Biohazardous Waste in Biohazard Bag.** Every person subject to this Article shall comply with the following requirements to containerize biohazardous waste in a biohazard bag:

(1) The bags shall be tied to prevent leakage or expulsion of contents during all future storage, handling or transport.

(2) Biohazardous waste shall be bagged in accordance with Paragraph (a)(2) and placed for storage, handling, or transport in a rigid or disposable container. The container shall be leak resistant, have tight fitting covers, and be kept clean and in good repair. The container may be of any color and shall be labeled with the words "Biohazardous Waste," or with the international biohazard symbol and the word "BIOHAZARD," on the lid and on the sides so as to be visible from any lateral direction. Containers meeting the requirements specified in Section 66840 of Title 22 of the California Code of Regulations may also be used until the replacement of the containers is necessary or existing stock has been depleted.

(3) No bagged biohazardous waste shall be removed from the bag until treatment as prescribed in Section 1511 is completed. Biohazardous waste shall not be disposed of before being treated as prescribed in Section 1511.

(A) Biohazardous or sharps waste shall not be contained or stored above 0° Centigrade (32° Fahrenheit) for more than seven days at any on-site location without the written approval of the Director.

(B) Biohazardous or sharps waste may be stored at or below 0° Centigrade (32° Fahrenheit) for up to 90 days at any on-site location; provided that any such storage shall not exceed 90 days without written permission of the Director.

(C) Biohazardous or sharps waste shall be stored off-site only as provided in Subsection 1506(a).

(D) If any on-site or off-site facility is unable to control the odor from its stored waste and the odor poses a public nuisance, the Director may require more frequent removal or take such other action as allowed by law.

(c) **Sharps Waste.** Every person subject to this Article shall comply with the following requirements to containerize sharps:

(1) All sharps waste shall be placed into a sharps container;

(2) Full sharps containers ready for disposal shall be taped or tightly lidded to preclude loss of contents;

(3) Sharps containers ready for disposal shall not be stored for more than seven days without the written approval of the Director;

(4) Sharps containers shall be labeled with the words "sharps waste" or with the international biohazard symbol and the word "BIOHAZARD."

(d) **Storage in Common Storage Facility.** Any small quantity generator who has properly containerized the medical waste according to the requirements of this Section, and is otherwise in compliance with the registration and

notification requirements of this Article may store the waste in a permitted common storage facility.

(e) **Rigid Containers for Waste; Washing and Decontamination.** Every person subject to this Article shall thoroughly wash and decontaminate reusable rigid containers for medical waste by a method approved by the Director each time they are emptied, unless the surfaces of the containers have been completely protected from contamination by disposable liners, bags, or other devices removed with the waste. These containers shall be maintained in a clean and sanitary manner. Approved methods of decontamination include, but are not limited to, agitation to remove visible soil combined with one of the following procedures:

(1) Exposure to hot water of at least 82° Centigrade (180° Fahrenheit) for a minimum of 15 seconds.

(2) Exposure to chemical sanitizer by rinsing with, or immersion in, one of the following for a minimum of three minutes:

(A) Hypochlorite solution (500 ppm available chlorine);

(B) Phenolic solution (500 ppm active agent);

(C) Iodoform solution (100 available iodine);

(D) Quaternary ammonium solution (400 ppm active agent).

(f) **Decontamination of Leaks or Spills.** Any leak or spill of a medical waste by a medical waste generator, medical waste treatment facility, common storage facility, or any person subject to this Article shall be decontaminated by procedures adopted by the Director, as approved by the department.

(g) **Use of Containers for Solid Waste.** No person subject to the requirements of this Article shall use, allow or make available reusable pails, drums, dumpsters, or bins used for medical waste for the containment of solid waste, or for other purposes, except after being decontaminated by the procedures specified in Subsections (e) and (f) of this Section, and removal of all medical waste labels.

(h) **Security of Storage Areas.** Any enclosure or designated accumulation area used for the storage of medical waste containers, including common storage facilities, shall be secured so as to deny access to unauthorized persons and shall be marked with warning signs on, or adjacent to, the exterior of entry doors, gates, or lids. The storage area may be secured by use of locks on entry doors, gates, or receptacle lids.

(1) The wording of warning signs shall be in English, "CAUTION—BIOHAZARDOUS WASTE STORAGE AREA—UNAUTHORIZED PERSONS KEEP OUT," and in Spanish, "CUIDADO—ZONA DE RESIDUOS—BIOLOGICOS PELIGROSOS—PROHIBIDA LA ENTRADA A PERSONAS NO AUTORIZADAS," or in another language, in addition to English, determined to be appropriate by the infection control staff, the person responsible for medical waste management or the Director. Warning signs shall be readily legible during daylight from a distance of at least 25 feet.

(2) Any enclosure or designated accumulation area shall provide medical waste protection from animals and natural elements and shall not provide a breeding place or a food source for insects or rodents.

(i) **Trash Chutes.** No person shall use a trash chute to transfer medical waste.

(j) **Compacters or Grinders.** Compacters or grinders shall not be used to process medical waste until after the waste has been treated pursuant to Section 1511 and rendered solid waste, unless the grinding or compacting is an integral part of the treatment method and allowed by the facility permit. Medical waste in bags or other disposable containers shall not be subject to compaction by any compacting device and shall not be placed for storage or transport in a portable or mobile trash compactor. (Added by Ord. 375-92, App. 12/23/92)

SEC. 1511. TREATMENT REQUIREMENTS.

(a) **Methods of Treatment for On-Site Treatment Facilities.** Any person treating medical waste shall ensure that the medical waste is

treated by one of the following methods, thereby rendering it solid waste, which is not otherwise hazardous, prior to disposal:

(1) Incineration at a permitted medical waste treatment facility in a controlled-air, multichamber incinerator, or other method of incineration approved by the department which provides complete combustion of the waste into carbonized or mineralized ash. Monitoring for release of airborne pathogens from medical waste incinerations shall be conducted as required by the medical waste treatment permit.

(2) Discharge to the sewerage system as defined in the San Francisco Public Works Code, if the medical waste is liquid or semiliquid. Any such medical waste discharge shall be consistent with the waste discharge requirements placed on the City and County of San Francisco by state or federal law, and with any pretreatment permit issued by the Department of Public Works pursuant to the Public Works Code; provided that such discharge shall not consist of either of the following:

(A) Liquid or semiliquid laboratory waste, as defined in Subsection 1502(c).

(B) Microbiological specimens, including those specified in Subsection 1502(c).

(3) Steam sterilization at a permitted medical waste treatment facility or by other sterilization, in accordance with all of the following operating procedures for steam sterilizers or other sterilization:

(A) Standard written operating procedures shall be established for biological indicators, or for other indicators of adequate sterilization approved by the department and included in the applicable permit, for each steam sterilizer, including time, temperature, pressure, type of waste, type of container, closure on container, pattern of loading, water content, and maximum load quantity.

(B) Recording or indicating thermometers shall be checked during each complete cycle to ensure the attainment of 121° Centigrade (250° Fahrenheit) for at least one-half hour, depending on the quantity and density of the load, in order to achieve sterilization of the entire load. Thermometers shall be checked for calibration annually. Records of the calibration checks shall be maintained as part of the facility's files and records for a period of three years or for the period specified in the regulations.

(C) Heat-sensitive tape, or another method acceptable to the Director, shall be used on each container that is processed to indicate the attainment of adequate sterilization conditions.

(D) The biological indicator Bacillus stearothermophilus, or other indicator of adequate sterilization as approved by the department and included in the applicable permit, shall be placed at the center of a load processed under standard operating conditions at least monthly to confirm the attainment of adequate sterilization conditions.

(E) Records of the procedures specified in Subparagraphs (A), (B), and (D) shall be maintained for a period of not less than three years.

(4) Rendered noninfectious prior to disposal, if sharps waste, by one of the following methods:

(A) Incineration;

(B) Steam sterilization;

(C) Disinfection and encasement using an alternative treatment method approved by the Department. Sharps waste which is encased in a sharps container which complies with Subsection 1502(x) meets the encasement requirements of this Paragraph, and may be disposed of solid waste pursuant to Paragraph (n)(4) of Section 1502.

(5) Other alternative medical waste treatment methods which are both of the following:

(A) Approved by the Department and included in the applicable permit;

(B) Result in the destruction of pathogenic microorganisms. (Added by Ord. 375-92, App. 12/23/92)

SEC. 1512. ENFORCEMENT.

(a) **Entry and Inspection Authority.** Upon presentation of proper credentials, the Director may, at any reasonable time, enter and inspect the following facilities, or take any of the following actions:

(1) Enter and inspect any facility for which a medical waste permit, common storage facility permit, or medical waste registration has been filed, or which is subject to registration or permitting requirements pursuant to this Article;

(2) Enter and inspect any facility for which a nonregistrant information document has been filed pursuant to Section 1505, upon receipt of information that a violation of this Article has occurred;

(3) Enter and inspect a vehicle for which a limited-quantity exemption application has been filed or granted, or which is subject to registration or permit requirements pursuant to this Article;

(4) As part of any entry, take photographs or videotapes, take samples, inspect and copy any records, reports, test results, or other information related to the requirements of this Article.

(b) **Consent to Entry.** The Director's inspection shall be made with the consent of the owner or possessor of the facilities. If entry or inspection authorization is denied, the Director shall obtain a proper inspection warrant or other remedy provided by law to secure entry.

(c) **Emergency Inspection Authority.** Notwithstanding the provisions of Subsection (b), if the Director determines that a violation or an emergency may endanger public health or safety, an inspection may be made without consent or issuance of a warrant.

(d) **Notice of Violation and Administrative Orders.** The Director is authorized to enforce the requirements of this Article, including the provisions of any regulation, permit, registration, or hauling exemption. Upon receipt of information that a violation has occurred or may occur, the Director may take any, or any combination, of the following actions.

(1) Serve notice requiring correction of violations of this Article upon any person, including the owner, operator, permittee or registrant of the facility or vehicle where the violation occurred or may occur, and on any other person responsible for violation of this Article. Corrective action may be required immediately or upon a schedule specified by the Director.

(2) After notice and hearing, issue an order to cease or abate the violation and to take any necessary remedial action. The order shall be served personally or by certified mail on the owner, operator, permittee or registrant of the facility where a violation occurred or may occur, and on any other person responsible for violation of this Article.

(3) After notice and hearing, issue an order to the person responsible for a violation of this Article specifying a schedule for compliance, or imposing an administrative penalty of not more than $1,000 per violation, or both. Any person who violates an order issued pursuant to this Subsection 1512(d) shall be guilty of a misdemeanor.

(4) Request the City Attorney to bring an action to enjoin any violation or threatened violation of this Article, to enforce an order issued under this Section, and to recover civil penalties.

(e) **Unauthorized Treatment or Disposal of Medical Waste; Penalties.** No person shall haul, transport, store, treat, dispose, or cause the treatment or disposal of medical waste in a manner not authorized by a valid order, permit, registration, or hauling exemption issued under this Article, or any regulations adopted pursuant hereto. Any person who stores, treats, disposes, or causes the treatment or disposal of medical waste in violation of this Article is guilty of an offense as follows:

(1) For a small quantity generator, a first offense is an infraction, punishable by a fine of not more than $1,000.

(2) For a person other than a small quantity generator, a first offense is a misdemeanor punishable by a fine of not less than $2,000, or by up to one year in county jail, or by both fine and imprisonment.

(3) Any person convicted of a second or subsequent violation of this Subsection 1512(e) within three years of the prior conviction shall be punished by imprisonment in the county jail for not more than one year or by imprisonment in state prison for one, two, or three years or by a fine of not less than $5,000 or more than $25,000, or by both the fine and imprisonment. This Paragraph (3) shall not apply unless any prior conviction is charged in the accusatory pleading and admitted by the defendant or found to be true by the trier of fact. If the defendant is a corporation which operates medical facilities in more than one geographic location, this subdivision shall apply only if the offense involves an adjacent facility involved in the prior conviction.

(4) Any person who knowingly treats or disposes, or causes the treatment or disposal of, medical waste in violation of this chapter shall be punished by imprisonment in the county jail for not more than one year or by imprisonment in the state prison for one, two, or three years, or by a fine of not less than $5,000 or more than $25,000, or by both the fine and imprisonment.

(5) Any person who intentionally makes any false statement or representation in any application, label, tracking document, record, report, permit, registration, or other document filed, maintained, or used for purposes of compliance with this chapter which materially affects the health and safety of the public is liable for a civil penalty of not more than $10,000 for each separate violation, or for continuing violations, for each day that the violation continues.

(6) Any person who fails to register or fails to obtain a medical waste permit in violation of this Article, or otherwise violates any provision of this Article, including any order or permit, shall be liable for a civil penalty of not more than $10,000 for each violation of a separate provision of this Article, or for continuing violations, for each day that the violation continues.

(f) **Suspension or Revocation of Permits.** The Director may, after notice and a hearing, suspend, revoke or modify any medical waste permit or common storage facility permit upon making a finding that:

(1) The permittee has violated the provisions of this Article, or any regulation adopted pursuant to this Article;

(2) The permittee has violated any term or condition of a permit or administrative order issued pursuant to this Article;

(3) The permittee has aided or abetted the violations specified in Paragraphs (1) and (2), or has interfered with the performance of any activity or duty of the Director;

(4) The permittee has intentionally made false statements, or intentionally failed to disclose fully all relevant facts, in any material regard, in an application for a medical waste permit or common storage facility permit;

(5) A temporary or permanent modification, reduction or termination of the permitted operation is necessary to bring it into compliance with the provisions of this Article.

(g) **Emergency Enforcement Authority.** Notwithstanding any other provision of this Article, whenever the Director determines that medical waste may cause an imminent danger to the health or welfare of any person, the Director may take all necessary actions to immediately abate the threat without notice or a hearing. Any person subject to this Article shall immediately cease any activity, or commence abatement or mitigation action upon verbal or written notification by the Director that an imminent danger is presented by medical waste.

(h) **Liens.** Costs and charges incurred by the City by reason of the abatement of any violation of this Article, or abatement of any imminent danger, including but not limited to monitoring and inspection costs, and any administrative civil penalties assessed against any person for violations of this Article, shall be an obligation owed by the owner of the property where the violation originated or by the person against whom the penalty was assessed to the City. Such obligation may collected by means of

the imposition of a lien against the property of the owner where the violation originated or of the person against whom the final administrative civil penalty was assessed. The City shall mail to the owner of the property where the violation occurred and to the person or business against whom the final administrative civil penalty was assessed (if different from the owner of the property) a notice of the amounts due and a warning that lien proceedings will be initiated against the property if the amounts are not paid within 30 days after mailing of the notice.

(i) Liens shall be created and assessed in accordance with the requirement of Article XX of Chapter 10 of the San Francisco Administrative Code (commencing with Section 10.230). (Added by Ord. 375-92, App. 12/23/92; amended by Ord. 322-00, File No. 001917, App. 12/28/2000)

SEC. 1513. INSPECTION AND INVESTIGATION FEES.

(a) Notwithstanding any other provision of this Article, the Director may conduct an investigation and an inspection pursuant to Section 1512 whenever information is received that any medical waste generator or any person is in violation of this Article. The Director may require any person subject to this Article to pay an inspection and investigation fee equal to $142 for fiscal year 2004 (beginning July 1, 2004), $155 for fiscal year 2005 (beginning July 1, 2005), $167 for fiscal year 2006 (beginning July 1, 2006) for each hour or portion thereof spent by the Department of Public Health in conducting such activities.

(b) A notice of payment due shall be sent by the Director to the medical waste generator and the owner of the property inspected, advising of the amount of any fee and containing the following information:

(1) The date and location of the Director's investigation and inspection activities;

(2) The amount of the fee;

(3) A statement advising the generator and property owner that he or she is liable under this Article for the fee in the amount indicated in the notice and that payment to the City is due within 30 days of the mailing date of the notice;

(4) A statement advising the generator and property owner that a penalty of 10 percent plus interest at the rate of one percent per month on the outstanding balance shall be added to the costs from the date that payment is due under Subsection (b)(3);

(5) A statement advising the property owner that if payment of the costs is not received within 90 days of the mailing date, a lien may be imposed on the property of the owner where the generator is located, or where the violation occurred, pursuant to the provisions of this Section;

(6) A statement that the generator or property owner may appeal the fee determination contained in the notice of payment due to the Director. Said appeal must be filed in writing with the Director no later than 30 days after the date the notice of payment due is issued. The Director's decision on the appeal shall be final.

(c) If full payment of the costs is not received within 30 days after the notice of payment due was sent, a second notice of payment due shall be sent by the Director to the generator and property owner. The second notice shall state that the generator and property owner are liable for the payment of the costs indicated on the notice.

(d) If full payment of the costs is not received within 30 days after the second notice of payment due was sent, a third (and final) notice of payment due shall be sent by the Director to the generator and property owner. The third notice shall state that the generator and property owner are liable for the payment of the costs indicated on the notice and that if payment of such costs is not received within 30 days of the mailing date of the third notice, lien proceedings may be initiated against the subject property pursuant to the provisions of this Article.

(e) If payment is not received within 30 days following mailing the third notice, the Department shall initiate lien proceedings pursuant to the provisions of Article XX of Chapter 10 of the San Francisco Administrative Code. (Added by Ord. 375-92, App. 12/23/92; amended by Ord. 322-00, File No. 001917, App. 12/28/2000; Ord. 176-04, File No. 040734, App. 7/22/2004)

SEC. 1514. FEES.

Beginning with fiscal year 2007-2008, no later than April 15 of each year, the Controller shall adjust the fees provided in this Article to reflect changes in the relevant Consumer Price Index, without further action by the Board of Supervisors. In adjusting the fees, the Controller may round these fees up or down to the nearest dollar, half-dollar or quarter-dollar. The Director shall perform an annual review of the fees scheduled to be assessed for the following fiscal year and shall file a report with the Controller no later than May 1st of each year, proposing, if necessary, an adjustment to the fees to ensure that costs are fully recovered and that fees do not produce significantly more revenue than required to cover the costs of operating the program. The Controller shall adjust fees when necessary in either case. (Added by Ord. 176-04, File No. 040734, App. 7/22/2004) (Former Sec. 1514 added by Ord. 375-92, App. 12/23/92; renumbered as Sec. 1515 by Ord. 176-04)

SEC. 1515. SEVERABILITY.

If any section, subsection, paragraph, subparagraph, sentence, clause, or phrase of this Article, is for any reason held to be unconstitutional, invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Article. The Board of Supervisors declares that it would have passed each section, subsection, paragraph, subparagraph, sentence, clause, or phrase of this Article irrespective of the fact that any one or more sections, subsections, paragraphs, subparagraphs, clauses, or phrases could be declared unconstitutional, invalid or ineffective. (Formerly Sec. 1514; added by Ord. 375-92, App. 12/23/92; renumbered by Ord. 176-04, File No. 040734, App. 7/22/2004)

[The next page is 821]

ARTICLE 26: COMPREHENSIVE ENVIRONMENTAL LEAD POISONING INVESTIGATION, MANAGEMENT AND ENFORCEMENT PROGRAM

DIVISION I
GENERAL PROVISIONS

DIVISION II
COMPREHENSIVE ENVIRONMENTAL LEAD POISONING INVESTIGATION, MANAGEMENT AND ENFORCEMENT PROGRAM

DIVISION III
EDUCATION AND NOTICE

DIVISION IV
MEDICAL SERVICES FOR ELEVATED BLOOD LEAD LEVEL CHILDREN

DIVISION V
PUBLICLY OWNED PROPERTY

DIVISION VI
PRIORITY AREAS

DIVISION VII
INVESTIGATION AND ORDER AUTHORITY

DIVISION VIII
INCENTIVE PROGRAMS

DIVISION IX
COMPREHENSIVE ENVIRONMENTAL LEAD POISONING FUND

DIVISION X
ENFORCEMENT AND PENALTIES

DIVISION XI
IMPLEMENTATION

DIVISION I
GENERAL PROVISIONS

SEC. 1600. TITLE.

This law may be cited as the Comprehensive Environmental Lead Poisoning Prevention, Investigation, Management and Enforcement Program. (Added by Ord. 376-92, App. 12/23/92; amended by Ord. 409-96, App. 10/21/96; Ord. 36-03, File No. 021857, App. 3/28/2003)

SEC. 1601. FINDINGS.

The Board of Supervisors finds that:

(a) The Centers for Disease Control ("CDC") have determined that childhood lead poisoning is one of the most common pediatric health problems in the United States today, and it is entirely preventable. ("Preventing Lead Poisoning in Young Children," CDC, Oct. 1991.) Children in San Francisco up to 72 months of age are particularly at risk due to the multiple sources of lead in the City's housing stock and in the background environment. The Board of Supervisors believes that childhood lead poisoning is the most significant environmentally caused health threat to young children living in San Francisco.

From March 1991 through November 1994, initial blood lead tests were received by the Department of Public Health for 7,143 children aged six to 72 months. Of these 7,143 children, 587 (8.2 percent) had elevated blood lead (EBL) levels greater than or equal to 10 µg/dL, the level at which some action must be taken to prevent further exposures according to CDC guidance. Children requiring case management included 186 children (2.6 percent of the total) with blood lead levels between 15 and 19 µg/dL and 123 children (1.7 percent of total) with blood levels greater than or equal to 20 µg/dL. The highest prevalence of EBL was 10.1 percent for one-year-olds, closely followed by a prevalence of 9.6 percent among two-year-olds. ("San Francisco Epidemiologic Bulletin," Vol. 11, Nos. 1/2, Jan/Feb. 1995.)

There are approximately 42,000 children in San Francisco in the age group of concern, but this number is likely to grow. At the current rate of 9,000 births per year, thousands more children will enter the age group of concern in the coming years. Census data from 1990 show significant numbers of these children living in poverty, and in properties built prior to 1950. Based on these proven risk factors, a significant proportion of San Francisco's children are at risk for lead poisoning.

(b) Childhood lead poisoning is dangerous to public health, safety and general welfare. It requires large, but avoidable expenditures of public funds for health care and special education, causing a substantial, unnecessary drain on public revenues, and it reduces the ability of lead-poisoned children to become productive members of the City's work force. Recent studies show a need for remedial education for lead-poisoned children. Studies by the federal government show that the benefits of protecting children from lead poisoning are far greater than the costs needed to prevent lead poisoning and reduce lead hazards.

(c) The Agency for Toxic Substances And Disease Registry has reported the following toxicological effects of lead to the U.S. Congress: "Exposure to lead continues to be a serious public health problem - particularly for the young child and the fetus. The primary target organ for

lead toxicity is the brain or central nervous system, especially during early child development. In children and adults, very severe exposure can cause coma, convulsions and even death. Less severe exposure of children can produce delayed cognitive development, reduced IQ scores, and impaired hearing - even at exposure levels once thought to cause no harmful effects. Depending on the amount of lead absorbed, exposure can also cause toxic effects on the kidney, impaired regulation of vitamin D, and diminished synthesis of heme in red blood cells. All of these effects are significant. Toxicity can be persistent, and effects on the central nervous system may be irreversible." ("The Nature and Extent of Lead Poisoning in Children in the U.S.: A Report to Congress," ATSDR, July 1988.)

Furthermore, the ATSDR reported that in recent years, a growing number of investigators have examined the effects of exposure to low levels of lead on young children. The history of research in this field shows a progressive decline in the lowest exposure levels at which adverse health effects can be reliably detected. Thus, despite some progress in reducing the average level of lead exposure in this country, it is increasingly apparent that the scope of the childhood lead poisoning problem has been, and continues to be, much greater than was previously realized. The National Health and Nutrition Examination Survey ("NHANES III") has shown that the remaining issues are in the nation's housing stock, particularly in urban areas and communities of color or low income status.

(d) The most significant sources of environmental lead are deteriorated and disturbed lead-based paint in housing, lead-contaminated dust, water and soil. In San Francisco, approximately 75 percent or 260,000 out of some 330,000, housing units have been painted with leaded paint prior to 1978, the highest percentage of housing units in a county in California, and one of the highest number of housing units in an urban city in the entire country. The Board of Supervisors finds that these types of lead hazards are under the control of building owners and landlords who have ultimate authority over and responsibility for the condition of San Francisco's housing stock. The Board intends to require that owners of residential property built prior to 1978 warn tenants of the potential for lead paint hazards.

(e) Other sources of lead in San Francisco contribute to lead poisoning of children, including lead in drinking water, some food cans, some ceramics and dishware, artists' paints, automotive and marine paints, adult occupations and hobbies, old factory sites and auto wrecking yards, soil and reentrained dust along busy roads and highways, and some traditional medicines. In addition, where lead hazards do not exist they are often created by painting and home remodeling. The Board intends to address this last hazard through requirements for signs warning of lead hazards in home improvement stores where painting and remodeling equipment is sold.

(f) The impact on children from lead poisoning is immediate at high levels of exposure. At chronic low-level exposure, epidemiological studies have shown lifelong impact. The causes of childhood lead poisoning are well understood. This terribly debilitating disease is preventable and can be eliminated with concerted community action.

(g) The CDC has recommended that primary prevention efforts (that is, elimination of lead hazards before children are poisoned) receive more emphasis as the blood lead levels of concern are lowered. The CDC further determined that the goal of all lead poisoning prevention activities should be to reduce children's blood lead levels below 10 µg/dL. If many children in the community have blood lead levels greater than or equal to 10 µg/dL, community-wide interventions (primary prevention activities) should be considered by appropriate agencies. Medical interventions for individual children should begin at blood lead levels of 15 µg/dL. ("Preventing Lead Poisoning in Young Children," CDC, Oct. 1991.)

(h) San Francisco has begun to implement a comprehensive plan for preventing childhood lead poisoning and reducing exposure to lead. Medical case management currently begins when a

child has a blood lead level of 15 µg/dL or greater. Environmental investigation of the child's housing unit begins when blood lead levels are 20 µg/dL or greater, or 15 to 19 µg/dL in consecutive tests three to four months apart. These interventions were provided for in the Comprehensive Lead Poisoning Prevention Program added to the San Francisco Health Code in 1992.

(i) The 1992 ordinance did not provide specific authority for the Department of Public Health to order control or elimination of the lead hazards in dwelling units. The Board of Supervisors was aware that protecting the public health from lead poisoning problems involves complex issues, including technological questions, that required discussion and resolution. To that end, in 1992 the Board appointed, in Section 1608 of the 1992 Ordinance, the Lead Hazard Reduction Citizens Advisory Committee. The Committee was mandated to recommend legislation to the Board on the technical and policy issues needing resolution. The Board of Supervisors concurs with the recommendations submitted by the Citizens Advisory Committee, including the recommendation that the Department of Public Health must have authority to order the removal of lead hazards, and that such authority is a necessary component of a program designed to control lead hazards that would adversely affect a child with elevated blood levels. It is the intent of the Board of Supervisors that the Director of Public Health have broad discretionary authority to enforce the mandates of this ordinance by ordering the control or elimination of lead hazards. The provisions of this law shall be liberally construed to implement and effectuate its purposes.

(j) The intent of the Board is that lead hazards be controlled or eliminated in a cost-effective manner. The Board of Supervisors finds that the "Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing" produced by the Department of Housing and Urban Development, provide a useful guide for the Department of Public Health to use in sampling, testing, and approving the control and elimination of lead hazards. The preface to the "Guidelines" notes that the overall framework is designed to "tailor sensible and effective hazard control programs to fit the financial and environmental conditions of specific properties." The Director of Public Health should, to the extent feasible, utilize these Guidelines and other guidance issued by federal and State agencies, to maintain the high standard of public health protection that is scientifically based and cost-effective.

(k) This legislation is directed primarily at those dwelling units where a lead-poisoned child resides, has resided in the recent past, or spends a considerable amount of time. This ordinance is an integral step toward primary prevention of lead poisoning through remediation of the City's overall housing stock, and the Board intends that the Director of Public Health make diligent efforts to see that building owners and landlords and tenants receive prompt, actual notice of any identified lead hazards. The Board intends that those lead hazards that are within the control of owners or managers of buildings should be considered nuisances and subject to elimination or control whenever a lead-poisoned child is present. The Board expects that future legislation will address these issues for all properties, regardless of the age or health of the occupants. The Lead Hazard Reduction Committee's mandate includes future legislative proposals for the Board to consider towards the goal of prevention of childhood lead poisoning.

(l) On May 222, 2000, the California Department of Health Services issued Childhood Lead Poisoning Prevention Branch (CLPPB) Program Letter #00-06 creating new policy which directed local Childhood Lead Poisoning Prevention (CLPP) Case Management Contractors to modify the case definition eligible for case management services, to include children from birth to 21 years of age. Because CLPP contractors are providing services to children in publicly funded programs (such as EPSDT, a Medicaid service), we must make our eligibility criteria consistent with other federal and state agencies that regulate and fund blood lead testing and case management services. EPSDT services are provided to eligible children from birth to 21 years of age.

(m) Based on scientific evidence, such as the age of concern established by the CDC, the Director of Health is focused on reducing lead hazards to children up to 72 months of age in order to prevent lead poisoning in this vulnerable population. However, due to a contractual agreement with the State Department of Health Services for the City and County of San Francisco to provide case management services to lead-poisoned children, the Director's authority to respond to reports of lead poisoning is extended to children up to 21 years of age. (Added by Ord. 376-92, App. 12/23/92; amended by Ord. 409-96, App. 10/21/96; Ord. 36-03, File No. 021857, App. 3/28/2003)

SEC. 1602. PURPOSES AND GOALS.

(a) (1) The purpose of this Article is to protect the public health and welfare by establishing a definition of lead hazards, and requiring control or elimination of lead hazards through administrative orders when the Director of Public Health has found that a child up to 21 years of age is known to be lead poisoned and may be further exposed.

(2) Overall, this Article mandates the Department to respond to all children found to have elevated blood lead levels in the appropriate manner, consistent with federal and State guidelines.

(b) The goals of this law are:

(1) To respond to individual cases of childhood lead poisoning through the elimination of potential exposure pathways to environmental lead; and

(2) To maintain and increase a stock of lead-safe housing in the City and County of San Francisco by requiring lead hazard control or elimination at those properties where lead-poisoned children may suffer continued exposure. (Added by Ord. 376-92, App. 12/23/92; amended by Ord. 409-96, App. 10/21/96; Ord. 36-03, File No. 021857, App. 3/28/2003)

SEC. 1603. DEFINITIONS.

All defined terms used in this Article incorporate the meanings set forth below. In order to identify defined terms, the first letter of each defined term is capitalized.

(a) "Accredited Laboratory" means a laboratory which operates within the EPA National Lead Laboratory Accreditation Program.

(b) "Case-Managed Child" means an elevated blood lead child with a venous blood lead level greater than or equal to 15 micrograms per deciliter.

(c) "Certified Lead Inspector/Assessor" means any Person licensed or certified to perform risk assessment and/or lead-based paint inspection by the California Department of Health Services (DHS), as authorized by the United States Environmental Protection Agency (EPA), in accordance with 40 CFR Part 745, subparts L or O.

(d) "Clean" or "Cleaning" means a lead hazard remediation technique in which a HEPA vacuum, truck-mounted vacuum, wet cleaning agent, and/or other technology that results in compliance with HUD clearance criteria, is used to remove a lead-contaminated dust hazard.

(e) "Child" means a natural individual who is under 21 years of age.

(f) "Clearance Inspection" means visual examination and collection of environmental samples by a certified lead inspector/assessor, and analysis by an accredited laboratory, upon completion of lead hazard remediation activities.

(g) "Deteriorated Lead-Based Paint" means any interior or exterior lead-based paint that is peeling, chipping, blistering, flaking, worn, chalking, alligatoring, cracking or otherwise separating from the substrate, or located on any surface or fixture that is damaged.

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

(i) "Dust Removal" means a lead hazard remediation technique which involves an initial cleaning of lead-contaminated dust followed by periodic monitoring and recleaning as needed.

Dust removal may be the primary remediation technique or one element of a broader effort which reduces lead hazards.

(j) "Dwelling Unit" means all residential dwelling units in the City and County of San Francisco together with the land and appurtenant buildings thereto, and all furnishings and facilities supplied in connection with the use or occupancy thereof, including garage and parking facilities.

(k) "Elevated Blood Lead Child" means a child with a venous blood lead level greater than or equal to 10 micrograms per deciliter (µg/dL).

(l) "Encapsulation" means a lead hazard remediation technique which utilizes a covering or coating to act as a barrier between lead-based paint and the environment, and that relies on adhesion and the integrity of the existing paint bonds between layers and with the substrate for its durability (see also "enclosure").

(m) "Enclosure" means a lead hazard remediation technique which utilizes rigid, durable construction materials that are mechanically fastened to the substrate in order to act as a barrier between lead-based paint and the dwelling unit or the environment.

(n) "Exposure Sources" means paint, dust, soil, water, cookware, ceramics, tableware, food sources, parental hobby and occupation materials, home remedies and traditional medicines, cosmetics, and nearby lead industry emissions.

(o) "HEPA" means a high efficiency particulate air filter.

(p) "Landlord" means an owner, lessor, or sublessor who receives or is entitled to receive rent for the use and occupancy of any dwelling unit or portion thereof, any nonresidential building, or any other premises in the City and County of San Francisco, and the agent, representative or successor of any of the foregoing.

(q) "Landscaping" means the creation of barriers or barrier plantings that limit exposure to lead-contaminated soil.

(r) "Lead" means metallic lead and all inorganic and organic compounds of lead.

(s) "Lead-Based Paint" means any paint, varnish, shellac or other coating on surfaces with lead in excess of 1.0 mg/cm^2 as measured by X-ray fluorescence (XRF) detector or laboratory analysis or 0.5 percent by weight (5,000 ppm, 5,000 µg/g, or 5,000 mg/kg) by laboratory analysis.

(t) "Lead-Contaminated Dust" or "Dust-Lead Hazard" means surface dust that contains a mass per area concentration of lead equal to or exceeding 40 $µ/ft^2$ on floors and other interior horizontal surfaces, 250 $µ/ft^2$ on interior windowsills, and 800 $µ/ft^2$ on exterior windowsills and other exterior horizontal surfaces.

(u) "Lead-Contaminated Soil" or "Soil-Lead Hazard" means bare soil that contains total lead equal to or exceeding 400 parts per million (µg/g) in bare soil, or such lower level as the Director determines to constitute a lead hazard.

(v) "Lead-Contaminated Water" means tap water that contains lead in excess of 15 parts per billion (µg/l).

(w) "Lead Hazard" means any condition that exposes children to lead from any source, including but not limited to lead-contaminated water, lead-contaminated dust (Dust-lead hazard), lead-contaminated soil (Soil-lead hazard), and Paint-lead hazard in dwelling units or other locations.

(x) "Lead Hazard Remediation Technique(s)" means an activity designed to control or eliminate a lead hazard.

(y) "Lead-Poisoned Child" means a child with a single venous blood lead level greater than or equal to 20 micrograms per deciliter, or a persistent venous blood lead level between 15 and 19 micrograms per deciliter based on consecutive measurements three to four months apart.

(z) "Manager" means the authorized agent or landlord for the owner of a dwelling unit, or any nonresidential building or premises, who is responsible for the day-to-day operation of said dwelling unit, building or premises.

(aa) "Owner" means any person, agent, firm or corporation having a legal or equitable interest in a dwelling unit, building, or other premises. For purposes of orders under Sections

1628 and 1630, the term "owner" shall not include entities such as banks or lending institutions holding equitable interests as security unless the entity is in actual physical control of the premises, or is performing property management activities.

(bb) "Paint Film Stabilization" means a lead hazard remediation technique using wet scraping, priming, and repainting a deteriorated lead-based paint film.

(cc) "Paint-Lead Hazard" means any of the following: (1) any lead-based paint on a friction surface that is subject to abrasion and where the lead dust levels on the nearest horizontal surface underneath the friction surface (e.g.: the windowsill or floor) constitute a dust-lead hazard; (2) any damaged or otherwise deteriorated lead-based paint on impact surface that is caused by impact from a related building component, such as a door knob that knocks into a wall or a door that knocks against its door frame; (3) any chewable lead-based painted surface on which there is evidence of teeth marks; and (4) other deteriorated lead-based paint on the interior or exterior of any building.

(dd) "Paint Removal" means a lead hazard remediation technique using chemicals, heat guns emitting heat below 1,100 degrees Fahrenheit and certain contained abrasive methods to remove lead-based paint, but does not mean open flame burning, open abrasive blasting, sandblasting, water blasting or extensive dry scraping.

(ee) "Periodic Surveillance" means a series of reevaluations, including visual assessment and collection of environmental samples, by a certified lead inspector/assessor or other person acceptable to the Director, to determine whether a lead hazard remediation technique previously implemented is still effective, or whether the dwelling unit is still lead-safe.

(ff) "Person" means a natural person, his or her heirs, executors, administrators or assigns, and also includes a municipal or State agency, a firm, joint stock company, business concern, association, partnership or corporation, its or their successors or assigns, or the agent of any of the aforesaid.

(gg) "Replacement" is a lead hazard remediation technique utilizing removal of building components such as windows, doors, and trim that have lead-based paint surfaces, and installing new components free of lead-based paint.

(hh) "Substrate" means a surface upon which paint, varnish, or other coating has been or may be applied. Examples of substrates include wood, plaster, metal, and drywall.

(ii) "Tenant" means a person entitled by written or oral agreement, subtenancy or by sufferance, to occupy a residential dwelling unit to the exclusion of others. (Added by Ord. 376-92, App. 12/23/92; amended by Ord. 409-96, App. 10/21/96; Ord. 36-03, File No. 021857, App. 3/28/2003)

SEC. 1604. AUTHORITY OF THE DIRECTOR.

(a) The Director is authorized to administer and enforce the provisions of this Article; to conduct a case management program for elevated blood lead level children; to conduct a program for the remediation of lead hazards in residential and nonresidential buildings, indoor or outdoor property or premises, and dwelling units; to order vacation of any dwelling unit; and to enforce the provisions of this Article by any lawful means. The Director's authority to abate nuisances under this Article shall be in addition to authority granted under other law, including Article 11 of the this Code, and the Director may combine all such authorities to protect persons from lead hazards and to seek collection or reimbursement of nuisance abatement costs. The Special Revenue Fund created under Section 599(e) of this Code may be used to abate lead hazards in any structure, building or part thereof as provided in Article 11.

(b) Upon showing of proper credentials, persons authorized by the Director, when necessary for the performance of their duties, shall have the right to enter any building, premises or dwelling unit specified in Section 1626 of this Article and perform sampling, testing or periodic

surveillance of potential lead hazards. The Director shall seek the consent of the owner or current occupant before entry.

(c) The Director may promulgate such regulations as may be necessary from time to time to carry out the provisions of this Article. The definitions for lead-contaminated dust, water and soil, and the definition of lead-based paint expressed in Section 1603 may be amended by such regulations in light of scientific evidence or guidance from federal or State agencies, without further action by the Board of Supervisors.

(d) Prior to adoption of any rule or regulation under this Article, the Director shall provide a 30-day public comment period by providing published notice in an official newspaper of general circulation in the City and County of San Francisco of the intent to issue or amend the rule or regulation. Rules and regulations shall be approved by the Health Commission at a public hearing. In addition to the notices required by law, the Secretary of the Health Commission shall send written notice, at least 15 days prior to the hearing, to any interested party who sends a written request to the Health Commission for notice of hearings on lead regulation. Regulations promulgated by the Director and approved by the Health Commission shall be maintained in the Office of the Clerk of the Board of Supervisors. (Added by Ord. 409-96, App. 10/21/96; amended by Ord. 125-01, File No. 010269, App. 6/15/2001; Ord. 36-03, File No. 021857, App. 3/28/2003)

DIVISION II
COMPREHENSIVE ENVIRONMENTAL LEAD POISONING INVESTIGATION, MANAGEMENT AND ENFORCEMENT PROGRAM

SEC. 1605. COMPREHENSIVE ENVIRONMENTAL LEAD POISONING PREVENTION PROGRAM.

(a) The Director shall create and implement a coordinated and comprehensive plan to prevent lead poisoning and eliminate exposure to environmental lead.

(b) The Director shall exercise any and all powers necessary and appropriate to implement the provisions of this ordinance, including but not limited to:

(1) Developing and implementing a comprehensive education program regarding environmental lead exposures and lead poisoning in cooperation with and in support of efforts by nongovernment agencies and community groups directed at key professional groups, the general public and other appropriate target groups;

(2) Coordinating all phases of management and surveillance for all elevated blood lead level children;

(3) Developing interagency agreements to coordinate lead poisoning prevention, exposure reduction, identification, and treatment and lead reduction activities with all appropriate federal, State and local agency lead prevention programs, including, but not limited to, public housing agencies, energy efficiency and weatherization programs, and home maintenance and improvement programs;

(4) Promulgating and enforcing regulations;

(5) Proposing legislation;

(6) Coordinating implementation of this Article with the provisions of the San Francisco Administrative Code requiring relocation assistance for occupants who are displaced due to the issuance of orders under this Article. (Added by Ord. 376-92, App. 12/23/92; amended by Ord. 409-96, App. 10/21/96)

SEC. 1606. CITY AGENCY TASK FORCE.

(a) The Director shall convene and coordinate an interdepartmental task force that shall be comprised of representatives from the following City departments: the Department of Public Health, the Department of Public Works, the Department of Building Inspection, the Department of City Planning, the Department of Social Services, the Recreation and Park Department, the Public Library, the Public Utilities Commission (which shall include a representative from the Water Department and the Bureau of Energy Conservation), the Mayor's Office, and the office of the City Administrator. The Director shall also

request the participation of the Housing Authority, Redevelopment Agency, San Francisco Unified School District, and other governmental agencies and community representatives when additional expertise, resources, or other assistance is deemed necessary by the Director.

(b) The Task Force shall meet on a regular basis and exchange information regarding lead education and abatement matters and shall coordinate lead abatement activities that involve more than one department. Upon the Director's request, the task force shall provide consultation services and assistance to the Director for the purpose of facilitating coordinated implementation of the duties imposed on the Director by this ordinance.

(c) The Director shall provide clerical assistance to the City Agency Task Force and to its subcommittees. (Added by Ord. 376-92, App. 12/23/92; amended by Ord. 409-96, App. 10/21/96)

Sec. 1607.
(Added by Ord. 376-92, App. 12/23/92; amended by Ord. 85-93, App. 3/26/93; Ord. 56-96, App. 2/2/96; repealed by Ord. 38-05, File No. 050007, App. 2/11/2005)

SEC. 1608. LEAD HAZARD REDUCTION CITIZENS ADVISORY COMMITTEE.

(a) There is hereby established a Lead Hazard Reduction Citizens Advisory Committee (hereafter, the "Advisory Committee") of the City and County of San Francisco. The Advisory Committee shall (i) recommend to the Board of Supervisors a range of options for a lead hazard reduction program for residential dwelling units, and (ii) provide consultation and assistance to the Director upon the Director's request with respect to the implementation of those provisions when they become effective. The Advisory Committee shall submit a report to the Board of Supervisors within one year of the effective date of this ordinance and annually thereafter. The report shall at a minimum include recommendations on the following matters:

(1) Acceptable levels of exposure to various sources of lead;

(2) The circumstances under which responsible parties must reduce lead exposure hazards to avoid imminent hazards and potential health risks to persons;

(3) A priority-based schedule of classes of dwelling units and premises where owners or operators must reduce lead hazards based on various factors, such as the age and condition of a building, and the age of the occupants;

(4) Provisions to insure that occupants are relocated to lead-safe housing during lead hazard reduction activities where necessary;

(5) Acceptable lead hazard reduction methods;

(6) Containment and cleanup measures to be taken as part of the lead hazard reduction activities;

(7) Occupational safety and health provisions for inspectors, contractors, supervisors, workers and other persons who perform lead hazard reduction;

(8) Provisions to protect the health and safety of occupants, neighbors and the public from exposure to lead during lead hazard reduction activities;

(9) Provisions for insuring safe disposal of lead-contaminated waste;

(10) The qualifications necessary for any person (contractors, supervisors, consultants, and workers) to perform lead hazard work;

(11) Assess the extent of the need to implement lead hazard reduction efforts, the potential impact of alternative lead hazard reduction measures on tenants and landlords, and the most effective way to implement the program to reduce lead hazard risks;

(12) Provide advice to the Mayor's Office with respect to the development of proposed incentive programs pursuant to Section 1634 when the Mayor's Office requests such assistance;

(13) Appropriate financing mechanisms for any proposals recommended.

(b) The Advisory Committee shall consist of 15 members appointed by the Board of Supervisors. The members shall consist of representatives, or their designee, from each of the following categories:

(1) Bureau of Building Inspection: One representative;

(2) Painting contractors: One representative;

(3) Building trade: One representative;

(4) Mayor's Office: One representative involved in housing and community development issues;

(5) Public interest organization: One representative;

(6) Residential owners: Two representatives;

(7) Tenant organizations: Two representatives;

(8) Testing expert: One representative;

(9) Abatement expert: One representative;

(10) Parent: One representative;

(11) United States Environmental Protection Agency, CAL/OSHA, San Francisco Housing Authority: Three representatives; one from each agency to serve as ex officio, non-voting members who shall not be counted in determining the quorum for the Advisory Committee.

The Director, or his or her designee, shall attend all meetings of the Advisory Committee.

(c) Members of the Committee shall serve without compensation or reimbursement for expenses. In the event a vacancy occurs, the Board of Supervisors shall appoint a successor from the same category.

(d) At the initial meeting of the Advisory Committee, and yearly, thereafter, the Advisory Committee members shall select such officers deemed necessary by the Advisory Committee. The Advisory Committee shall establish rules and regulations for its own organization and procedure and shall meet when necessary as determined by the Advisory Committee. All meetings shall, except as provided by general law, be open to the public.

(e) The establishment of the Lead Hazard Reduction Committee is not intended to limit the efforts currently engaged in by City departments to reduce the risks of exposure to lead.

(f) The Director shall provide clerical assistance to the Lead Hazard Reduction Citizens Advisory Committee and its subcommittees.

(g) The Director and the Advisory Committee shall take the following actions to address lead hazards in dwelling units subject to inspection under Section 1626.

(1) The Director shall draft Proposed Interim Lead Hazard Reduction Guidelines designed to assist the Advisory Committee in its presentation under Section 1608(g)(2), and present them to the Advisory Committee at its first meeting.

(2) Within six months after the effective date of this Section, the Advisory Committee shall present Final Interim Lead Hazard Reduction Guidelines ("Interim Guidelines"), including any changes recommended by the Advisory Committee, to the Board of Supervisors in the form of a draft ordinance. The Interim Guidelines shall be designed to be effective pending enactment of any ordinance based on the Advisory Committee's recommendations under Section 1608(a).

(3) The Interim Guidelines shall be developed in accordance with sound medical practice and current technical knowledge, and include at least the following:

(A) Procedures requiring the owner of a dwelling inspected pursuant to Section 1626 to reduce lead hazards;

(B) The amount or concentration of lead that creates a threat of cases of childhood lead poisoning, and the allowable means of detection;

(C) The surfaces where lead hazard reduction must be performed shall include areas accessible to children and areas where the condition of the paint, plaster or other surface covering is deteriorating and resulting in accessibility of lead paint to children;

(D) Acceptable methods of lead hazard reduction prescribing the removal or adequate covering of lead-based paint. Repainting with common non-lead-based paint, or covering with

easily removable materials shall not constitute acceptable methods of lead hazard reduction. Acceptable methods shall prohibit reduction techniques that may damage the health of residents, neighbors or workers. Acceptable methods shall include cleanup and containment procedures;

(E) Procedures for inspections after lead hazard reduction work is completed, and for certification that lead hazards have been reduced in accordance with the Interim Guidelines;

(F) Procedures requiring notice of the risks of lead paint hazards to tenants, purchasers of real estate, and purchasers of home improvement products. The committee shall consider, among other matters it deems appropriate, how to define tenants, whether tenants in certain buildings (such as those newly constructed) need not receive notice; how and when the notice can be disseminated effectively and economically; whether the notice shall be posted in stores selling building materials and hardware; whether the notice shall be required in real estate transactions; and the content of the notice.

(4) Within six months after the effective date of this Section, the Advisory Committee shall propose legislation to the Board of Supervisors amending Chapter 37 of the San Francisco Administrative Code, the Residential Rent Stabilization and Arbitration Ordinance, to provide whether and under what circumstances the costs of lead hazard reduction may be passed on to tenants, and further to provide protection against permanent displacement of tenants due to lead hazard reduction.

(h) Members of the Lead Hazard Reduction Citizens Advisory Committee shall be appointed for a term of four years; provided, however, that the 23 members first appointed shall, by lot at the first meeting, classify their terms so that seven shall serve for a term of two years, eight shall serve for a term of three years, and eight shall serve for a term of four years.

(i) The Lead Hazard Reduction Citizens Advisory Committee shall sunset on December 31, 2006. (Added by Ord. 376-92, App. 12/23/92; amended by Ord. 85-93, App. 3/26/93; Ord. 215-93, App. 6/28/93; Ord. 335-96, App. 9/5/96; Ord. 48-99, App. 3/26/99; Ord. 253, File No. 031502, App. 10/22/2003)

SEC. 1609. ANNUAL REPORT.

(a) The Director shall publish and submit to the Board of Supervisors an annual evaluation report describing the current efforts of all City agencies pursuant to this ordinance, including but not limited to:

(1) The extent to which the City is providing community education, screening and treatment of children, lead hazard reduction (testing, interim measures and abatement), and enforcement of the provisions of the Program and the City's ability to obtain funding for its implementation;

(2) The effectiveness of the program and City agencies' efforts in implementation, including, but not limited to, additional actions needed to effectively implement and carry out the Program, the reasons why those actions are not being taken, and the plans of the relevant City agencies to implement those actions, including descriptions of specific actions, time lines, and the work plans and budgets of all City agencies involved in implementing the Program;

(3) Recommendations for legislation and regulations to improve implementation of the Program;

(4) A survey of other State and local efforts to abate lead hazards which might provide models for improvements to this Program. (Added by Ord. 376-92, App. 12/23/92)

DIVISION III
EDUCATION AND NOTICE

SEC. 1610. INFORMATIONAL BULLETIN, PRE-1978 HAZARD NOTICE, AND AFFIDAVIT.

(a) The Director shall prepare an Informational Bulletin about lead poisoning problems, screening and testing for elevated blood lead levels, the procedures for lead control and hazard reduction, how to obtain additional information on the topic, and the obligations imposed by this ordinance. The Director may amend the Informational Bulletin from time to time as he or

she deems appropriate and shall review the bulletin at least annually to determine whether amendments are appropriate.

(b) The Director shall prepare a Pre-1978 Hazard Notice form for owners and occupants of residential property. The notice shall contain information on lead hazards, a warning that dwelling units constructed before 1978 may contain lead hazards, and shall provide a phone number to call for additional information. The notice shall be written in at least six languages, including English, and shall state in English that the document contains important health information for property owners and tenants.

(c) The Director shall prepare an Affidavit form for property owners to attest that they have provided copies of the Pre-1978 Hazard Notice to tenants as required by Section 1616. The Director shall provide copies of the Pre-1978 Hazard Notice and Affidavit forms to owners and tenants upon request. (Added by Ord. 376-92, App. 12/23/92; amended by Ord. 409-96, App. 10/21/96)

SEC. 1610.1. WARNINGS POSTED IN HOME IMPROVEMENT STORES.

(a) The Director shall prepare a pamphlet to notify purchasers of home improvement products of techniques to lower the risk of lead hazards associated with painting and home remodeling. Copies of the pamphlet shall be provided to retail establishments which sell home improvement products, such as building materials, paints, and hardware, the use of which, in the Director's discretion, may pose a risk of exposure to lead hazards. The pamphlet shall be produced in multiple languages and provided to retail establishments in English and in other languages appropriate for the local community.

(b) The Director shall prepare a sign which makes the following statement, or a substantially equivalent statement, in large or boldface capital letters no less than one-half inch in size:

"PAINTING AND REMODELING CAN EXPOSE YOUR FAMILY TO LEAD. ASK FOR A FREE PAMPHLET ON LEAD-BASED PAINT HAZARDS."

(c) The owner and the manager or operator of every retail store which sells home improvement products, including but not limited to, paint and paint removal products, construction and building materials, and tools and hardware, shall conspicuously post the sign prepared by the Director, or a sign of substantially the same size and typeface, and using the same language.

(d) Every store owner or manager subject to the requirement of Section 1610.1(c) shall maintain a supply of the pamphlets prepared and supplied by the Director. The pamphlets shall be prominently displayed and provided upon request to customers or other invitees.

(e) The Director may prepare signs and pamphlets in other languages to comply with the requirements of this Section. Notwithstanding any other provisions of this Section, the required signs and pamphlets, or multiple signs and pamphlets, shall be posted, displayed and provided to customers and invitees in languages other than English when such signs and pamphlets are supplied by the Director. (Added by Ord. 409-96, App. 10/21/96)

SEC. 1611. EDUCATION AND OUTREACH.

(a) The Director shall engage in an outreach program to inform the public about lead poisoning problems and steps the public can take to learn more about screening and testing services.

(b) The Director shall provide copies the Informational Bulletin to each physician who provides CHDP services in the City with a request that the physician provide the information to parents and guardians of children when the children are enrolled in the CHDP program.

(c) The Director shall provide the Informational Bulletin to the San Francisco Unified School District with a request that the District provide the information to parents on a regular basis of no less than once every six months.

(d) The Director shall provide the Informational Bulletin to persons who request a copy of a birth certificate for a child under six years of age.

(e) The Director shall provide the Informational Bulletin to the Department of Social Services, the Recreation and Park Department, the Library Commission, and other departments that the Director deems appropriate with a written directive that these departments implement a program designed to provide the information to children and parents involved in programs that they sponsor. Each City department shall comply with this directive.

(f) The Director shall provide the Informational Bulletin to the Head Start program with a request that it provide parents and guardians of children enrolled in Head Start programs with the information.

(g) The Director shall adopt and implement a program designed to disseminate the Informational Bulletin to pregnant women by any means that the Director determines appropriate.

(h) The Director shall make the Informational Bulletin available to persons who use City health care facilities.

(i) The Director shall make the Informational Bulletin available to physicians and health care facilities who have any contact with women of childbearing age, pregnant women, or families so that they may place the bulletin in publicly accessible areas for their patients. The Director shall take any steps that he or she determines reasonable to notify physicians and health care facilities of the availability of the information and to encourage its dissemination, including requesting the assistance of the San Francisco Medical Society.

(j) The Director shall provide the Informational Bulletin to the Mayor's Office of Children, Youth and Their Families with a written directive that it:

(1) Provide the Informational Bulletin to San Francisco's State-funded resource and referral agencies;

(2) Request these agencies to feature the Informational Bulletin once a year in either an agency newsletter or other communication with providers and the public;

(3) Request that these agencies distribute the Informational Bulletin to every licensed childcare facility who in turn are requested to give the bulletin to parents of children enrolled in their program at least once a year.

The Mayor's Office of Children, Youth and Their Families shall comply with this directive.

(k) The Director shall provide the Informational Bulletin to the San Francisco Association of Realtors with a request that the Association make it available to members of the Association and other persons in the real estate community.

(l) The Director may charge a reasonable fee to persons who request a copy of the Informational Bulletin. (Added by Ord. 376-92, App. 12/23/92)

SEC. 1612. USE OF APPROPRIATE LANGUAGES.

City departments providing education and outreach services pursuant to this ordinance shall provide the information in a language appropriate to the intended audience. (Added by Ord. 376-92, App. 12/23/92)

SEC. 1613. EDUCATION FOR CITY-FUNDED CHILDCARE FACILITIES.

The Director shall provide educational training for the owners and operators of childcare facilities that receive City and County of San Francisco revenues for their childcare operations. As a condition of receiving such revenues for their childcare operations, the owner and operator of each childcare facility shall participate in the Director's educational training program for childcare facilities and shall develop a program for staff, parents and guardians of children served by the facility designed to communicate the information obtained in the training program. The Director's program shall include education regarding the hazards to health from exposure to lead, the sources of exposure, the CHDP program and interim methods for reducing exposure to, and the effects of lead on, humans. The Director may include in the program childcare providers other than owners and

operators of facilities that receive local revenues for their childcare operations. (Added by Ord. 376-92, App. 12/23/92)

SEC. 1614. INFORMATION PROVIDED TO BUILDING AND DEMOLITION PERMIT APPLICANTS.

The Director shall provide written information informing the public of the methods by which lead can be abated or removed from property and of any risks to health that may arise from construction activities. The Director of the Department of Building Inspection shall provide copies of this written information to every person who applies for a building or demolition permit. (Added by Ord. 376-92, App. 12/23/92; amended by Ord. 409-96, App. 10/21/96)

SEC. 1615. TAX COLLECTOR TO SEND INFORMATION WITH PROPERTY TAX BILLS.

(a) The Tax Collector shall mail a copy of the Informational Bulletin or an equivalent lead hazard warning, along with each County tax bill.

(b) The Tax Collector shall mail a copy of the Pre-1978 Hazard Notice and Affidavit forms prepared under Section 1610 along with each County tax bill until January 1, 2003. (Added by Ord. 376-92, App. 12/23/92; amended by Ord. 409-96, App. 10/21/96; Ord. 267-99, File No. 991649, App. 10/22/99)

SEC. 1616. BUILDING OWNERS TO PROVIDE PROOF OF NOTICE.

Every owner of any dwelling unit constructed prior to 1978 shall provide a copy of the Pre-1978 Hazard Notice, and any other form of notice required by federal or State law to every tenant in each such dwelling unit within 10 days of commencement of occupancy, or for tenancies in existence on the effective date of this Article, within 60 days of such effective date. The owner shall complete, sign and maintain Affidavits provided in Section 1610(c) as instructed thereon in order to provide evidence of compliance with this Article. The requirements of this Section shall terminate effective January 1, 2003. (Added by Ord. 409-96, App. 10/21/96; Ord. 267-99, File No. 991649, App. 10/22/99)

DIVISION IV
MEDICAL SERVICES FOR ELEVATED BLOOD LEAD LEVEL CHILDREN

SEC. 1617. CASE MANAGEMENT.

(a) The Director shall develop a case management program so that all elevated blood lead level children receive appropriate services. At a minimum, the services provided by the Director shall include:

(1) For levels 10 to 14 µg/dL: A letter and lead information packet shall be sent to the parent (which encourages retest in three months and gives simple recommendations).

(2) For levels 15 to 19 µg/dL: A Public Health Nurse (PHN) referral shall be made. The PHN shall make a home visit to provide extensive teaching.

(3) For levels 20 µg/dL and above, and levels from 15 to 19 µg/dL in consecutive measurements three to four months apart (a lead-poisoned child): In addition the assigned PHN duties, a certified lead inspector/assessor shall perform an environmental investigation and issue a report of lead hazard findings. The building owner and the Department of Building Inspection shall also receive notice of lead hazard findings which are in the building owner's control.

(b) The Director shall have the authority to establish deadlines and priorities regarding the provision of such services as described in Section 1617(a) to all children with elevated blood lead levels. (Added by Ord. 376-92, App. 12/23/92; amended by Ord. 409-96, App. 10/21/96; Ord. 36-03, File No. 021857, App. 3/28/2003)

SEC. 1618. CHDP ENROLLMENT.

The Director shall adopt a program designed to inform parents or guardians of eligible chil-

dren of the CHDP program and to provide them with an opportunity to join. (Added by Ord. 376-92, App. 12/23/92)

SEC. 1619. TEMPORARY SAFE HOUSING.

The Director may develop a program in cooperation with appropriate agencies to make lead-safe housing temporarily available when the Director believes it appropriate to cases of elevated blood lead level children and their families if those families are not able to make arrangements themselves. (Added by Ord. 376-92, App. 12/23/92; amended by Ord. 409-96, App. 10/21/96)

SEC. 1620. DATA MANAGEMENT SYSTEM.

The Director shall maintain a data management system designed to collect and analyze information regarding elevated blood lead level children, primary prevention and screening activities. (Added by Ord. 376-92, App. 12/23/92; amended by Ord. 409-96, App. 10/21/96)

SEC. 1621. BLOOD TEST REPORTING.

Every physician and clinical laboratory shall promptly report all results of blood lead tests to the County Health Officer on forms devised by that Officer, and such demographic information as the forms require. (Added by Ord. 376-92, App. 12/23/92)

SEC. 1622. LEAD POISONING TEST REPORTS.

The Director shall prepare a report every six months in language designed to be understood by the general public describing the results of all lead tests obtained by the Department for San Francisco residents, including the test level, age, sex, ethnicity and general area of residence of each case of childhood lead poisoning. The Director shall prepare the report in those languages that he or she deems appropriate in order to communicate the information effectively. (Added by Ord. 376-92, App. 12/23/92)

DIVISION V
PUBLICLY OWNED PROPERTY

SEC. 1623. DEPARTMENTS TO IDENTIFY LEAD-CONTAMINATED SITES.

(a) Within 90 days of the effective date of this ordinance, the Director shall issue guidelines identifying various types, conditions or characteristics of City property which may create a risk of lead exposure to children. The Director shall notify every City department once these guidelines are issued. Each City department with jurisdiction over such property shall undertake assessment or lead testing, or both, of such property in compliance with the guidelines. The guidelines may identify the manner in which any testing is to be performed. All departments are required to report their findings to the Director.

(b) Each department of the City shall comply with the Director's guidelines.

(c) The Director shall take whatever actions he or she deems appropriate in order to provide public notice of the risks of using, or to prevent or restrict access to, properties which have been assessed or tested pursuant to this Section. The Director may require departments to adopt and implement a remediation plan for these properties that complies with State and federal law. (Added by Ord. 376-92, App. 12/23/92)

DIVISION VI
PRIORITY AREAS

SEC. 1624. PROGRAM FOR SELECTION OF HIGH PRIORITY LEAD REDUCTION AREAS.

(a) Within one year from the effective date of this ordinance, the Director shall develop a program to delineate geographical areas within the City, to be known as Priority Areas. To the extent allowed by law, the Director and all City departments shall direct their resources to provide Priority Areas with the highest priority for primary prevention services, screening, lead hazard reduction efforts, inspections, loans, loan guarantees or grants.

(b) In delineating Priority Areas the Director shall consider the following factors for particular geographic areas, along with such other factors as he or she deems relevant to the presence of significant levels of environmental lead within the City:

(1) The number and severity of cases of elevated blood lead level children;

(2) The age and condition of dwelling units;

(3) The results of any inspections carried out pursuant to Section 1626;

(4) Income levels;

(5) The historic and current presence of known sources of lead such as highways or industrial facilities.

(c) The Director shall publish a list of the Priority Areas, and make a map of such areas available to the public without charge. (Added by Ord. 376-92, App. 12/23/92; amended by Ord. 409-96, App. 10/21/96)

SEC. 1625. HAZARDOUS NON-HOUSING SITES.

(a) For the purposes of this Section, "non-housing site" means a parcel of land, other than land owned by an agency of the State or federal governments, that is one of the following:

(1) An abandoned factory site, auto wrecking yard or dump site;

(2) Open space or a park intended for use by children;

(3) A vacant lot containing an attractive nuisance to children; or

(4) Any other parcel of land that does not contain at least one dwelling unit, and which the Director has determined may constitute a lead hazard to children.

(b) In making a determination under Subparagraph (a)(4) of this Section, the Director shall consider the potential for lead contamination on the site, accessibility to the site by children, and whether the site is in a Priority Area as determined pursuant to Section 1624. The Director may also consider any other factors which he or she deems relevant to the presence of significant levels of environmental lead within the City.

(c) Within one year from the effective date of this ordinance the Director shall develop and implement a program to identify all non-housing sites within the City which are likely to expose children to lead hazards, to be known as lead hazard sites. The Director shall provide public notice of each lead hazard site to the community in which the site is located. The notice shall describe the lead hazard site, the hazard to children, the steps the Department intends to take to reduce lead hazard exposure and the timetable for taking those steps. The notice shall include a contact person in the Department of Public Health.

(d) The Director is authorized to require the owner of any non-housing site that contains more than 10 square feet of bare soil and is either: (1) accessible to children; or (2) a site at which children have been known to play or walk through, to comply with the requirements of Subsection (e) following written notice from the Director.

(e) The owner of any non-housing site who has received written notice from the Director pursuant to Subsection (d) shall, within 60 days of receiving such notice, take one of the following measures:

(1) Permit the Director to enter the site and test the topsoil for total lead; or

(2) Provide to the Director representative topsoil testing results of the site that have been analyzed by an accredited laboratory to establish the absence of any lead hazard; or

(3) Prevent access to the site through appropriate means such as fencing; or

(4) Permanently remediate any lead hazards present in accessible bare soil at the site in a manner that is acceptable to the Director.

(f) The Director may issue an order to any property owner subject to this Section who fails to comply with Subsection (e) within 60 days of receiving notice from the Director. Such orders

shall be enforceable in accordance with Sections 1636 and 1637. (Added by Ord. 376-92, App. 12/23/92; amended by Ord. 409-96, App. 10/21/96; Ord. 448-97, App. 12/5/97)

DIVISION VII INVESTIGATION AND ORDER AUTHORITY

SEC. 1626. INVESTIGATION AND TESTING.

(a) Whenever the Director determines that a lead-poisoned child resides in the City and County of San Francisco, the Director may inspect:

(1) The dwelling unit in which the affected child currently resides, and;

(2) Any dwelling unit in which the affected child resided or received family day care during the six-month period prior to the Director's initial determination.

(b) Whenever the Director determines that a lead-poisoned child spends a substantial amount of time at any location other than a dwelling unit, and that such building or premises may cause or contribute to the child's elevated blood lead level, the Director may inspect that building or premises to the extent allowed by law. The Director shall notify the owner or manager of such location of any discovered lead hazards and shall notify the users or occupants by posting a notice of his/her findings at the premises.

(c) Every inspection shall include sampling for the presence of environmental lead as deemed necessary and appropriate by the Director, provided that, the Director shall use the most current guidance from the United States Department of Housing and Urban Development and the United States Environmental Protection Agency to determine appropriate sampling and testing methods. All bulk samples gathered during an inspection shall be tested by an accredited laboratory.

(d) The Director shall provide the results of any sampling to the parent or guardian of the affected child and to the owner of the dwelling unit, if different than such parent or guardian, and to the owner or manager of any nonresidential premises inspected under this Article, along with the Director's requirements for control or elimination of lead hazards. The Director shall also provide sample results to the Director of the Department of Building Inspection.

(e) If the results of an inspection under Subsection (a) indicate lead hazards, the Director shall notify all residential occupants of the building of the test results. (Added by Ord. 376-92, App. 12/23/92; amended by Ord. 409-96, App. 10/21/96; Ord. 36-03, File No. 021857, App. 3/28/2003)

SEC. 1627. CONSULTANTS TO THE DIRECTOR.

The Director of the Department of Building Inspection shall appoint a representative who for purposes under this Article shall consult with the Director to identify any factors contributing to lead hazards which may be Housing Code or Building Code violations. (Added by Ord. 409-96, App. 10/21/96)

SEC. 1628. HAZARD REDUCTION ORDER.

(a) All dwelling units or nonresidential premises which have been inspected pursuant to Section 1626, and which contain lead hazards as determined by the Director, are hereby declared to be and are nuisances. The Director is hereby authorized and empowered to abate any such nuisance by issuance of an order as set forth in this Article, or by taking such other actions as authorized by law. Every order issued pursuant to this Article shall require the performance of such lead hazard remediation techniques as may be necessary in the Director's discretion to control, reduce or eliminate lead hazards and to abate any nuisance caused by such hazards. Every such order shall include a schedule for the performance of all lead hazard reduction or control activities, including abatement of Housing and/or Building Code violations which cause or

contribute to the nuisance. The schedule shall reflect time allocated for the required public hearing under Section 1631.

(1) Every Section 1628(a) order issued to the owner or manager of a dwelling unit shall state, in boldface type of at least 12 points, the following warning:

WARNING! Sections 17274 and 24436.5 of the Calif. Revenue and Taxation Code provide that a taxpayer who derives rental income from housing determined by the San Francisco Department of Public Health or by the San Francisco Department of Building Inspection to be substandard by reason of violation of state or local codes dealing with housing, building, health, or safety, cannot deduct from state personal income taxes and bank and corporate income taxes any deductions for interest, taxes, depreciation, or amortization attributable to such substandard housing, where the substandard conditions are not corrected within six months after notice of violation.

(b) Any lead hazard remediation technique which the Director determines necessary to eliminate lead hazards must be substantially completed within 14 days of the effective date of the order, except that activities which require the owner or manager to obtain permits and/or contractors, must be substantially completed within 30 days of the effective date of the order. For the purposes of this Section, the term "substantially completed" shall include but not be limited to obtaining estimates, applying for permits, hiring contractors and to the extent reasonably possible, conducting the activities specified by the order.

(c) The Director's order may limit the performance of specified lead hazard remediation techniques to certified or licensed contractors.

(d) Upon request of the Director, the consultant(s) appointed under Section 1627 shall prepare and submit a plan outlining any identified Housing or Building Code violations in a building, premises or dwelling unit subject to inspection under this Article, concluding whether such violations cause or contribute to lead hazards identified by the Director, and indicating the measures necessary to eliminate the hazards. The Director may incorporate the Consultant's conclusions in any order issued under this Article.

(e) The Director may require that the owner/manager obtain a building permit from the Department of Building Inspection for certain activities to complete the order.

(f) All orders issued under this Section shall require the least invasive, lowest-cost lead hazard remediation techniques available to abate the nuisance created by lead hazards, provided that the use of any such remediation technique is effective to protect the lead-poisoned child from exposure to lead hazards for the period ordered by the Director.

(g) The Director may review any order issued under this Article with the owner or manager at the site of the inspection.

(h) Every person subject to an investigation or other enforcement action pursuant to the provisions of this Article shall pay an inspection and administrative fee to cover the costs of inspection, sampling, testing, and administrative time. The inspection fee shall equal $85 per hour of Department of Public Health staff time spent during inspection or periodic surveillance, plus the actual cost of any equipment, supplies, laboratory fees, all tenant relocation costs and any other costs required to bring the dwelling into compliance with an order issued by the Director under this Section.

(i) All orders issued under this Section must be written in the appropriate language(s) of the affected tenant(s) and owner or manager.

(j) All orders issued under this Section to the owner of a dwelling unit shall require the owner to notify future occupants, purchasers or transferees of the contents of the order, and whether the dwelling unit is in compliance with the order at the time of transfer or lease.

(k) An owner or manager issued orders under this Section must comply with all applicable federal, State or local laws regarding lead hazard remediation techniques.

(l) In any judicial or administrative proceeding, it shall not be a defense to an order issued under the Housing Code, Building Code or Health Code that the condition of the building or dwelling was not a cause or contributing factor to the child's blood lead level.

(m) All orders issued under this Section shall require the owner to provide adequate protection to occupants against lead hazards, including vacation of the building or dwelling unit, if necessary in the Director's discretion. The Director may delete a vacation requirement at the request of any party upon approval of a workplan specifying work processes, performance controls, and engineering and access controls that will ensure occupant safety during lead hazard reduction work. (Added by Ord. 409-96, App. 10/21/96)

SEC. 1629. REPORT OF FINDINGS.

(a) The Director shall issue a report of findings to accompany all orders issued under Section 1628, which will contain the following:

(1) A list of all potential exposure sources and lead hazards, including the characteristic(s) of each source and whether the source is under the control of the occupant or owner of the building or dwelling unit. Lead hazards shall be considered in the owner or manager's control.

(2) An explanation of the cause(s) of any and all lead hazards found in the building or dwelling unit, in the common areas of the building, and from the exterior of the building, out to the perimeter of the property.

(b) Every report of findings regarding lead hazards in a dwelling unit shall contain a statement, supported by factual findings, identifying any lead hazard which the Director has determined constitutes a substantial danger to the occupants.

(c) A record of all paint and soil conditions cited in the Director's order shall be made in writing and visually documented by still or video camera.

(d) Any order under this Section 1629 shall be written in the appropriate language(s) of the affected tenant(s), owner(s) and/or manager(s). (Added by Ord. 376-92, App. 12/23/92; amended by Ord. 409-96, App. 10/21/96)

SEC. 1630. EMERGENCY ORDERS.

(a) Whenever the Director determines that a nuisance under this Article presents an imminent and substantial threat to the health of a lead-poisoned child, and that an order under Section 1628 will not protect the affected child from the continued presence of lead hazards before the building, premises or dwelling unit can be made lead safe, the Director may issue an emergency order to the owner or manager. The emergency order shall require the owner or manager to reduce or eliminate certain lead hazards within 48 hours, and shall specify the measures necessary to reduce the hazard(s). Emergency orders may require immediate cleaning of the building, premises or dwelling unit, fencing to limit access to lead-contaminated soil, provision of bottled drinking water, and other measures which the Director determines to be readily available to prevent exposure to a lead hazard.

(b) The Director will determine at his or her discretion when the emergency procedures have been satisfactorily completed. Any lead hazards which have not been addressed by the emergency order, shall be designated in an order issued under Section 1628.

(c) An emergency order issued under this Section shall be personally served upon the owner or manager of the building, premises or dwelling unit, and any tenant residing there with a lead-poisoned child. If the owner or manager cannot be located promptly after the Director's determination to issue an emergency order, the order may be served as set forth in Section 1631(a).

(d) All emergency orders issued under this Section must be written in the appropriate language(s) of the affected tenant(s), owner(s) and manager(s). Every such order to the owner or manager of a dwelling unit shall also state, in boldface type of at least 10 points, the following warning:

"WARNING! Sections 17274 and 24436.5 of the Calif. Revenue and Taxation Code provide

that a taxpayer who derives rental income from housing determined by the San Francisco Department of Public Health or by the San Francisco Department of Building Inspection to be substandard by reason of violation of state or local codes dealing with housing, building, health, or safety, cannot deduct from state personal income taxes and bank and corporate income taxes any deductions for interest, taxes, depreciation, or amortization attributable to such substandard housing, where the substandard conditions are not corrected within six months after notice of violation."

(e) In the event that the person named in an emergency order fails to carry out prescribed activities, the Director may abate the nuisance as provided in Article 11, Section 599 of the San Francisco Health Code. An emergency order shall not be appealable under this Article. (Added by Ord. 409-96, App. 10/21/96)

SEC. 1631. NOTICE AND HEARING REQUIREMENTS.

(a) Orders issued under Sections 1625 or 1628 shall be served by certified mail, return receipt requested, and accompanied by a notice which shall be posted at the affected site. The order and notice shall include, but not be limited to, the measures necessary for compliance with the order, the final compliance date, and the date of the public hearing scheduled under Section 1631(b).

(1) For all order issued under Section 1628, a copy of the order and notice, and the report of findings under Section 1629, shall be mailed to the parent or guardian of the child determined to have an elevated blood level, and notice of the presence of lead hazards may be provided to users of nonresidential buildings and premises by posting a notice at the affected site. A copy of the order, notice and report of findings shall be served upon each of the following:

(A) The landlord, manager, or other person in real or apparent charge and control of the premises or dwelling unit involved;

(B) The owner of record.

(2) For all orders issued under Section 1625, a copy of the order and notice shall be mailed to the owner of record.

(3) Service under this Section shall be effective on the date of mailing if sent to each person at the address of such person as it appears on the last equalized assessment roll of the County or at the address to which the most recent real property tax bill for said building or premises was mailed by the Tax Collector. If no such address so appears from the assessment roll of the County or the records of the Tax Collector, then a copy of the order, notice and report of findings shall be addressed to such person at the address of the building or premises involved. The failure of any owner or other person to receive such order, notice and report of findings shall not affect in any manner the validity of any proceeding under this Article.

(b) When an order is issued under Sections 1625 or 1628, a public hearing shall be scheduled and held seven working days from the date the order is issued. An extension of time for the hearing may be granted by the Director upon good cause shown by an owner, manager, landlord or tenant(s) electing to appear at the hearing.

(c) The public hearing shall be a forum for an owner, manager, landlord or tenant(s) to challenge part or all of an order issued under Sections 1625 or 1628.

(d) At the conclusion of a public hearing, the Director may take any action consistent with this ordinance and other applicable law. The Director's final decision shall be in writing, shall contain a statement of reasons in support of the decision and shall reflect any extension of time, if necessary, for compliance with the order.

(1) Decisions of the Director under Section 1628 shall be sent by certified mail, return receipt requested, to the building owner or manager, and to the landlord and tenant of the applicable dwelling unit, and by regular mail to all other parties who request a copy at the hearing.

(2) Decisions of the Director under Section 1625 shall be sent by certified mail, return receipt requested, to the owner of record.

(e) A copy of the Director's decision shall be posted in a conspicuous place on the building or premises, and shall be recorded in the office of the Recorder of the City and County of San Francisco. (Added by Ord. 409-96, App. 10/21/96; amended by Ord. 448-97, App. 12/5/97)

SEC. 1632. CLEARANCE INSPECTIONS BY DEPARTMENT.

Whenever a final decision of the Director has been issued under Section 1631, and the date for compliance has arrived, a clearance inspection shall be conducted by the Director in order to verify compliance. If the Director finds that the owner or manager has not complied with an order, or that compliance has failed to eliminate lead hazards or abate the nuisance created thereby, the Director may issue additional orders or take such further actions as authorized by law. The Director shall notify the Director of the Department of Building Inspection if violations of the San Francisco Building Code or the San Francisco Housing Code continue to cause or contribute to any lead hazard. If the Director determines that the order has been complied with the Director shall issue an order rescinding the original order. The order of recision shall be recorded in the office of the Recorder upon verification that the Department's costs, charges and penalties under Sections 1628(h), 1636, and 1637 have been paid. (Added by Ord. 409-96, App. 10/21/96)

SEC. 1633. MAINTENANCE AND REINSPECTION ORDER.

(a) Whenever the Director determines that an owner or manager has complied with a Section 1628 order which ordered only temporary remediation techniques, the Director shall issue a Maintenance and Reinspection Order. Every such order shall include a schedule of appropriate maintenance and periodic reinspection. Reinspections will be performed by a certified risk assessor. Reinspection reports, including visual and quantitative data, shall be submitted to the Director.

(b) The Director may, as necessary, issue new Emergency or Hazard Reduction Orders to the owner or manager of a dwelling unit or nonresidential premises which is subject to a Maintenance and Reinspection Order. (Added by Ord. 409-96, App. 10/21/96)

DIVISION VIII INCENTIVE PROGRAMS

SEC. 1634. INCENTIVE PROGRAMS.

(a) The Mayor's Office shall develop proposed programs for grants, loan guarantees and no- or low-interest loans for owners of property contaminated with lead. The Mayor's Office shall transmit to the Board of Supervisors a range of options for such programs within one year.

(b) In preparing proposed programs, the Mayor's Office shall consider and make recommendations regarding the following potential elements: whether and to what extent financial assistance should be provided based on an owner's voluntary abatement of lead hazards, the income of the owner and the owner's tenants, the risk of tenants becoming homeless if abatement work proceeds and the cost of the work is passed through to the tenants, the presence of children under the age of six on the property, the current blood lead levels of children who frequent the property, the condition of the property, whether rehabilitation, energy conservation or other improvements are planned, and whether the owners of nonrental property should be required to demonstrate financial need and the presence of children under the age of six with a certain blood lead level. (Added by Ord. 376-92, App. 12/23/92; amended by Ord. 409-96, App. 10/21/96)

DIVISION IX COMPREHENSIVE ENVIRONMENTAL LEAD POISONING FUND

SEC. 1635. COMPREHENSIVE LEAD POISONING FUND.

(a) There is hereby established a special fund to be known as the Comprehensive Environmental Lead Poisoning Fund. Into this fund shall be deposited (1) all monies obtained from

civil penalties obtained from enforcement of this Article, (2) all monies obtained from enforcement of Proposition 65 (the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code Sections 25249.5 et seq.), Business and Professions Code Sections 17200 et seq., or similar laws, insofar as monies are recovered under these laws because of lead contamination, except when the governing law requires that the monies be otherwise allocated, and (3) all donations of money which may be offered to the City to support the Program. The Director is hereby authorized to accept, on behalf of the City and County of San Francisco, any grants, gifts and bequests made for the purpose of furthering the goals of the Program and upon acceptance they shall be deposited into said fund.

(b) Subject to the budget and fiscal provisions of the Charter, the monies in this fund may only be expended for expenses related to the development, implementation and operation of the Program.

(c) Interest earned from the monies in said fund shall become part of the principal thereof, and shall not be expended for any purpose other than for which said fund is established. The balance remaining in the fund at the close of any fiscal year shall be deemed to have been provided for a specific purpose within the meaning of Charter Section 6.306 and shall be carried forward and accumulated in said fund for the purpose recited herein.

(d) No later than one year after the effective date of this ordinance and thereafter annually, the Controller shall submit a report to the Director, the Board of Supervisors and the Mayor which shall include the following information:

(1) A detailed identification of the sources of monies contributed to the fund;

(2) An accounting of the uses of the monies in the fund during the preceding year;

(3) An estimate of the amount of money that the Controller anticipates, after consulting with the Director and other appropriate City departments, shall be deposited in the fund during the next year.

The Controller shall coordinate with the Director and attempt to issue this report at the same time that the Director provides the annual Program report required under Section 1609. (Added by Ord. 376-92, App. 12/23/92; amended by Ord. 409-96, App. 10/21/96)

DIVISION X
ENFORCEMENT AND PENALTIES

SEC. 1636. ENFORCEMENT.

(a) The Department of Public Health shall be the primary administering and enforcing agency under this Article. The Director is hereby authorized to call upon the Director of Public Works and the Chief of Police and all other city officers, employees, departments and bureaus to aid and assist him or her in such enforcement, and it shall then be their duty to assist the Director in enforcement of this Article by performing such duties as may come within their respective jurisdictions.

(b) Upon an owner or manager's failure to comply with an order from the Director, the Director may request the City Attorney to maintain an action for injunction to enforce the provisions of this Article and for assessment and recovery of a civil penalty for such violation. The Director may also request the City Attorney or the District Attorney, as the case may be, to commence an action against the owner or manager of any building, premises or dwelling unit declared to be a nuisance under this Article for an injunction or civil penalty under the California Business and Professions Code.

(c) Upon an owner's failure to abate a nuisance under this Article pursuant to an order from the Director, and if an owner has not commenced good faith efforts for compliance as determined by the Director, the Director may notify, in writing, the Franchise Tax Board of the noncompliance. The notice of noncompliance shall contain the legal description or the lot and block numbers of the real property, the assessor's parcel number, and the name of the owner of record as shown on the latest equalized assessment roll. (Added by Ord. 409-96, App. 10/21/96)

SEC. 1637. CIVIL AND ADMINISTRATIVE PENALTIES.

(a) Any person who fails to comply with an order from the Director under this Article shall be civilly liable to the City and County of San Francisco for a civil penalty in an amount not to exceed $500 for each day in which the violation occurs. Each day that such violation continues shall constitute a separate violation.

(b) In determining civil penalties, the court shall consider the extent of harm caused by the violation(s) to the order, the nature and persistence of the violation(s), the length of time over which the violation(s) occur(s), the frequency of past violations, any action taken to mitigate the violation, and the financial burden to the violator. In addition to assessing a civil penalty, a court may order compliance with the order or such other relief as may be necessary to abate the nuisance.

(c) Any person who fails to comply with an order under Sections 1625 or 1628 may be assessed an administrative penalty by the Director. Assessment of an administrative civil penalty shall not be a prerequisite to abatement by the Director, or to the filing of a court action seeking penalties or injunctive relief.

(1) Upon receipt of information that a violation of an order has occurred, the Director shall serve the parties named in the order with a complaint specifying the violations, assessing a proposed administrative penalty, warning the parties that their violation will be reported to the Franchise Tax Board (explaining the consequences of such notification), and setting a hearing date no more than 30 days and no less than 10 from the date the complaint is mailed. Service shall be by first class mail, return receipt requested. In the case of an order issued under Section 1628, a copy of the complaint shall be provided to the occupants of the affected dwelling unit. The Director shall post a notice of the hearing at the affected building or premises.

(2) The hearing officer shall hear testimony from the parties named in the complaint and any other interested party on the nature of the alleged violation, the appropriateness of the proposed penalty, and the need to adjust the schedules in the original order. If the hearing officer determines that a violation continues to occur, the compliance schedule shall be adjusted to allow a reasonable period of time, not to exceed 30 days, for completion of the requirements of the order. A penalty shall be assessed based on the factors in Subsection (b) above, which shall become due and payable to the City and County of San Francisco on the thirty-first day after the effective date of the hearing officer's determination if the Director determines, after inspection, that compliance has not been achieved.

(A) A record of the hearing shall be prepared which shall include a transcript, all written letters, pleadings, notices and orders, exhibits and any other papers in the case. The hearing officer's final written decision shall be included in the record.

(B) A final decision which finds a continuing violation shall instruct the Department of Public Health to notify the Franchise Tax Board of any violation which continues for six months beyond the original order as provided in Revenue and Taxation Code Sections 12724 and 24436.5.

(C) The final decision shall notify all parties that the time within which judicial review may be sought is governed by Section 1094.6 of the California Code of Civil Procedure.

(3) If a penalty is not timely paid the Director may take any action authorized by law, including commencement of a judicial action to seek the full amount of a civil penalty plus injunctive relief. The Director may initiate lien proceedings pursuant to Chapter 10, Article XX of the San Francisco Administrative Code to collect any unpaid penalties.

(4) Administrative penalties shall be assessed in amounts not to exceed $100 per day for a first violation, $200 per day for a second violation within one year, and $500 per day for each additional violation within one year. (Added by Ord. 409-96, App. 10/21/96; amended by Ord. 448-97, App. 12/5/97; Ord. 322-00, File No. 001917, App. 12/28/2000)

SEC. 1638. CRIMINAL PENALTIES.

(a) Any person who fails to comply with an order from the Director under this Article shall be guilty of a misdemeanor. Each violation shall be considered a separate misdemeanor punishable by a fine not exceeding $1,000, or imprisonment not to exceed six months in the County Jail, or both.

(b) The court, in determining criminal penalties, shall consider the extent of harm caused by the violation(s) to the order, the nature and persistence of the violation(s), the length of time over which the violation(s) occur(s), the frequency of past violations, any action taken to mitigate the violation, the financial burden to the violator, and such other factors as deemed relevant and material. (Added by Ord. 409-96, App. 10/21/96)

DIVISION XI
IMPLEMENTATION

SEC. 1639. REMEDIES AND ENFORCEMENT: CITY OFFICIALS.

(a) In undertaking the enforcement of this ordinance, the City and County of San Francisco is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury.

(b) Subject to the limitations of due process, notwithstanding any other provision of this Code whenever the words "shall" or "must" are used in establishing a responsibility or duty of the City, its elected or appointed officers, employees, or agents, it is the legislative intent that such words establish a discretionary responsibility or duty requiring the exercise of judgment and discretion. (Added by Ord. 376-92, App. 12/23/92; amended by Ord. 409-96, App. 10/21/96)

SEC. 1640. SEVERABILITY.

If any section, subsection, paragraph, subparagraph, sentence, clause or phrase of this Article is for any reason held to be unconstitutional, invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Article. The Board of Supervisors declares that it would have passed each section, subsection, paragraph, subparagraph, sentence, clause or phrase of this Article irrespective of the fact that any portion of this Article could be declared unconstitutional, invalid or ineffective. (Added by Ord. 376-92, App. 12/23/92; amended by Ord. 409-96, App. 10/21/96)

[The next page is 865]

ARTICLE 27: HEALTH SERVICE SYSTEM AGREEMENT

SEC. 1700. CITY ADMINISTERED HEALTH PLAN.

(a) The Director of Public Health and the Director of the Health Service System are hereby authorized to enter into a hospital service agreement and to enter into any amendments to such agreement and any similar agreements subject to approval of the Board of Supervisors.

(b) Upon execution of any agreement described in Subsection (a), the Director of the Health Service System shall pay to the Department of Public Health the amounts owing under the agreement within the time specified in the agreement. The rates and charges contained in any such agreement shall govern rather than any rates and charges approved under Section 117 of this Code.

(c) Upon execution of any agreement described in Subsection (a), the Health Service System shall not be liable for any claims, losses, obligations, actions, demands, costs and expenses (1) which may arise out of any act or omission of the Department of Public Health or its agents or employees in connection with any hospital services performed pursuant to the agreement or (2) which may arise as a result of or are related to any breach or failure of hospital or its agents to perform any of its obligations, representations, warranties, agreements or covenants hereunder. If any such claims, losses, obligations, actions, demands or expenses arise, the Director of Public Health shall take any steps necessary to protect the Health Service System from incurring any liability, consistent with the procedures set forth in the Charter and implementing ordinances governing the settlement and payment of unmitigated and litigated claims. If the Health Service System is required to incur any financial loss due to any such claims, losses, obligations, actions, or demands, the Controller shall pay to the Health Service System any amounts needed to hold the Health Service System harmless from such financial obligations. The obligations of the Department of Public Health to hold harmless the Health Service System as set forth herein apply to acts, omissions and events occurring during the term of the agreement and survives the termination of the agreement. Nothing herein is intended to hold harmless the Health Service System from any liability, claim, loss, obligation, action, demand, cost or expense to the extent that it arises solely as the result of the negligence or wilful misconduct of the Health Service System or its employees or agents, or to the extent that it arises out of a claim of injury based on the failure of the Health Service System to provide coverage for any particular type of medical care under the City Administered Health Plan.

(d) It is the intent of the Board of Supervisors that the obligations imposed by this Section may be compelled by a writ of mandate. It is the further intent of this Section that no party shall be a beneficiary of the obligations imposed by this Section other than the parties who sign the agreement. (Added by Ord. 253-95, App. 8/4/95)

[The next page is 871]

ARTICLE 28: MEDICAL CANNABIS USER AND PRIMARY CAREGIVER IDENTIFICATION CARDS

SEC. 1800. DECLARATION OF POLICY.

It is the policy of the City and County of San Francisco that California Health & Safety Code Section 11362.5 shall be implemented with consideration for qualified users of medical cannabis, physicians, responsible and accountable providers of medical cannabis, and the police. The City and County recognizes that individuals who qualify to use medical cannabis may require the support of numerous caregivers to meet their needs for housing, health, or safety under California Health & Safety Code Section 11362.5(e). Voluntary primary caregiver cards and medical cannabis user identification cards will help peace officers identify individuals whose possession of medical cannabis is permissible under Health & Safety Code Section 11362.5. Such cards can promote cooperation between the Department of Public Health and law enforcement to protect the public welfare and medical cannabis users' rights. To further these goals, the Department of Public Health shall heed the vision, expertise, and voluntary counsel of private citizens in order to discover valuable information about the identification cards program. It also shall be the policy of the City and County of San Francisco to enable the Director of Health to take whatever steps are deemed necessary to protect the privacy of the physician-patient relationship by ensuring the confidentiality of patients' identities. Although this voluntary identification card program has no relation to any research studies, the City and County of San Francisco supports additional research on the benefits of medical cannabis and recognizes that such research must respect the confidentiality of patients and promote safeguards governing research on human subjects. (Added by Ord. 11-00, File No. 992079, App. 2/11/2000)

SEC. 1801. DEFINITIONS.

For the purpose of Article 28, certain words and phrases shall be construed as hereafter defined. Words in the singular include the plural, and words in the plural shall include the singular. Words in the present tense shall include the future. Masculine pronouns include feminine meaning and are not intended to be gender-specific.

(a) **Department.** The term "Department" means the Department of Public Health of the City and County of San Francisco or an authorized contractor of the Department of Public Health of the City and County of San Francisco.

(b) **Director of Health.** The term "Director of Health" includes the Director of Health or his designee. (Added by Ord. 11-00, File No. 992079, App. 2/11/2000)

SEC. 1802. ELIGIBILITY FOR IDENTIFICATION CARDS.

(a) Individuals who qualify to use medical cannabis under California Health & Safety Code Section 11362.5 may apply for a medical cannabis user identification card. Every applicant for a medical cannabis user identification card shall present to the Department proof that the applicant's physician recommends cannabis use

for the applicant and a California driver's license, California state identification card, or United States passport. The Department may also request such other pertinent information as the Department may require to determine whether the applicant qualifies as a user of medical cannabis under California Health & Safety Code Section 11362.5. The Department may demand proof of identity prior to the issuance of the medical cannabis user identification card.

(b) Individuals who qualify as primary caregivers under California Health & Safety Code Section 11362.5(e) may apply for a primary caregiver identification card. Every applicant for a primary caregiver identification card shall present to the Department a California driver's license, California state identification card, or United States passport. Every applicant for a primary caregiver identification card shall present to the Department proof that a physician recommends medical cannabis use for the individual for whom the applicant provides primary care. Every applicant and the qualified user for whom the applicant provides primary care also shall provide such other pertinent information as the Department may require to determine whether the applicant qualifies as a primary caregiver under California Health & Safety Code Section 11362.5. The Department may demand proof of identity prior to the issuance of the primary caregiver identification card. (Added by Ord. 11-00, File No. 992079, App. 2/11/2000)

SEC. 1803. IDENTIFICATION CARDS.

(a) The medical cannabis user identification card issued by the Department shall bear a unique serial number, a picture or photograph of the card holder, and the date of expiration of the identification card.

(b) The primary caregiver identification card shall bear a unique serial number, a picture or photograph of the card holder, and the date of expiration of the identification card.

(c) Both medical cannabis user identification cards and primary caregiver identification cards shall display a message from the Department advising that it is illegal to distribute marijuana or to use marijuana for nonmedical purposes. (Added by Ord. 11-00, File No. 992079, App. 2/11/2000)

SEC. 1804. INVESTIGATION AND VERIFICATION.

(a) The Department shall satisfy itself as to the accuracy of the physician's recommendation of cannabis use for the applicant and other statements made in support of each medical cannabis user identification card. If the Department is satisfied with the information, the Department shall issue the requested medical cannabis user identification card.

(b) The Department shall satisfy itself as to the accuracy of the statements made in support of each primary caregiver identification card. If the Department is satisfied with the supporting information, including the physician's recommendation of cannabis use for the individual for whom the applicant provides primary care, the Department shall issue the requested primary caregiver identification card. (Added by Ord. 11-00, File No. 992079, App. 2/11/2000)

SEC. 1805. FEES.

The Department is authorized to charge every applicant for a medical cannabis user identification card or a primary caregiver identification card a fee sufficient to cover the costs of the medical cannabis user identification and primary caregiver identification cards program. The Department shall consider the extent of an applicant's ability to pay the whole or partial fee and may provide for fee waiver or reduction in appropriate cases.

The Board of Supervisors of the City and County of San Francisco does hereby determine and fix the proper reasonable amounts to be charged to persons seeking medical cannabis identification cards from the Department of Public Health as follows, which rates shall be effective for this service delivered as of the date of approval of this ordinance.

Type of Service	Unit	Amount
Medical Cannabis User Identification Card	Per Application	$25
Primary Caregiver	Per Application	$25

(Added by Ord. 11-00, File No. 992079, App. 2/11/2000; amended by Ord. 127-00, File No. 000732, App. 6/9/2000)

SEC. 1806. EXPIRATION DATE.

(a) A medical cannabis user identification card may be granted at any time and shall remain valid for the length of time during which a physician certifies a recommendation for use of medical cannabis. No medical cannabis user identification card shall remain valid for longer than two years. A person may apply to renew such a medical cannabis user identification card. Medical cannabis user identification cards shall not be transferable.

(b) A primary caregiver identification card may be granted at any time and shall remain valid for the length of time during which a physician certifies a recommendation for use of medical cannabis by the individual for whom the card holder provides primary care. No primary caregiver identification card shall remain valid for longer than two years. A person may apply to renew such a primary caregiver identification card. Primary caregiver identification cards shall not be transferable. (Added by Ord. 11-00, File No. 992079, App. 2/11/2000)

SEC. 1807. AUTHORITY TO ADOPT RULES AND REGULATIONS.

The Director may issue and amend rules, regulations, standards, or conditions to implement and enforce this Article. The Director is authorized to enforce the provisions of this ordinance, including any rules, regulations, standards, or conditions issued hereunder. (Added by Ord. 11-00, File No. 992079, App. 2/11/2000)

SEC. 1808. PENALTY.

Any person who shall present false information or falsify, forge, or alter a document to support a request for a medical cannabis user identification card or a primary caregiver identification card or make, create, sell, or use a false medical cannabis user identification card or a primary caregiver identification card shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not to exceed $250, or by imprisonment in the County Jail for not more than three months, or by both such fine and imprisonment. (Added by Ord. 11-00, File No. 992079, App. 2/11/2000)

SEC. 1809. CITY UNDERTAKING LIMITED TO PROMOTION OF GENERAL WELFARE.

In undertaking the adoption and enforcement of this ordinance, the City and County is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing on its officers and employers, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury. (Added by Ord. 11-00, File No. 992079, App. 2/11/2000)

SEC. 1810. SEVERABILITY.

If any part or provision of this Ordinance, or the application thereof to any person or circumstances, is held invalid, the remainder of this Ordinance, including the application of such part or provision to the other persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this Ordinance are severable. (Added by Ord. 11-00, File No. 992079, App. 2/11/2000)

[The next page is 885]

ARTICLE 29: LICENSING AND REGULATION OF MASSAGE PRACTITIONERS

SEC. 1900. DEFINITIONS.

For the purposes of this Article:

(a) "City" means the City and County of San Francisco.

(b) "Convicted" means having pled guilty or having received a verdict of guilty, including a verdict following a plea of nolo contendere, to a crime.

(c) "Director" means the Director of Public Health or any individual designated by the Director to act on his or her behalf.

(d) "Massage" means any method of pressure on or friction against, or stroking, kneading, rubbing, tapping, pounding, vibrating, or stimulating of the external soft pads of the body with the hands or with the aid of any mechanical electrical apparatus or appliances, with or without such supplementary aids as rubbing alcohol, liniments, antiseptics, oils, powder, lotions, ointments, or other similar preparations.

(e) "Massage establishment" means a fixed place of business where more than one person engages in or carries on, or permits to be engaged in or carried on, the practice of massage.

(f) "Massage practitioner" means any individual who, for any monetary consideration whatsoever, engages in the practice of massage. "Massage practitioner" shall include both general massage practitioners and advanced massage practitioners, as provided in Section 1901.

(g) "Non-profit organization" means any fraternal, charitable, religious, benevolent, or any other nonprofit organization having a regular membership association primarily for mutual social, mental, political, and civic welfare, to which admission is limited to the members and guests and revenue accruing therefrom to be used exclusively for the benevolent purposes of said organization and which organization or agency is exempt from taxation, under the Internal Revenue Laws of the United States as a bona fide fraternal, charitable, religious, benevolent, or non-profit organization.

(h) "Outcall massage service" means any business, not permitted as a massage establishment or solo practitioner massage establishment under the provisions of this Article, wherein the primary function of such business is to engage in or carry on massage not at a fixed location but at a location designated by the client or customer.

(i) "Permittee" means the owner, proprietor, manager, or operator of a massage establishment, outcall massage service, or solo practitioner massage establishment.

(j) "Person" means any individual, partnership, firm, association, joint stock company, corporation, or combination of individuals of whatever form or character.

(k) "Recognized school for massage" means any school or institution of learning which teaches the theory, ethics, practice, profession, and work of massage, which requires a resident course of study of not less than 100 hours to be completed before the student shall be furnished with a diploma or certificate of graduation, and which has been approved pursuant to California Education Code Sections 94301 et seq., or, if said school or institution is not located in California, has complied with standards commensurate with those required in said Sections 94301 et seq. and has obtained certification under any similar state approval program, if such exists.

(l) "Solo practitioner massage establishment" means a fixed place of business where a person holding an advanced massage practitioner permit engages in or carries on, or permits to be engaged in or carried on, the practice of massage. Said fixed place of business may be shared by two to four advanced massage practitioners, or two to four advanced massage practitioners and one or more health or healing arts practitioners, except as otherwise provided pursuant to Section 1913(e). (Added by Ord. 269-03, File No. 030995, App. 12/5/2003)

SEC. 1901. PERMIT REQUIRED FOR MASSAGE PRACTITIONER; EXEMPTIONS.

(a) It shall be unlawful for any individual to engage in the practice of massage without first obtaining a permit from the Director.

(b) An individual may receive a permit as either a general massage practitioner or an advanced massage practitioner, as provided in Section 1902. As used in this Article, the term "massage practitioner" shall refer to both general massage practitioners and advanced massage practitioners, unless otherwise specifically provided in the ordinance.

(c) A permit is not required where the individual is a licensed or certificated health care practitioner practicing massage as part of his or her health care practice. For purposes of this Section, "health care practitioner" shall mean any person who activities are licensed or regu-

lated under Division 2 of the California Business and Professions Code or any initiative act referred to in that division.

(d) A permit is not required where the individual is a barber, cosmetologist, esthetician, or manicurist licensed or certificated pursuant to Division 3, Chapter 10, of the California Business and Professions Code, practicing massage as part of his or her work as a barber, cosmetologist, esthetician, or manicurist and within the scope of any relevant state restrictions on the practice of massage by members of those professions.

(e) An individual practicing massage under the direction of a non-profit organization, and the organization itself are exempt from permit and license fees under this Article, but the individual and the organization must obtain the necessary permits and licenses and otherwise comply with all relevant requirements. (Added by Ord. 269-03, File No. 030995, App. 12/5/2003)

SEC. 1902. APPLICATION FOR MASSAGE PRACTITIONER PERMIT; GENERAL AND ADVANCED PRACTITIONERS.

(a) Every applicant for a massage practitioner permit shall file an application with the Director upon a form provided by the Director and pay a non-refundable application fee, as set forth in Section 1927.

(b) The application for a massage practitioner permit shall set forth, under penalty of perjury, the following:

(1) Name and residence address of the applicant;

(2) A unique identifying number from at least one government-issued form of identification, such as a social security card, a state driver's license or identification card, or a passport;

(3) Written evidence that the applicant is at least 18 years of age;

(4) Applicant's height, weight, and color of hair and eyes;

(5) Business, occupation, or employment of the applicant for the five years immediately prior to the date of application; this information shall include, but not be limited to, a statement as to whether or not the applicant, in working as a massage practitioner or bodywork technician or similar occupation under a permit or license, has had such permit or license revoked or suspended, and the reasons therefor; and

(6) All felony or misdemeanor convictions.

(c) An applicant for a general massage practitioner permit shall provide, as part of the application, the name and address of the recognized school for massage attended, the dates attended, and the original of the diploma or certificate of graduation awarded the applicant showing that the applicant has completed not less than 100 hours of instruction. An applicant for an advanced massage practitioner permit shall provide, as part of the application, the name and address of the recognized school or schools for massage attended, the dates attended, and the original of the diploma(s) or certificate(s) of graduation awarded the applicant showing that the applicant has completed not less than 200 hours of instruction. The additional 100 hours of instruction required for the advanced massage practitioner permit may be completed at one or more schools. If the applicant already holds a current general massage practitioner permit, he or she need only submit documentation for the additional 100 hours of instruction necessary for the advanced massage practitioner permit.

(d) The Director shall administer a culturally-sensitive test to all applicants, in the applicant's own language, to confirm basic proficiency in massage before issuing a permit.

(e) The Director is hereby authorized to require in the application any other information including, but not limited to, any information necessary to discover the truth of the matters set forth in the application. (Added by Ord. 269-03, File No. 030995, App. 12/5/2003)

SEC. 1903. ISSUANCE OF MASSAGE PRACTITIONER PERMIT.

(a) Within 14 days following a hearing, or, if no hearing is held, within 60 business days following receipt of a completed application for a

massage practitioner permit, the Director shall either issue the permit or mail a written statement of his or her reasons for denial thereof to the applicant. If the Director takes neither action, the permit shall he deemed issued.

(b) No massage practitioner permit shall be issued if the Director finds:

(1) The applicant has provided materially false documents or testimony; or

(2) The applicant has not complied fully with the provisions of this Article; or

(3) Within five years immediately prior to the date of application, the applicant has had any license or permit related to the practice of massage revoked; or

(4) The applicant has been convicted of any of the following offenses or convicted of an offense outside the State of California that would have constituted any of the following offenses if committed within the State of California:

(i) Any felony involving the use of coercion or force and violence upon another person; or

(ii) Any misdemeanor sexual battery; or

(iii) Any offense involving sexual misconduct with children; or

(iv) Any offense requiring registration pursuant to Section 290 of the California Penal Code.

(c) The Director may issue a massage practitioner permit to any individual convicted of one of the offenses listed in Subsection (b)(4) of this Section if the Director finds that the offense was not violent, the conviction occurred at least five years prior to the date of application, and the applicant has not been convicted subsequently of one of those offenses.

(d) If an application for a massage practitioner permit is denied, within 30 days of the date of receipt of the notice of denial, the applicant may appeal the decision by notifying the Director in writing. The notice shall set forth in detail the ground or grounds for the appeal. Within 30 days of receipt of the notice of appeal, the Director shall conduct a hearing to consider the appeal. At least 10 days prior to the hearing, the Director shall notify the applicant of the time and place of the hearing. The Director shall oversee the hearing, provide the applicant an opportunity to speak at the hearing, and issue a ruling within 30 days of its conclusion. The Director's ruling shall be final. (Added by Ord. 269-03, File No. 030995, App. 12/5/2003)

SEC. 1904. TEMPORARY MASSAGE PRACTITIONER PERMIT; TRAINEE PERMIT.

(a) Upon completion and submission of an application for a massage practitioner permit as required in Section 1902 of this Article, and upon payment of all fees for the permit, an applicant may request a temporary massage practitioner permit. If requested, the Director shall issue the temporary massage practitioner permit which is valid for the period during which the application is under review, but in no event for more than 60 days. The Director may revoke the permit at any time if he or she finds that the applicant has failed to meet any of the requirements of Section 1903 of this Article.

(b) The Director may adopt rules and procedures for issuing trainee permits, not to exceed three months in duration, to persons who have otherwise completed an application for a massage practitioner permit and who are currently registered in a recognized school of massage to fulfill the training requirement. (Added by Ord. 269-03, File No. 030995, App. 12/5/2003)

SEC. 1905. IDENTIFICATION CARD.

The Director shall provide all massage practitioners granted a permit with an identification card. The identification card must he presented to any City health inspector upon request at all times during the regular business hours of any massage establishment or solo practitioner massage establishment. (Added by Ord. 269-03, File No. 030995, App. 12/5/2003)

SEC. 1906. MASSAGE PRACTITIONER LICENSE FEE.

Every massage practitioner shall pay to the Tax Collector an annual license fee, as set forth in Section 1927. (Added by Ord. 269-03, File No. 030995, App. 12/5/2003)

SEC. 1907. REVOCATION OF MASSAGE PRACTITIONER PERMIT.

(a) The Director may revoke or suspend any massage practitioner permit, after a public hearing, if the Director finds:

(1) The massage practitioner willfully violated any of the provisions of this Article; or

(2) The massage practitioner has provided materially false documents or testimony; or

(3) Within five years immediately prior to the date of application, the massage practitioner has had any license or permit related to the practice of massage revoked; or

(4) The massage practitioner has violated a rule or regulation adopted by the Director pursuant to Section 1926.

(b) Before any hearing is conducted under this Section, the Director shall provide the massage practitioner at least 20 days written notice. The notice shall include the time, place, and grounds for the hearing. If requested by the massage practitioner, the Director shall make available all documentary evidence against him or her no later than 15 days Prior to the hearing. At the hearing, the massage practitioner shall be provided an opportunity to refute all evidence against him or her. The Director shall oversee the hearing and issue a ruling within 20 days of its conclusion. The Director's ruling shall be final.

(c) The Director may suspend summarily any massage practitioner permit issued under this Article pending a noticed hearing on revocation or suspension when in the opinion of the Director the public health or safety requires such summary suspension. Any affected permittee shall be given notice of such summary suspension in writing delivered to said permittee in person or by registered letter. (Added by Ord. 269-03, File No. 030995, App. 12/5/2003)

SEC. 1908. PERMIT REQUIRED FOR A MASSAGE ESTABLISHMENT, SOLO PRACTITIONER MASSAGE ESTABLISHMENT, OR OUTCALL MASSAGE SERVICE, EXEMPTIONS.

(a) It shall be unlawful for any person to engage in, conduct, or carry on, or to permit to be engaged in, conducted, or carried on, in or upon any premises in the City the operation of a massage establishment, solo practitioner massage establishment, or outcall massage service without first obtaining a permit from the Director.

(b) Hospitals, nursing homes, and other State-licensed health care facilities providing massage services to their patients shall not be required to obtain a permit under this Section, where the services are provided by a licensed or certificated health care practitioner or an individual practicing massage under the direction of a health care practitioner. For purposes of this Section, "health care practitioner" shall mean any person who activities are licensed or regulated under Division 2 of the California Business and Professions Code or any initiative act referred to in that division.

(c) A permit shall not be required under this Section where the services are provided on the premises (1) by a licensed or certificated health care practitioner or (2) by a barber, cosmetologist, esthetician, or manicurist, licensed or certificated pursuant to Division 3, Chapter 10, of the California Business and Professions Code, practicing massage as part of his or her work as a barber, cosmetologist, esthetician, or manicurist, and within the scope of any relevant state restrictions on the practice of massage by members of those professions. A non-profit organization providing massage services on its premises, and the individuals providing the massage services, are exempt from permit and license fees under this Article, but the organization and the individuals must obtain the necessary permits and licenses and otherwise comply with all relevant requirements. (Added by Ord. 269-03, File No. 030995, App. 12/5/2003)

SEC. 1909. APPLICATION FOR MASSAGE ESTABLISHMENT, SOLO PRACTITIONER MASSAGE ESTABLISHMENT, OR OUTCALL MASSAGE SERVICE PERMIT.

(a) Every applicant for a massage establishment, solo practitioner massage establishment, or outcall massage service permit shall file an

application with the Director upon a form provided by the Director and pay a non-refundable application fee, as set forth in Section 1927.

(b) The application shall set forth, under penalty of perjury, the following:

(1) The exact nature of the services to be rendered;

(2) The address of the proposed place of business and facilities thereof

(3) The number of individuals to be employed by the business, and, in the case of a solo massage practitioner establishment, the names of any massage practitioners who shall operate under that permit;

(4) The name, residence address, and date of birth of each applicant;

(5) Any history of previous massage permits or licenses in San Francisco or elsewhere, including whether any such permit or license has been revoked and the reasons therefor, for each applicant; and

(6) All felony or misdemeanor convictions for the applicant.

(c) The Director is hereby authorized to require in the application any other information including, but not limited to, information related to the health, hygiene, and sanitation of the premises and any information necessary to confirm the accuracy of the matters set forth in the application.

(d) If an applicant for a massage establishment or outcall massage service permit is a corporation, the name of the corporation shall be set forth exactly as shown in its articles of incorporation together with the names and residence addresses of each of the officers, directors, and each stockholder holding more than 10 percent of the stock of the corporation. If the application is a partnership, the application shall set forth the name and the residence address of each of the partners, including limited partners. If one or more of the partners is a corporation, the provisions of this Section pertaining to corporate applicants applies. The same permit and criminal history information required of individual applicants shall be provided for each officer, director, and stockholder holding more than 10 percent of the stock of the corporation, or for each partner, including limited partners.

(e) In addition to the information required under subsections (b) and (c), an applicant for a solo practitioner massage establishment permit shall provide proof that he or she holds a current, valid advanced massage practitioner permit issued by the Director under Section 1901.

(f) Applicants shall also submit proof of compliance with any applicable Planning Code requirements regarding notice and posting of the proposed establishment.

(g) An advanced massage practitioner holding a solo practitioner massage establishment permit shall not be required to pay any additional permit fee for an outcall massage service permit. (Added by Ord. 269-03, File No. 030995, App. 12/5/2003)

SEC. 1910. FACILITIES NECESSARY FOR MASSAGE ESTABLISHMENT.

No permit to conduct a massage establishment shall be issued unless an inspection by the Director reveals that the massage establishment complies with each of the following requirements:

(a) Construction of rooms used for toilets, tubs, steam baths, and showers shall be made waterproof with hard nonabsorbent materials which are easily cleaned and shall be installed in accordance with the San Francisco Building Code. Plumbing fixtures shall be installed in accordance with the San Francisco Plumbing Code.

(1) For toilet rooms, toilet room vestibules, and rooms containing bathtubs, there shall be a waterproof floor covering, which will be carried up all walls to a height of at least five inches. Floors shall be coved at the juncture of the floor and wall with a 3/8 inch minimum radius coving.

(2) Steam rooms and shower compartments shall have waterproof floors, walls, and ceilings approved by the Director.

(3) Floors of wet and dry heat rooms shall be adequately pitched to one or more floor drains properly connected to the sewer. Dry heat rooms with wooden floors need not be provided with pitched floors and floor drains.

(4) A source of hot water must be available within the vicinity of dry and wet heat rooms to facilitate cleaning.

(b) Toilet facilities shall be provided in convenient locations. When five or more employees or patrons of different genders are on the premises at the same time, separate toilet facilities shall be provided. A single toilet shall be provided for each 1.5 or more persons of the same gender on the premises at any one time. Urinals may be substituted for toilets after one toilet has been provided. Doors to toilet rooms shall open inward and be self-closing. Toilet rooms shall be designated as to the gender accommodated therein.

(c) Lavatories or wash basins with both hot and cold running water shall be installed in either the toilet room or the vestibule. Lavatories or wash basins must have soap in a dispenser and sanitary towels.

(d) All portions of the massage establishment shall be provided with adequate light and ventilation by means of windows or skylights with an area of not less than 1/8 of the total floor area, or shall be provided with an approved artificial light and a mechanical operating ventilating system. When windows or skylights are used for ventilation, at least 1/2 of the total required window area shall be operable. To allow for adequate ventilation, cubicles, rooms, and areas provided for the use of patrons not served directly by a window, skylight, or mechanical system of ventilation shall be constructed so that the height of the partitions does not exceed 75 percent of the floor-to-ceiling height of the area in which they are located.

(e) All electrical equipment shall be installed in accordance with the requirements of the San Francisco Electrical Code. (Added by Ord. 269-03, File No. 030995, App. 12/5/2003)

SEC. 1911. FACILITIES NECESSARY FOR SOLO PRACTITIONER MASSAGE ESTABLISHMENT.

No permit to conduct a solo practitioner massage establishment shall be issued unless an inspection by the Director reveals that the solo practitioner massage establishment complies with each of the following requirements:

(a) Toilet facilities shall be provided for patrons.

(b) Rooms used for toilets, tubs, steam baths. and showers, including the floors, walls, and ceilings of those rooms, shall be constructed from hard, durable, and nonabsorbent materials which are easily cleaned.

(c) Handwashing facilities shall be provided within or adjacent to toilet rooms and shall be equipped with an adequate supply of hot and cold running water under pressure.

(d) Handwashing facilities shall be readily accessible to the massage practitioner and shall be equipped with an adequate supply of hot and cold running water under pressure.

(e) A room, enclosure, or designated area shall be provided where patrons may change and store their clothes.

(f) Toilet and dressing rooms and massage rooms shall be provided with at least 108 lux (10 footcandles) of light.

(g) Smooth and cleanable containers shall be provided for soiled linens.

(h) Adequate and suitable space shall be provided for storage of clean linens, including towels, apparel, etc.

(i) All portions of the facility used by patrons shall be provided with adequate ventilation. (Added by Ord. 269-03, File No. 030995, App. 12/5/2003)

SEC. 1912. REFERRAL OF PERMIT APPLICATION TO OTHER DEPARTMENTS.

The Director, within 10 days of receiving an application for a permit to operate a massage establishment or solo practitioner massage establishment permit, shall refer the application to the City Department of Building Inspection and the City Police, Fire, and Planning Departments. Said departments shall inspect the premises proposed to be operated as a massage establishment or a solo practitioner massage establish-

ment and shall make written findings to the Director concerning compliance with codes that they administer.

The Director shall notify the Police Department of all approved permit applications. (Added by Ord. 269-03, File No. 030995, App. 12/5/2003)

SEC. 1913. ISSUANCE OF MASSAGE ESTABLISHMENT, SOLO PRACTITIONER MASSAGE ESTABLISHMENT, OR OUTCALL MASSAGE SERVICE PERMIT.

(a) Within 14 days following a hearing, or, if no hearing is held, within 60 business days, following receipt of a completed application for a massage establishment, solo practitioner massage establishment, or outcall massage service permit, the Director shall either issue the permit or mail a written statement of his or her reasons for denial thereof to the applicant. If the Director takes neither action, the permit shall be deemed issued.

(b) No massage establishment, solo practitioner massage establishment, or outcall massage service permit shall be issued if the Director finds:

(1) The applicant has provided materially false documents or testimony; or

(2) The operation as proposed by the applicant would not comply with all applicable laws including, but not limited to, the City Building, Planning. Housing, and Fire Codes or any rule or regulation adopted by the Director pursuant to this Article; or

(3) Within five years immediately prior to the date of application, the applicant has had any license or permit related to the practice of massage revoked; or

(4) The applicant and any other individual who will be directly engaged in the management and operation of the massage establishment, solo practitioner massage establishment, or outcall massage service has been convicted of any of the following offenses or convicted of an offense outside the State of California that would have constituted any of the following offenses if committed within the State of California:

(i) Any felony involving the use of coercion or force and violence upon another person; or

(ii) Any misdemeanor sexual battery; or

(iii) Any offense involving sexual misconduct with children;

(iv) Pimping or pandering; or

(v) Any offense requiring registration pursuant to Section 190 of the California Penal Code.

(c) The Director may issue a permit authorized under this Section to any individual convicted of one of the offenses listed in Subsection (h)(4) of this Section if the Director finds that the offense was not violent, the conviction occurred at least five years prior to the date of application, and the applicant has not been convicted subsequently of one of those offenses.

(d) The Director may refuse to issue any permit authorized under this Section in any case where there is reasonable grounds to determine that the premises or the business will be or are being managed, conducted, or maintained in such a manner as to endanger the health or safety of the employees or patrons thereof or to coerce any employee to engage in any illegal conduct.

(e) Notwithstanding the provisions of Section 1900(l), the Director may issue a solo practitioner massage establishment permit authorizing more than four solo massage practitioners to operate out of the same place of business if the Director finds good cause exists and the operation of the establishment will not have a negative impact on the neighborhood.

(f) If an application for a permit authorized under this Section is denied, within 30 days of the date of receipt of the notice of denial, the applicant may appeal the decision by notifying the Director in writing. The notice shall set forth in detail the ground or grounds for the appeal. Within 30 days of receipt of the notice of appeal, the Director shall conduct a hearing to consider the appeal. At least 10 days prior to the hearing, the Director shall notify the applicant of the time and place of the hearing. The Director shall oversee the hearing, provide the applicant an opportunity to speak at the hearing, and issue a

ruling within 30 days of its conclusion. The Director's ruling shall be final. (Added by Ord. 269-03, File No. 030995, App. 12/5/2003)

SEC. 1914. OPERATING REQUIREMENTS FOR MASSAGE ESTABLISHMENT.

(a) Every portion of a massage establishment, including appliances and apparatus, shall be kept clean and operated in a sanitary condition.

(b) A room, enclosure, or designated area, which is separate from the toilet, massage room, steam room, or other common areas shared by the patrons shall be made available for each employee. Individual lockers within this room shall be made available to each employee. Doors to dressing rooms shall open inward and be self closing.

(c) Every massage establishment shall provide clean laundered sheets and towels and shall launder them after each use and store them in a sanitary manner. No towels or sheets shall be laundered or dried in any massage establishment unless such massage establishment is provided with laundry facilities for such laundering and drying. The massage establishment shall provide appropriately labeled receptacles for the storage of soiled linens and paper towels. The massage establishment shall appropriately bag and dispose of soiled refuse.

(d) Every massage establishment shall thoroughly clean its wet and dry heat rooms, shower compartments, and toilet rooms each business day. Bathtubs shall be thoroughly cleaned and sanitized after each use.

(e) Any room in which a massage establishment provides massage services shall not be used for residential sleeping purposes; provided, however, that the Director may allow such room to be used for residential or sleeping purposes if the Director finds that the health and safety of the patrons of the massage establishment will not be jeopardized. (Added by Ord. 269-03, File No. 030995, App. 12/5/2003)

SEC. 1915. EMPLOYMENT OF MASSAGE PRACTITIONERS.

It shall be the responsibility of every permittee for a massage establishment or outcall massage service, or the employer of any individual purporting to act as a massage practitioner, to ensure that such individual has obtained a permit pursuant to this Article. (Added by Ord. 269-03, File No. 030995, App. 12/5/2003)

SEC. 1916. REGISTER OF EMPLOYEES.

The operator of a massage establishment, solo practitioner massage establishment, or outcall massage service must maintain a register of all individuals employed as massage practitioners and their permit numbers. Such register shall be available for inspection by the Department of Public Health at all times during regular business hours. (Added by Ord. 269-03, File No. 030995, App. 12/5/2003)

SEC. 1917. EMPLOYMENT OF PERSONS UNDER THE AGE OF 18 PROHIBITED.

It shall be unlawful for any permittee to employ any individual who is not at least 18 years of age. (Added by Ord. 269-03, File No. 030995, App. 12/5/2003)

SEC. 1918. DISPLAY OF PERMIT; HOURS OF OPERATION.

(a) Every permit to operate a massage establishment or solo practitioner massage establishment shall be displayed in a conspicuous place within the establishment so that the permit may be readily seen by individuals entering the premises. Every permit to operate an outcall massage service must be made available for inspection by the Department of Public Health at all times while providing massage services.

(b) No massage establishment, solo practitioner massage establishment, or outcall massage service shall operate or provide massage services during the hours between midnight and 7:00 a.m. (Added by Ord. 269-03, File No. 030995, App. 12/5/2003)

SEC. 1919. INSPECTION.

(a) Any member of the Department of Public Health may make an inspection of any massage establishment or solo practitioner massage establishment in the City for the purpose of determining that the establishment is in compliance with the provisions of this Article or for the purpose of providing health and safety information to employees of the establishment. The Director shall adopt regulations under Section 1926 governing the use of double doors or other structural devices that interfere with reasonable inspections and do not have legitimate safety or security purposes.

(b) Nothing in this Section shall limit or restrict the authority of a police officer to enter premises licensed under this Article (i) pursuant to a search warrant signed by a magistrate and issued upon a showing of probable cause to believe that contraband is present or that a crime has been committed or attempted, (ii) without a warrant in the case of an emergency or other exigent circumstances, or (iii) as part of any other lawful entry in connection with a criminal investigation or enforcement action. (Added by Ord. 269-03, File No. 030995, App. 12/5/2003)

SEC. 1920. MASSAGE ESTABLISHMENT, SOLO PRACTITIONER MASSAGE ESTABLISHMENT, OR OUTCALL MASSAGE SERVICE LICENSE FEE.

(a) Every person holding a massage establishment, solo practitioner massage establishment, or outcall massage service permit shall pay to the Tax Collector an annual license fee, as set forth in Section 1927; provided, however, that the annual license fee shall be $10 for any person holding a massage establishment permit who is over 60 years old and does not employ others and whose gross receipts from the massage business operated under the authority of said permit for the previous year were less than $1,000.

(b) An advanced massage practitioner holding a solo practitioner massage establishment permit shall not be required to pay any additional annual license fee for an outcall massage service permit. (Added by Ord. 269-03, File No. 030995, App. 12/5/2003)

SEC. 1921. REVOCATION OF MASSAGE ESTABLISHMENT, SOLO PRACTITIONER MASSAGE ESTABLISHMENT, OR OUTCALL MASSAGE SERVICE PERMIT.

(a) The Director may revoke or suspend any massage establishment, solo practitioner massage establishment, or outcall massage service permit, after a hearing, if the Director finds:

(1) The permittee has violated any of the provisions of this Article; or

(2) The permittee has refused to permit any duly authorized City health inspector to inspect the premises or the operations therein; or

(3) The permittee has engaged in any conduct in connection with the operation of the business that violates any state or local laws, or, in the case of a massage establishment or outcall massage service permit, any employee of the permittee has engaged in any conduct that violates any state or local laws at permittee's place of business, and the permittee had or should have had actual or constructive knowledge by due diligence of the illegal conduct; or

(4) In the case of a solo practitioner massage permit, the permittee no longer holds a current, valid advanced massage practitioner permit issued by the Director; or

(5) The Director determines by clear and convincing evidence that such business is being managed, conducted, or maintained without regard for public health or the health of patrons, customers, or employees, or without due regard to proper sanitation and hygiene; or

(6) The permittee has violated a rule or regulation adopted by the Director pursuant to Section 1926.

(b) Before any hearing is conducted under this Section, the Director shall provide the permittee at least 20 days' written notice. The notice shall include the time, place, and grounds for the hearing. If requested by permittee, the Director shall make available all documentary evidence against permittee no later than 15 days prior to

the hearing. At the hearing, the permittee shall be provided an opportunity to refute all evidence against him or her. The Director shall oversee the hearing and issue a ruling within 20 days of its conclusion. The Director's ruling shall be final.

(c) The Director may suspend summarily any massage establishment, solo practitioner massage establishment, or outcall massage service permit issued under this Article pending a noticed hearing on revocation or suspension when in the opinion of the Director the public health or safety requires such summary suspension. Any affected permittee shall be given notice of such summary suspension in writing delivered to said permittee in person or by registered letter. (Added by Ord. 269-03, File No. 030995, App. 12/5/2003)

SEC. 1922. HEARINGS.

The Director may fix a time and place for a hearing on any application for a permit under this Article, which shall not be held more than 45 days after the receipt of the completed application, or, in the case of a permit to operate a massage establishment or solo massage practitioner establishment, more than 30 days after receiving the findings required under Section 1912 of this Article. (Added by Ord. 269-03, File No. 030995, App. 12/5/2003)

SEC. 1923. TRANSFER OF PERMIT.

No permit issued under this Article shall be transferable. (Added by Ord. 269-03, File No. 030995, App. 12/5/2003)

SEC. 1924. EXISTING PERMITS.

(a) All persons who possess outstanding massage establishment, outcall massage service, or masseur or masseuse permits on the effective date of this ordinance must surrender and exchange any such permits for new permits within 90 days of the effective date of this ordinance. Any such surrender and exchange shall be without fee to the permittee. From and after the 91st day after the effective date of this ordinance, all permits not surrendered and exchanged for new permits shall be void and continuance of operation under any such void permits shall be a violation of this Article. However, until issuance of the new permit, all existing permits are subject to the rules and regulations in effect at the time of the issuance of the permits.

(1) A person who possesses an outstanding masseur or masseuse permit on the effective date of this ordinance may exchange that permit for a general massage practitioner permit. He or she may seek an advanced massage practitioner permit upon submitting documentation for the additional 100 hours of instruction required under Section 1902(c).

(2) A person who possesses an outstanding massage establishment permit on the effective date of this ordinance may exchange that permit for a massage establishment permit under this Article. Only a person who has obtained an advanced massage practitioner permit may obtain a solo practitioner massage establishment permit.

(b) Any person practicing massage without a permit on the effective date of this ordinance, or who has done so prior to that date, shall be eligible to receive a general or advanced massage practitioner permit upon satisfying the requirements of Sections 1902 and 1903, or a massage establishment, solo practitioner massage establishment, or outcall massage service permit upon satisfying the requirements of Sections 1909 and 1913. Such applicants shall not be disadvantaged or penalized in the permitting process for having practiced massage without a permit prior to the effective date of this ordinance. (Added by Ord. 269-03, File No. 030995, App. 12/5/2003)

SEC. 1925. BUSINESS TAX AND ZONING INFORMATION, RESOURCES FOR MASSAGE PRACTITIONERS.

(a) Upon issuing or renewing any permit issued under this Article, the Director and the Tax Collector shall also provide the permitholder with general information, including appropriate referrals to other City departments, regarding (1) the need and procedure for registering a business with the Tax Collector, and, (2) possible zoning restrictions on the operation of a massage practice.

(b) The Director shall provide all persons receiving a massage practitioner permit with educational materials regarding their rights and informing them of available resources such as health services and victim assistance, as well as emergency numbers and hotlines to call for information and assistance. (Added by Ord. 269-03, File No. 030995, App. 12/5/2003)

SEC. 1926. RULES AND REGULATIONS; COMPLAINT LINE.

(a) The Director, after a noticed public hearing, may adopt rules and regulations to carry out the provisions of this Article. Such rules and regulations shall take effect 15 days after the meeting. Violation of any such rule or regulation may be grounds for administrative action against the permittee, including suspension or revocation of the permit as provided in Sections 1907 and 1921 or an administrative fine as provided in Section 1928, but the Director shall whenever possible give the permittee a reasonable opportunity to cure the violation before seeking penalties.

(b) The Director shall maintain a phone line for inquiries and complaints regarding massage businesses and practitioners. (Added by Ord. 269-03, File No. 030995, App. 12/5/2003)

SEC. 1927. FEES.

(a) The application fee for a massage practitioner permit, as provided in Section 1902, shall be $100.00. The annual license fee for a massage practitioner, as provided in Section 1906, shall be $75.00.

(b) The application fee for a massage establishment, as provided in Section 1909, shall be $240.00. The annual license fee for a massage establishment, as provided in Section 1920, shall be $600.

(c) The application fee for a solo practitioner massage establishment, as provided in Section 1909, shall be $240. The annual license fee for a solo practitioner massage establishment, as provided in Section 1920, shall be $400.

(d) The application fee for an outcall massage services permit, as provided in Section 1909, shall be $240.00. The annual license fee for an outcall massage service, as provided in Section 1920, shall be $200.

(e) An advanced massage practitioner holding a solo practitioner massage establishment permit shall not be required to pay any additional permit or annual license fee for an outcall massage service permit.

(f) Beginning with fiscal year 2004-2005, fees set in this Section may be adjusted each year, without further action by the Board of Supervisors, to reflect changes in the relevant Consumer Price Index, as determined by the Controller.

No later than April 15th of each year, the Health Department shall submit its current fee schedule to the Controller, who shall apply the price index adjustment to produce a new fee schedule for the following year.

No later than May 15th of each year, the Controller shall file a report with the Board of Supervisors reporting the new fee schedule and certifying that: (a) the fees produce sufficient revenue to support the costs of providing the services for which each fee is assessed, and (b) the fees do not produce revenue which is significantly more than the costs of providing the services for which each fee is assessed. (Added by Ord. 269-03, File No. 030995, App. 12/5/2003)

SEC. 1928. VIOLATIONS AND PENALTIES.

(a) Any person who violates any provision of this Article or any rule or regulation adopted pursuant to Section 1926 may, after being provided notice and an opportunity to be heard, be subject to an administrative fine not to exceed $1,000 for the first violation of a rule or regulation in a 12-month period, $2,500 for the second violation of the same rule or regulation in a 12-month period, and $5,000 for the third and subsequent violations of the same rule or regulation in a 12-month period; provided, however, that the schedule of administrative fines for a massage practitioner shall be as follows: not to

exceed $250 for the first violation of a rule or regulation in a 12-month period, $500 for the second violation of the same rule or regulation in a 12-month period, and $1,000 for the third and subsequent violations of the same rule or regulation in a 12-month period.

(b) Any permittee who knowingly employs a massage practitioner who is not in possession of a valid permit or who allows such a massage practitioner to perform, operate, or practice in the permittee's place of business may, after being provided notice and an opportunity to be heard, be subject to an administrative fine not to exceed $1,000 for the first violation in a 12-month period, $2,500 for the second violation in a 12-month period, and $5,000 for the third and subsequent violations in a 12-month period.

(c) Administrative fines collected under this Section shall be used to support the Department of Public Health and its Health Code enforcement functions.

(d) Nothing in this Section shall preclude the prosecution of anyone under any of the laws of the State of California. (Added by Ord. 269-03, File No. 030995, App. 12/5/2003)

SEC. 1929. COOPERATIVE EFFORTS WITH LAW ENFORCEMENT.

The Director of Public Health shall work with the Chief of Police on issues of common concern affecting the massage industry, such as protections against violence in massage establishments, crimes against massage practitioners, forced labor, or trafficking.

During the six-month period between adoption of this Article and its effective date, the Director of Public Health shall work with the Chief of Police to develop procedures to verify that permit applicants do not have prior criminal convictions that would disqualify the applicants from receiving a permit under this Article. (Added by Ord. 269-03, File No. 030995, App. 12/5/2003)

SEC. 1930. DISCLAIMER.

In regulating massage establishments and massage services as provided in this Article, the City is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury. (Added by Ord. 269-03, File No. 030995, App. 12/5/2003)

SEC. 1931. SEVERABILITY.

If any of the provisions of this Article or the application thereof to any person or circumstance is held invalid, the remainder of this Article, including the application of such part or provisions to persons or circumstances other than those to which it is held invalid, shall not be affected thereby and shall continue in full force and effect. To this end, the provisions of this Article are severable. (Added by Ord. 269-03, File No. 030995, App. 12/5/2003)

[The next page is 911]

ARTICLE 30: REGULATION OF DIESEL BACKUP GENERATORS

SEC. 2001. FINDINGS AND PURPOSE.

The Board of Supervisors finds and declares the following:

(a) Diesel Backup Generators emit large amounts of smog-forming nitrogen oxides (NOx), particulate matter with a diameter of 10 microns or less (PM_{10}), sulfur oxides and hydrocarbons contributing to ground-level ozone, and reduced visibility.

(b) Diesel exhaust is linked to short and long-term adverse health effects in humans, which include lung cancer, aggravation of respiratory and cardiovascular disease, aggravation of existing asthma, acute respiratory symptoms, and chronic bronchitis and decreased lung function.

(c) In August of 1998, the California Air Resource Board listed diesel exhaust, specifically particulate emissions from diesel fueled engines, as a "toxic air contaminant."

(d) According to the Bay Area Air Quality Management District (BAAQMD), Diesel Backup Generators tend to emit more pollutants than a new well-controlled power plant. In fact, even a clean diesel backup generator may emit more than 20 times as much NOx per kilowatt-hour as a new well-controlled power plant. Older dirtier Diesel Backup Generators may emit 200 times as much NOx.

(e) The Bay Area is currently designated nonattainment for the national ozone standards by the United States Environmental Protection Agency.

(f) The Bay Area is currently designated nonattainment for the state ozone and PM_{10} standards by the California Air Resource Board.

(g) The City and County of San Francisco is concerned about the health hazards posed by diesel emissions polluting the air, and wishes to impose limitations on Diesel Backup Generators to reduce the emission of diesel exhaust. (Added by Ord. 202-02, File No. 012186, App. 9/27/2002)

SEC. 2002. DEFINITIONS.

As used in this Article, the defined terms shall have the following meaning:

(a) "Certificate of Registration" or "Certificate" shall mean a certificate of registration issued pursuant to this Article.

(b) "Commission" shall mean the San Francisco Health Commission as established by Section 4.110 of the San Francisco Charter.

(c) "Department" shall mean the San Francisco Department of Public Health.

(d) "Diesel Backup Generator" shall mean any internal combustion engine or gas turbine with an output rating of 37.3 kilowatt (50 horsepower) or greater and used or designed to be used as a Distributed Generation Unit which may be powered by distillate fuel, such as diesel. Diesel Backup Generator shall not include any portable internal combustion engine or gas turbine registered with the California Air Resources Board pursuant to the California Code of Regulations, Title 13, Chester 9, Article 5.

(e) "Director" shall mean the Director of the Department or her or his designee.

(f) "Distributed Generation Unit" shall mean an electrical generation unit that produces electricity near the place of use.

(g) "Emergency Use" shall mean the temporary operation of the Diesel Backup Generator to provide electrical power during an actual Outage caused by sudden and reasonably unforeseen natural disaster such as earthquake, flood, fire or other acts of Nature, or other events beyond the control of the Owner and/or the Operator, its officers, employees, and contractors.

(h) "Non-Emergency Use" shall mean any operation of the Diesel Backup Generator that does not qualify as Emergency Use.

(1) Non-Emergency Use shall include without limitations: (i) operation of a Diesel Backup Generator to test its ability to perform during an emergency and (ii) operation of a Diesel Backup Generator before or after an actual Outage.

(2) Non-Emergency Use shall not include: (i) reliability testing of the Diesel Backup Generator required by a government regulatory agency in accordance with federal or state laws or regulations; (ii) use of Diesel Backup Generators during emergency drills or maintenance of critical electrical components at sites that have been designated by the City's Office of Emergency Services as the official Citywide emergency command and control centers; and (iii) testing of the Diesel Backup Generator required by any Repair performed on the generator.

(i) "Operator" shall mean any Person who is in control of or operates a Diesel Backup Generator.

(j) "Outage" shall mean the actual loss of normal electrical power service to a facility.

(k) "Owner" shall mean any Person who has equity in and/or legal title to the Diesel Backup Generator.

(l) "Person" shall mean an individual trust, firm, joint stock company, corporation including a government corporation, partnership, association.

(m) "Registrant" shall mean any Person to whom a Certificate is issued pursuant to this Article and any authorized representative, agent or designee of such Person.

(n) "Repair" shall mean any work that restores to optimum or designed usage of the Diesel Backup Generator that has become damaged or non-functional, through the replacement, reconnection, reassemble, and/or adjustment of component(s) of the generator. Repair shall not include periodic maintenance or routine reliability testing recommended by the manufacturer of the Diesel Backup Generator. (Added by Ord. 202-02, File No. 012186, App. 9/27/2002)

SEC. 2003. CERTIFICATE OF REGISTRATION REQUIRED.

(a) **Pre-Existing Diesel Backup Generators.** Not later than one (1) year after the effective date of this Article, no Person shall own or operate a Diesel Backup Generator that was installed prior to the effective date of this Article unless the Person has obtained a Certificate pursuant to this Article.

(b) **New Diesel Backup Generators.** Except as otherwise provided herein, any Person owning or operating a Diesel Backup Generator that is installed after the effective date of this Article in any facility within the City and County of San Francisco shall submit an application pursuant to Section 2004 of this Article within 90 days of the installation. (Added by Ord. 202-02, File No. 012186, App. 9/27/2002)

SEC. 2004. APPLICATION FOR CERTIFICATE.

(a) Any Person required to obtain a Certificate pursuant to this Article shall file an application, providing such information as required

by Subsection (b) and submitting the appropriate fees as specified in this Article. Applicant's failure to submit the required information or fees shall render such submission incomplete and not accepted for filing.

(b) Applicant shall submit the following information:

(1) The Owner of the Diesel Backup Generator and its address;

(2) The Operator of the Diesel Backup Generator, if different from the Owner, and its address;

(3) The name and address of facility in which the Diesel Backup Generator will be used;

(4) The name of the manufacturer of the Diesel Backup Generator;

(5) The model name and/or number of the Diesel Backup Generator;

(6) The model year of the Diesel Backup Generator;

(7) The maximum energy output rating of the Diesel Backup Generator;

(8) Any emission control equipment associated with the Diesel Backup Generator, if any;

(9) A copy of the manufacturer's specifications of the emission rate of the Diesel Backup Generator for criteria and toxic air pollutants and the manufacturer's specifications for testing of the Diesel Backup Generator for reliability purposes, if available;

(10) The method of storage of the fuel for the Diesel Backup Generator; and

(11) Any other information that the Department deems appropriate. (Added by Ord. 202-02, File No. 012186, App. 9/27/2002)

SEC. 2005. ISSUANCE OF CERTIFICATE.

Unless otherwise provided in this Article, upon the acceptance of a completed application for filing, the Department shall issue a Certificate. (Added by Ord. 202-02, File No. 012186, App. 9/27/2002)

SEC. 2006. REQUIREMENTS.

(a) Except as otherwise provided in this Section, the Certificate issued pursuant to this Article shall limit operating hours of a Diesel Backup Generator for Non-Emergency Use to 50 hours each year. Nothing in this Subsection shall prohibit or restrict the Owner or Operator from operating the Diesel Backup Generator for manufacturer's required liability testing that is beyond the hour limitations set forth in this Subsection; Provided that the Owner or Operator submits to the Department the manufacturer's specification which requires operation beyond the annual hour limitations set forth in this Subsection to test the Diesel Backup Generator for reliability purposes in which case the maximum allowable annual hours of operation for Non-Emergency Uses shall be the hours specified in the manufacturer's specification.

(b) Any Diesel Backup Generator installed after the effective date of this Article shall have the best available control technologies as determined by the California Air Resource Board or the Bay Area Air Quality Management District installed to reduce air emissions.

(c) Owner and/or Operator shall conduct periodic maintenance of the Diesel Backup Generator as recommended by the engine manufacturer. The periodic maintenance shall be conducted at least once each calendar year.

(d) Owner and/or Operator of the Diesel Backup Generator shall equip the Diesel Backup Generator with a non-resettable totalizing meter that measures the hours of operation or fuel usage. (Added by Ord. 202-02, File No. 012186, App. 9/27/2002)

SEC. 2007. NOTIFICATION TO THE DEPARTMENT.

Within ten (10) days from the completion of a Repair of a Diesel Backup Generator, the Owner and/or Operator shall submit to the Department documentation regarding the Repair. Such documentation includes, without limitations, (a) the name of the person performing the Repair, (b) the purpose of the Repair, (c) a description of the Repair work performed, (d) the amount of time

for which the Diesel Backup Generator was operated to test the effectiveness of the Repair, and (e) for operation of the Diesel Backup Generator after a Repair that exceeds one (1) hour, documentation demonstrating to the satisfaction of the Director that such operation is needed to test the efficacy of the Repair. (Added by Ord. 202-02, File No. 012186, App. 9/27/2002)

SEC. 2008. RENEWALS AND TRANSFERS.

(a) Certificates issued pursuant to this Article shall be valid for a term of one (1) year.

(b) Every application for a renewal of a Certificate shall be made thirty (30) days before the expiration of such Certificate and shall be accompanied by the appropriate fees set forth in this Article. The renewal application shall include: (1) either (i) a certification from the Registrant that information in the original Certificate of Registration application and any addenda thereto have not changed, or (ii) updated information regarding the operation of the Backup Generator to the Department that is not in the original Certificate of Registration application or addenda thereto and (2) a copy of the monthly logs kept pursuant to Section 2010 of this Article during the term of the prior Certificate.

(c) Any Certificate for which a properly completed application for renewal has been received by the Department pursuant to Subsection (b) of this Section shall remain in effect until: (1) the application for renewal is granted, (2) a decision has been made on the application and all appeals have been exhausted, or (3) the denial of the renewal application and the time for appeal has expired.

(d) The Department shall deny an application for renewal if the Owner and/or Operator failed to comply with any final order issued pursuant to this Article. The Registrant may file an appeal within thirty (30) days from the issuance of the Department's decision on the renewal application. Upon the receipt of a timely filed notice of appeal, the Director shall hold a public hearing pursuant to Section 2015 of this Article. The Department's decision shall be final and deemed a Director's order if the Registrant fails to file a timely appeal.

(e) A Certificate shall be transferable upon a change in ownership of a Diesel Backup Generator; provided that, within thirty (30) days of a change in Ownership, the Department shall be notified of such change. (Added by Ord. 202-02, File No. 012186, App. 9/27/2002)

SEC. 2009. GENERAL PROVISIONS AND DISCLAIMER.

(a) A Certificate issued pursuant to this Article does not take the place of any permit or license required by State, federal, or local laws nor does compliance with the requirements of this Article relieve any party of compliance with any other applicable State, federal or local laws.

(b) Issuance of a Certificate does not constitute authorization to own or operate a Diesel Backup Generator if such ownership and/or operation violates provision of this Article or any other local, federal, or State laws or regulations. (Added by Ord. 202-02, File No. 012186, App. 9/27/2002)

SEC. 2010. RECORD KEEPING.

Owner and/or Operator shall maintain a monthly maintenance and usage log for Diesel Backup Generators regulated under this Article which shall contain the following information: (1) total hours of operation; (2) hours of operation qualifying as Emergency Use; (3) for each Emergency Use, a description of the nature of the emergency condition; (4) hours of operation caused by a Repair; (5) hours of operation attributable to reliability testing; (6) a record of maintenance performed on the Diesel Backup Generator; and (7) a record of all Repair performed on the Diesel Backup Generator. All records kept pursuant to this Section shall be kept for at least three (3) years and maintained at the facility where the Diesel Backup Generator is located unless the Owner and/or Operator receives prior approval from the Department to maintain such records at another location. Such records shall be avail-

able for inspection by the Department upon request. (Added by Ord. 202-02, File No. 012186, App. 9/27/2002)

SEC. 2011. VIOLATIONS.

The following acts or omissions shall be a violation of this Article:

(a) Failure to maintain a current and valid Certificate issued Pursuant to this Article;

(b) Failure to operate the Diesel Backup Generator pursuant to the terms and conditions of a Certificate issued pursuant to this Article;

(c) Failure to comply with any requirements of this Article;

(d) Fraud or willful misrepresentation, or any wilfully inaccurate or false statement made in an application for or renewal of a Certificate;

(e) Fraud or willful misrepresentation, or any willfully inaccurate or false statement made in any report or record required by this Article. (Added by Ord. 202-02, File No. 012186, App. 9/27/2002)

SEC. 2012. DIRECTOR'S AUTHORITY.

The Director shall have the authority to administer and enforce all provisions of this Article. The Director may issue Certificates for Diesel Backup Generators, deny, revoke or suspend any Certificate issued pursuant to this Article; enforce the provisions of this Article by any lawful means available for such purpose; and inspect records of and facilities with Diesel Backup Generators to determine compliance with this Article. (Added by Ord. 202-02, File No. 012186, App. 9/27/2002)

SEC. 2013. ENFORCEMENT ACTIONS.

(a) **Administrative Complaint Order.** Whenever the Department determines that a Person is in violation of this Article, the Department may issue an administrative complaint order requiring the Person to comply with this Article and to assess an administrative penalty set forth in Section 2014 of this Article. The order shall allege sufficient facts to show a violation of this Article. Such order shall be served personally or by certified mail, return receipt requested, upon the Person alleged to be in violation of this Article. A Person who is subject to the administrative complaint order may file an appeal to the Director within thirty (30) days from the issuance of the order. Upon the receipt a timely filed appeal, the Director shall hold a public hearing pursuant to Section 2015 of this Article. The administrative complaint order shall be final and shall be deemed a Director's order if the Person fails to file a timely appeal to the Director. Any administrative complaint order issued shall be approved as to form by the City Attorney.

(b) **Order to Show Cause.** Whenever the Director finds that an Owner and/or Operator is operating a Diesel Backup Generator in violation of this Article, any order or any Certificate issued pursuant to this Article, the Director may issue an order to show cause to the Owner and/or Operator on why the Certificate should not be revoked or suspended. The order to show cause shall specify the date and location of hearing for the order to show cause and shall be served personally or by certified mail, return receipt requested upon the Owner and/or Operator. The Director shall hold a hearing pursuant to Section 2015 of this Article.

(c) **Injunctive Relief.**

(1) Upon failure of any Person to comply with the requirements of this Article, a Certificate, any regulation, or any other order issued by the Director, the City Attorney, upon request by the Director, may petition the proper court for injunctive relief, payment of civil penalties, and any other appropriate remedy, including restraining such Person from continuing any prohibited activity and compelling compliance with lawful requirements.

(2) In any civil action brought pursuant to this Article in which a temporary restraining order, preliminary injunction or permanent injunction is sought, it is not necessary to allege or prove at any state of the proceeding any of the following:

(A) Irreparable damage will occur should the temporary restraining order, preliminary injunction, or permanent injunction not be issued;

(B) The remedy at law is inadequate;

The court shall issue a temporary restraining order, preliminary injunction, or permanent injunction in a civil action brought pursuant to this Article without the allegations and without the proof specified above. (Added by Ord. 202-02, File No. 012186, App. 9/27/2002)

SEC. 2014. PENALTIES.

(a) **Civil Penalties.** Any Person found to be in violation this Article shall be civilly liable to the City in an amount not to exceed six thousand dollars ($6,000) per day per violation.

(b) **Administrative Penalties.** Any Person found to be in violation of this Article shall be civilly liable to the Department in the amount as follows:

(1) For failure to maintain a valid Certificate—up to $200 per day.

(2) For operating or allowing the operation of a Diesel Backup Generator beyond the allowable hours of operation for Non-Emergency Use—up to $250 for each hour beyond the allowable hours. Fractional hours shall be rounded up the next whole hour.

(3) For failing to submit required information or to maintain records of operation for the Diesel Backup Generator—up to $425 per violation.

(4) For providing false information or records to the Department—up to $850 per violation.

(5) For failing to comply with a final Director's Order—up to $2,000 per day.

(c) **Penalty Assessment.** A civil penalty pursuant to Subsection (a) of this Section shall not be recoverable for a violation if an administrative penalty was imposed pursuant to Subsection (b) of this Section for the same violation. Each day in which a Person fails to comply with the requirements of this Article shall be a separate and distinct violation.

(d) **Factors Considered in Penalty Assessment.** In determining the appropriate amount of civil or administrative penalties, the court or the Director shall consider the following: (1) the nature and persistence of the violation, (2) the frequency of past violations, (3) any action taken to mitigate the violation, (4) the economic benefits accrued to the violator as a result of the violation, and (5) the financial burden to the violator.

(e) **Remedies not Exclusive.** Remedies under this Section are in addition to and do not supersede or limit any and all other remedies, civil or criminal, that are available in law or equity. (Added by Ord. 202-02, File No. 012186, App. 9/27/2002)

SEC. 2015. DIRECTOR'S HEARING.

Any hearing required by this Article shall be conducted as follows:

(a) The Director shall serve a notice of hearing or order to show cause at least thirty (30) days before the date of the public hearing to the Person alleged to be in violation of this Article. Such notice or order to show cause shall specify the purpose of the public hearing and notify the Person of the date, time, and the location of the public hearing. Notices of hearing or order to show cause shall also be given by publication in a newspaper of general circulation in the City for at least two (2) days and not less than ten (10) days before the date of the hearing. Written notices setting forth the date of the public hearings shall be sent to any interested party who has requested, in writing, to be notified such hearings. Upon a written request from the Person submitted at least two (2) business days before the date of the public hearing, the Director may continue the date of the hearing once for not more than thirty (30) days. The Person requesting the continuance shall reimburse the Department for the costs of re-noticing the public hearing.

(b) In any public hearing held pursuant to this Section, all interested parties shall have the right to offer testimonial, documentary, and tangible evidence bearing on the issues, to see and copy all documents and other information the City relies on in the proceeding, to be represented by counsel, and to confront and cross-examine any witness against them. Any public hearing held pursuant to this Section shall be electronically recorded.

(c) Within thirty (30) days after the date of the hearing, the Director shall issue a written decision and order containing finding of facts and statement of reasons in support of the decision. Such decision shall be served upon the Person alleged to be in violation of this Article either personally or by certified mail, return receipt requested, and shall be served on other interested party who provided testimony at the hearing by first class mail, if such party requested at or before the hearing that the order be sent to them. The Director's order shall be final. The order shall apprise the Person alleged to be in violation of this Article of his or her right to seek judicial review of the Director's Order pursuant to Section 1094.6 of the California Code of Civil Procedures. (Added by Ord. 202-02, File No. 012186, App. 9/27/2002)

SEC. 2016. COLLECTION.

(a) Cost and charges incurred by the Department by reason of the abatement of any violation of this Article, including but not limited to inspection costs, and any final administrative penalties assessed against a Person or violation of this Article shall be an obligation owed to the City by the Person against whom the final administrative penalty was assessed. Such obligation may be collected by means of the imposition of a lien against the Person against whom the final administrative penalty was assessed if such Person is the property owner of the facility upon which the violation of this Article had occurred. The Department shall mail to the Person against whom the final administrative penalty was assessed a notice of the amounts due and a warning that a lien proceeding will be initiated against the Property on which the Backup Generator found to be in violation of this Article is located if the amounts are not paid within thirty (30) days after the mailing of the notice, when appropriate.

(b) Liens shall be created and assessed in accordance with the requirements of Article XX of Chapter 10 of the San Francisco Administrative Code (commencing with Section 10.230). (Added by Ord. 202-02, File No. 012186, App. 9/27/2002)

SEC. 2017. FEE SCHEDULE.

(a) All Applicants for a Certificate or a renewal of a Certificate shall submit an application fee of one hundred and sixty-three dollars ($163).

(b) In addition to the fee provided for in Subsection (a) of this Section, applicants who are not regulated under Article 21 of this Code shall pay an additional fee of one hundred and thirty dollars ($130). (Added by Ord. 202-02, File No. 012186, App. 9/27/2002)

SEC. 2018. ANNUAL FEE ADJUSTMENT.

After the effective date of this Article, on July 1st of each year, the fees set forth therein shall be increased by four percent (4%). (Added by Ord. 202-02, File No. 012186, App. 9/27/2002)

SEC. 2019. DELINQUENT FEES.

(a) Any person who fails to submit a timely application to register or to renew a registration or fails to submit the application fee specified in Section 2016(a) of this Code shall be subject to a onetime late-penalty fee of one hundred and sixty-three dollars ($163).

(b) All fees shall be due and payable within 30 days of the date of issuance of a notice of payment due. In addition to any other penalties provided for in this Article, delinquent fees shall be subject to a penalty of ten percent (10%) plus interest at the rate of one percent (1%) per month on the outstanding balance which shall be added to the amount of the fee collected from the date that payment is due. (Added by Ord. 202-02, File No. 012186, App. 9/27/2002)

SEC. 2020. REFUND OF FEES.

Registration applicant shall not be entitled to a refund or rebate of a fee because the Certificate is denied or the application is withdrawn. Registration fees are not refundable if the Owner and/or Operator discontinues the use of the Diesel Backup Generator prior to the expiration of the Certificate. (Added by Ord. 202-02, File No. 012186, App. 9/27/2002)

SEC. 2021. REGULATIONS.

(a) The Director may adopt and, from time to time, may amend reasonable regulations implementing the provisions and intent of this Article. The regulations shall be approved by the Commission at a public hearing. In addition to the notices required by law, before the Commission approves the issuance or amendment of any rule or regulation pursuant to this Article, the Director shall provide a 30-day public comment period by providing published notice in an official newspaper of general circulation in the City and County of San Francisco of the intent to issue or amend the rule or regulation.

(b) Regulations Promulgated by the Director and approved by the Commission shall be maintained in the Office of the Clerk of the Board of Supervisors. (Added by Ord. 202-02, File No. 012186, App. 9/27/2002)

SEC. 2022. DISCLAIMER OF LIABILITY.

(a) The degree of protection required by this Article is considered reasonable for regulatory purposes. This Article shall not create liability on the part of the City, or any of its officers or employees for any damages that result from reliance on this Article or any administrative decision lawfully made pursuant to this Article.

(b) In undertaking this program to obtain disclosure of information relating to the location of Diesel Backup Generators, the City and County of San Francisco is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury.

(c) All inspections specified in this Article shall be at the discretion of the City and nothing in this Article shall be construed as requiring the City to conduct any such inspection nor shall any actual inspection made imply a duty to conduct any other inspection. (Added by Ord. 202-02, File No. 012186, App. 9/27/2002)

SEC. 2023. DUTIES ARE DISCRETIONARY.

Subject to the limitations of due process, notwithstanding any other provision of this Code whenever the words "shall" or "must" are used in establishing a responsibility or duty of the City, its elected or appointed officers, employees, or agents, it is the legislative intent that such words establish a discretionary responsibility or duty requiring the exercise of judgment and discretion. (Added by Ord. 202-02, File No. 012186, App. 9/27/2002)

SEC. 2024. SEVERABILITY.

If any section, subsection, clause, phrase or portion of this Article is for any reason held invalid or unconstitutional by any court or federal or State agency of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof (Added by Ord. 202-02, File No. 012186, App. 9/27/2002)

SEC. 2025. SUNSET PROVISION.

In the event that either the Bay Area Air Quality Management District or the California Air Resources Board adopts enforceable regulations applicable to Diesel Backup Generators regulated under this Article that are as or more stringent than the operational hours limitation for Non-Emergency Uses for such generators, the Director shall notify the Board of Supervisors of such regulations. This Article shall become null and void on the a effective date of such regulations unless the Board of Supervisors amends this Article establishing a more stringent operational hours limitation for Non-Emergency Uses than such regulations. (Added by Ord. 202-02, File No. 012186, App. 9/27/2002)

ARTICLE 31: HUNTERS POINT SHIPYARD

SEC. 3100. HUNTERS POINT SHIPYARD.

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

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

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

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

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

E. On December 3, 2004, the Navy transferred portions of Parcel A to the San Francisco Redevelopment Agency. (Added by Ord. 303-04, File No. 041541, App. 12/24/2004)

SEC. 3101. DEFINITIONS.

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

(a) "Applicant" means a person applying for any of the following authorizations for subsurface activities on portions of the Hunters Point Shipyard subject to this Ordinance: (i) any building or grading permit that involves the disturbance of at least 50 cubic yards (38.23m^3) of soil; (ii) any permit pursuant to the Public Works Code that involves the disturbance of at least 50 cubic yards (38.23m^3) of soil; (iii) any improvement plan pursuant to Division 3 of the Subdivision Code that involves the disturbance of at least 50 cubic yards (38.23m^3) of soil; (iv) any permit to operate or approval to close an underground tank, pursuant to Sections 1120 and 1120.1 of the Health Code that involves the disturbance of at least 50 cubic yards (38.23m^3) of soil; or (v) any well construction or destruction permit pursuant to Article 12B of the Health Code. An Applicant does not include a person applying for a permit for the sole purpose of conducting environmental characterization.

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

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

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

(e) "Parcel A" means that parcel or parcels of land of the Hunters Point Shipyard as indicated on the Map filed with the Recorder of the City and County of San Francisco on December 3, 2004 situated in the City and County of San Francisco, that was transferred to the San Francisco Redevelopment Agency by the U.S. Navy.

(f) "Prescribed Subsurface Activity Area" means the specific location and horizontal and vertical extent of the proposed disturbance, excavation, grading or other subsurface activity defined using coordinates compatible wit the GIS to the extent feasible. (Added by Ord. 303-04, File No. 041541, App. 12/24/2004; amended by Ord. 113-05, File No. 050547, App. 6/10/2005)

SEC. 3102. APPLICABILITY OF ARTICLE.

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

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

(c) The following sections of this Article apply:

All Parcels Section 3100 et seq.
Parcel A Section 3120 et seq.
Parcel B Section 3130 et seq.
Parcel C Section 3140 et seq.
Parcel D Section 3150 et seq.
Parcel E Section 3160 et seq.
Parcel F Section 3170 et seq.

(d) Prior to applying for a permit or improvement plan any person that desires to comply with this ordinance may enter into a voluntary agreement with the Director. The voluntary agreement shall be signed as to form by the City

Attorney and shall require the person to comply with the substantive requirements of this Article and any regulations adopted by the Director; require payment of fees; and provide for Director notification to the relevant department that the person has complied with this Article.

(e) Compliance with this Article does not relieve any person of compliance with any applicable federal, state, regional or local law, and does not take the place of compliance with any requirement of any regulatory agency that has jurisdiction to enforce any legal requirement that this Article is intended to address. (Added by Ord. 303-04, File No. 041541, App. 12/24/2004)

SEC. 3103. REPORTS BY DIRECTOR.

The Director shall monitor compliance with this Article and provide an annual summary of compliance with this Article to the Board of Supervisors. (Added by Ord. 303-04, File No. 041541, App. 12/24/2004)

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

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

In undertaking to require Applicants to comply with this Article, the City and County of San Francisco is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing on itself or on its officers and employees, any obligation for breach of which it is liable for money damages to any person who claims that such breach proximately caused injury.

All inspections specified or authorized in this Article shall be conducted at the discretion of the City and nothing in this Article shall be construed as requiring the City to conduct any such inspection nor shall any actual inspection made imply a duty to conduct any other inspection. (Added by Ord. 303-04, File No. 041541, App. 12/24/2004)

SEC. 3105. CONSTRUCTION ON CITY PROPERTY.

All departments, boards, commissions and agencies of the City and County of San Francisco that authorize construction or improvements on land under their jurisdiction under circumstances where no building, grading, street use or other permit or approval is required pursuant to the San Francisco Municipal Codes shall adopt rules and regulations to insure that the procedures set forth in this Article are followed. The San Francisco Redevelopment Agency and the departments of Public Health, Public Works, and Building Inspection shall assist other departments, boards, commissions and agencies to ensure that these requirements are met. (Added by Ord. 303-04, File No. 041541, App. 12/24/2004)

SEC. 3106. FORMER LANDFILL DISPOSAL AREAS.

Upon receipt of a site evaluation report from an Applicant, the Director, in consultation with the Local Enforcement Agency and the California Integrated Waste Management Board, shall determine whether the Prescribed Subsurface Activity Area is subject to the provisions of the California Integrated Waste Management Act (Cal. Public Resources Code § 40000 et seq.) as amended, relating to development on or near a former landfill disposal site.

(a) For any Prescribed Subsurface Activity Area or portion thereof that is subject to such provisions, the Director shall require the Local Enforcement Agency to approve proposed land uses and determine any necessary protective measures or requirements to the extent necessary to comply with California Code of Regula-

tions, Title 27, Chapter 3, Subchapter 4, Article 6 (Section 20917 et seq.) and Subchapter 5 (Section 20950 et seq.), as amended.

(b) For any Prescribed Subsurface Activity Area or portion thereof that is located within 1,000 feet of a former landfill disposal site, but which is not subject to the above- referenced provisions of the California Integrated Waste Management Act, the Director shall review any proposed structures to ensure that the construction or use of the structure will not pose a threat to public health and safety or the environment. In making this determination, the Director shall consider the potential for adverse impacts on public health and safety and the environment, taking into account the following: the amount, nature and age of solid waste in the landfill disposal area; current and projected gas generation; effectiveness of existing controls; proximity of the proposed land uses to landfill disposal area; and other relevant geographic or geologic features. Based on these factors, the Director shall determine whether the structure must be designed and constructed in accordance with the following measures or requirements (or other design providing an equivalent degree of protection against gas migration into the structure): installation of a geomembrane or equivalent system with low permeability to landfill gas between the concrete floor slab of the structure and subgrade; installation of a permeable layer of open graded material of clean aggregate with a minimum thickness of 12 inches between the geomembrane and the subgrade or slab; installation of a geotextile filter to prevent the introduction of fines into the permeable layer; installation of perforated venting pipes, designed to operate without clogging, within the permeable layer; construction of a venting pipe with the ability to be connected to an induced draft exhaust system; installation of automatic methane gas sensors within the permeable gas layer, and inside the structure to trigger an audible alarm when methane gas concentrations are detected; and/or appropriate periodic methane gas monitoring, including monitoring inside structures, with reporting requirements and a contingency and mitigation plan.

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

(c) If the Director determines under subsections (a) or (b) of this Section that protective measures or requirements are necessary, the Director shall inform the relevant department in writing that such measures or requirements must become conditions of the permit or improvement plan. (Added by Ord. 303-04, File No. 041541, App. 12/24/2004)

SEC. 3107. RULES AND REGULATIONS.

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

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

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

(d) The Director shall maintain and update the GIS as site data is received pursuant to this Article and provide public access to the GIS.

(e) The Director shall maintain for public distribution a map that reflects the boundaries of each Parcel of the Hunters Point Naval Shipyard. The map shall include former landfill disposal sites and a line representing the 1,000 foot perimeter from those sites. For Parcel A, the Director shall adopt a map showing historic fill areas and utility lines existing prior to the date of transfer of Parcel A from Navy ownership. (Added by Ord. 303-04, File No. 041541, App. 12/24/2004)

SEC. 3108. FEES.

The Director is authorized to charge the following fees to defray the costs of document processing and review, consultation with Appli-

cants, and administration of this Article: for fiscal year 2004-2005: (1) an initial fee of $511.00 upon submission of the site evaluation report; and (2) an additional fee of $137.00 per hour for document processing and review and applicant consultation exceeding three hours or portion thereof payable on an ongoing basis; for fiscal year 2005-2006: (1) an initial fee of $514.00; and (2) an additional fee of $145.00 per hour exceeding three hours or portion thereof; for fiscal year 2006-2007: (1) an initial fee of $539.00; and (2) an additional fee of $153.00 per hour exceeding three hours or portion thereof. Beginning with fiscal year 2007-2008, no later than April 15 of each year, the Controller shall adjust the fees provided in this Article to reflect changes in the relevant Consumer Price Index, without further action by the Board of Supervisors. In adjusting the fees, the Controller may round these fees up or down to the nearest dollar, half-dollar or quarter-dollar. The Director shall perform an annual review of the fees scheduled to be assessed for the following fiscal year and shall file a report with the Controller no later than May 1st of each year, proposing, if necessary, an adjustment to the fees to ensure that costs are fully recovered and that fees do not produce significantly more revenue than required to cover the costs of operating the program. The Controller shall adjust fees when necessary in either case. (Added by Ord. 6-05, File No. 041664, App. 1/8/2005)

SEC. 3109. VIOLATIONS.

In addition to any other provisions of this Article, fraud, willful misrepresentation, or any willfully inaccurate or false statement in any report required by this Article shall constitute a violation of this Article. (Added by Ord. 303-04, File No. 041541, App. 12/24/2004)

SEC. 3110. ENFORCEMENT ACTIONS.

The Director shall have authority to administer and enforce all provisions of this Article and may enforce the provisions of this Article by any lawful means available for such purpose, including taking any action authorized pursuant to Article 21, Sections 1133(a)-(d), (f), and (h)-(i) of the Health Code. (Added by Ord. 303-04, File No. 041541, App. 12/24/2004)

SEC. 3111. RESERVED.

SEC. 3112. REMEDIES NOT EXCLUSIVE.

Remedies under this Article are in addition to and do not supersede or limit any and all other remedies, civil or criminal. (Added by Ord. 303-04, File No. 041541, App. 12/24/2004)

SEC. 3120. PARCEL A INSTITUTIONAL CONTROLS.

An Applicant must comply with institutional controls included in the deed conveying ownership of Parcel A from the United States Navy to the San Francisco Redevelopment Agency pursuant to the final FOST for Parcel A to the extent such institutional controls apply to activities authorized by a permit or improvement plan subject to this Article. The Director will advise the relevant department of the specific requirement pursuant to the deed; require compliance with the institutional controls as a condition of the permit or improvement plan; and coordinate with the relevant department to monitor and enforce compliance with such institutional controls. (Added by Ord. 303-04, File No. 041541, App. 12/24/2004)

SEC. 3121. PARCEL A SITE EVALUATION AND SITE MITIGATION.

(a) An Applicant must submit the following, satisfactory to the Director, as further specified in regulations adopted by the Director: (i) site evaluation report; (ii) dust control plan; (iii) disposal plan (if applicable); (iv) health and safety plan; (v) stormwater and erosion control plan; and (vi) a determination of whether additional information is necessary to adequately characterize the Prescribed Subsurface Activity Area. The plans required by (ii)—(v) 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) **Tier I Areas.** If a portion of a Prescribed Subsurface Activity Area has been used continuously only for residential purposes or is not located on historic fill (as defined in a map maintained by the Director pursuant to Section 3107(e)) or is not or has not been underlain by utility lines (as defined on a map maintained by the Director pursuant to Section 3107(e)), and, in any case, there is no evidence that hazardous substances are present, no additional information or sampling will be necessary with respect to such portions of the Prescribed Subsurface Activity Area. The Director shall provide the Applicant and the relevant department with written notification that the Applicant has complied with the requirements of this Article as to such portions, and must comply with the plans listed in subsection (a)(ii)—(v) and all laws applicable to soil removal and off-site disposal.

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

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

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

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

(c) Upon completion of the activity authorized by the permit or improvement plan, the Applicant shall submit a closure report to the Director including: additional information or data obtained, including information on unanticipated conditions; correcting any information previously submitted; and certifying implementa-

tion of the plans listed in subsection (a)(ii)—(v), any applicable risk management or site mitigation plan and all laws applicable to soil removal. (Added by Ord. 303-04, File No. 041541, App. 12/24/2004)

SEC. 3130. PARCEL B [RESERVED].

SEC. 3140. PARCEL C [RESERVED].

SEC. 3150. PARCEL D [RESERVED].

SEC. 3160. PARCEL E [RESERVED].

SEC. 3170. PARCEL F [RESERVED].

SEC. 3180. SEVERABILITY.

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Article or any part thereof, is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Section or any part thereof. The Board of Supervisors hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional or invalid or ineffective. (Added by Ord. 303-04, File No. 041541, App. 12/24/2004)

[The next page is 945]

ARTICLE 32: DISEASE PREVENTION DEMONSTRATION PROJECT

SEC. 3200. DISEASE PREVENTION DEMONSTRATION PROJECT.

(a) FINDINGS. The Board of Supervisors finds and declares the following:

(1) The sharing of syringes is the leading source of AIDS in women and children and is also the leading cause of the transmission of the hepatitis C.

(2) Medical evidence has established that providing clean syringes to injection drug users prevents the transmission of HIV and other blood borne infections while not increasing drug abuse.

(3) Based on this medical data, the U.S. Department of Health and Human Services advises all health care workers to counsel patients who continue to use injection drugs to use a new sterile syringe each time they prepare and inject drugs. In addition, the American Medical Association approved a resolution on June 14, 2000 "to strongly support the ability of physicians to prescribe syringes and needles to patients with injection drug addiction." (AMA House of Delegates Resolution 416, Physician Prescription of Needles to Addicted Patients.)

(4) Sections 4145 and 4147 of the California Businesses and Professions Code and Section 11364 of the Health and Safety Code have been amended, and Sections 121285 et seq. of the Health and Safety Code has been added, to allow pharmacists participating in a local Disease Prevention Demonstration Project to sell or furnish 10 or fewer hypodermic needles or syringes at any one time to a person 18 years of age or older without a prescription during the period of January 1, 2005 and December 31, 2010.

(5) Under Section 11364 of the Health and Safety Code, as amended, no person within the physical boundaries of the City and County of San Francisco who has in their possession 10 or fewer needles or syringes for personal use obtained from an authorized source in compliance with the Section 11364(c) shall be subject to Section 11364(a) of the Health and Safety Code.

(6) The Disease Prevention Demonstration Project will terminate on December 31, 2010.

(7) The State Department of Health Services, in conjunction with an advisory panel, will evaluate the effects of allowing the sale of hypodermic needles or syringes without prescription and will submit a report to the Governor and Legislation by January 15, 2010.

(b) LOCAL DISEASE PREVENTION DEMONSTRATION PROJECT. The health department shall initiate a local Disease Prevention Project satisfying the requirements for such a program as set forth in Section 121285 et seq. of the Health and Safety Code. The health department shall be responsible for the following:

1. Create and maintain a registry for pharmacies located within the physical boundaries of the City and County of San Francisco desiring to participate in the Local Disease Prevention Demonstration Project, said registry to include:

(A) A contact name and related information for each pharmacy.

(B) Certification in the form of an attestation by an individual authorized to sign on behalf of the pharmacy that at the time of furnishing or sale of hypodermic needles or syringes, the pharmacy will provide customers with written or oral information on all the following:

i. How to access drug treatment.

ii. How to access testing and treatment for HIV and hepatitis C.

iii. How to safely dispose of sharps waste.

2. Maintain a list of all pharmacies that have registered with the department's Disease Prevention Demonstration Project. Each such registered pharmacy shall also register with the San Francisco Safe Needle Disposal Program. Pharmacies registered with the Disease Prevention Demonstration Project shall notify the department of any changes to the registration information as soon as possible under the circumstances, including notification to withdraw from the program.

3. Registration information may be included in a resource directory for use by consumers and providers.

4. The health department shall make available to participating pharmacies written information that may be provided or reproduced to be provided in writing or orally by the pharmacy at the time of furnishing or the sale of nonprescription hypodermic needles or syringes including information on how to access drug treatment; how to access testing and treatment for HIV and hepatitis C and how to dispose of sharps waste.

5. The health department shall pass regulations as it deems necessary to implement the Disease Prevention Demonstration Project.

6. The department's obligations under these sections are subject to the budgetary and fiscal provisions of the Charter. (Added by Ord. 44-05, File No. 041611, App. 3/12/2005)

SEC. 3201. LIMITATION OF LIABILITY.

By adopting this Article, the City and County of San Francisco is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such a breach proximately caused injury. (Added by Ord. 44-05, File No. 041611, App. 3/12/2005)

SEC. 3202. SEVERABILITY.

If any section, subsection, clause, phrase or portion of this Chapter is for any reason held invalid or unconstitutional by any court or federal or state agency of competent jurisdiction, such portion shall be deemed a separate, distinct and such holding shall not affect the validity of the remaining portions thereof. (Added by Ord. 44-05, File No. 041611, App. 3/12/2005)

ARTICLE 33: MEDICAL CANNABIS ACT

SEC. 3301. DEFINITIONS.

For the purposes of this Article:

(a) "Cannabis" means marijuana and all parts of the plant Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It includes marijuana infused in foodstuff. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seeds of the plant are incapable of germination.

(b) "City" means the City and County of San Francisco.

(c) "Convicted" means having pled guilty or having received a verdict of guilty, including a verdict following a plea of nolo contendere, to a crime.

(d) "Director" means the Director of Public Health or any individual designated by the Director to act on his or her behalf, including but not limited to inspectors.

(e) "Excessive profits" means the receipt of consideration of a value substantially higher than. the reasonable costs of operating the facility. Such reasonable costs shall include expenses for rent or mortgage, utilities, employee costs, furniture, maintenance, or reserves maintained in a segregated account set aside exclusively for potential financial or legal liability.

(f) "Medical cannabis dispensary" means any association, cooperative, or collective of ten or more qualified patients or primary caregivers that facilitates the lawful distribution of medical cannabis.

(g) "Medical Cannabis Identification Card" or "Identification Card" means a document issued by the State Department of Health Services pursuant to California Health and Safety Code Sections 11362.7 et seq. or the City pursuant to Health Code Article 28 that identifies a person authorized to engage in the medical use of cannabis and the person's designated primary caregiver, if any, or identifies a person as a primary caregiver for a medical cannabis patient.

(h) "Permittee" means the owner, proprietor, manager, or operator of a medical cannabis dispensary or other individual, corporation, or partnership who obtains a permit pursuant to this Article.

(i) "Primary caregiver" shall have the same definition as California Health and Safety Code Section 11362.7 et seq., and as may be amended, and which defines "primary caregiver" as an individual, designated by a qualified patient or by a person with an identification card, who has consistently assumed responsibility for the housing, health, or safety of that patient or person, and may include a licensed clinic, a licensed health care facility, a residential care facility, a hospice, or a home health agency as allowed by California Health and Safety Code Section 11362.7(d)(1-3).

(j) "Qualified patient" shall have the same definition as California Health and Safety Code Section 11362.7 et seq., and as may be amended, and which states that a "qualified patient" means a person who is entitled to the protections of California Health and Safety Code Section 11362.5, but who does not have a valid medical cannabis identification card. For the purposes of this Article, a "qualified patient who has a valid identification card" shall mean a person who fulfills all of the requirements to be a "qualified patient" under California Health and Safety Code Section 11362.7 et seq. and also has a valid medical cannabis identification card (Added by Ord. 275-05, File No. 051250, App. 11/30/2005; Ord. 225-07, File No. 070667, App. 10/2/2007)

SEC. 3302. MEDICAL CANNABIS GUIDELINES.

Pursuant to the authority granted under Health and Safety Code section 11362.77, the City and County of San Francisco enacts the following medical cannabis guidelines:

(a) A qualified patient, person with a valid identification card, or primary caregiver may possess no more than eight ounces of dried cannabis per qualified patient. In addition, a qualified patient, person with a valid identification card, or primary caregiver may also maintain no more than twenty-four (24) cannabis plants par qualified patient or up to 25 square feet of total garden canopy measured by the combined vegetative growth area.

(b) If a qualified patient, person with an identification card, or primary caregiver has a doctor's recommendation that this quantity does not meet the qualified patient's medical needs, the qualified patient, person with an identification card, or primary caregiver may possess an amount of cannabis consistent with the patient's needs.

(c) Only the dried mature processed flowers of female cannabis plant or the plant conversion shall be considered when determining allowable quantities of cannabis under this section. (Added by Ord. 275-05, File No. 051250, App. 11/30/2005)

SEC. 3303. PERMIT REQUIRED FOR MEDICAL CANNABIS DISPENSARY.

Except for research facilities, it is unlawful to operate or maintain, or to participate therein, or to cause or to permit to be operated or maintained, any medical cannabis dispensary without first obtaining a final permit pursuant to this Article. It is unlawful to operate or maintain, or to participate therein, or to cause or to permit to be operated or maintained, any medical cannabis dispensary with a provisional permit issued pursuant to this Article. (Added by Ord. 275-05, File No. 051250, App. 11/30/2005; Ord. 225-06, File No. 060032, Effective without the signature of the Mayor)

SEC. 3304. APPLICATION FOR MEDICAL CANNABIS DISPENSARY PERMIT.

(a) Every applicant for a medical cannabis dispensary permit shall file an application with the Director upon a form provided by the Director and pay a non-refundable permit application fee of $6691.00 to cover the costs to all City departments of investigating and processing the application and any applicable surcharges, exclusive of filing fees for appeals before the Board of Appeals. Beginning with fiscal year 2006-2007, the application fee may be adjusted each

year, without further action by the Board of Supervisors, to reflect changes in the relevant Consumer Price Index, as determined by the Controller. No later than April 15th of each year, the Health Department shall, in collaboration with the Tax Collector's Office, submit the application fee to the Controller, who shall apply the price index adjustment to produce a new application fee for the following year. No later than May 15th of each year, the Controller shall file a report with the Board of Supervisors reporting the new application fee and certifying that: (a) the application fee produces sufficient revenue to support the costs of providing the services for which the annual fee is being charged and (b) the application fee does not produce revenue that exceeds the costs of providing the services for which the application fee is charged. Notwithstanding the procedures set forth in this Section, the Board of Supervisors, in its discretion, may modify the application fee by ordinance at any time.

(b) The permit application form shall provide clear notice to applicants that the California Fire Code includes a requirement, among others that may apply, that an establishment obtain a place of assembly permit if it will accommodate 50 or more persons based on its square footage.

(c) The applicant for a medical cannabis dispensary permit shall set forth, under penalty of perjury, following on the permit application:

(1) The proposed location of the medical cannabis dispensary;

(2) The name and residence address of each person applying for the permit and any other person who will be engaged in the management of the medical cannabis dispensary;

(3) A unique identifying number from at least one government-issued form of identification, such as a social security card, a state driver's license or identification card, or a passport for of each person applying for the permit and any other person who will be engaged in the management of the medical cannabis dispensary;

(4) Written evidence that each person applying for the permit and any other person who will be engaged in the management of the medical cannabis dispensary is at least 18 years of age;

(5) All felony convictions of each person applying for the permit and any other person who will be engaged in the management of the medical cannabis dispensary;

(6) Whether cultivation of medical cannabis shall occur on the premises of the medical cannabis dispensary;

(7) Whether smoking of medical cannabis shall occur on the premises of the medical cannabis dispensary;

(8) Whether food will be prepared, dispensed or sold on the premises of the medical cannabis dispensary; and

(9) Proposed security measures for the medical cannabis dispensary, including lighting and alarms, to ensure the safety of persons and to protect the premises from theft.

(e) If the applicant is a corporation, the applicant shall set forth the name of the corporation exactly as shown in its articles of incorporation, and the names and residence addresses of each of the officers, directors and each stockholder owning more than 10 percent of the stock of the corporation. If the applicant is a partnership, the application shall set forth the name and residence address of each of the partners, including limited partners. If one or more of the partners is a corporation, the provisions of this Section pertaining to a corporation apply.

(f) The Director is hereby authorized to require in the permit application any other information including, but not limited to, any information necessary to discover the truth of the matters set forth in the application.

(g) The Department of Public Health shall make reasonable efforts to arrange with the Department of Justice and with DOJ-certified fingerprinting agencies for fingerprinting services and criminal background checks for the purposes of verifying the information provided under Section 3304(c)(5) and certifying the listed individuals as required by Section 3307(c)(4).

The applicant or each person listed in Section 3304(c)(5) shall assume the cost of fingerprinting and background checks, and shall execute all forms and releases required by the DOJ and the DOJ-certified fingerprinting agency. (Added by Ord. 271-05, File No. 051747, App. 11/30/2005; amended by Ord. 273-05, File No. 051748, App. 11/30/2005; Ord. 275-05, File No. 051250, App. 11/30/2005; Ord. 225-06, File No. 060032, Effective without the signature of the Mayor; Ord. 225-07, File No. 070667, App. 10/2/2007)

SEC. 3305. REFERRAL TO OTHER DEPARTMENTS.

(a) Upon receiving a completed medical cannabis dispensary permit application and permit application fee, the Director shall immediately refer the permit application to the City's Planning Department, Department of Building Inspection, Mayor's Office on Disability, and Fire Department.

(b) Said departments shall inspect the premises proposed to be operated as a medical cannabis dispensary and confirm the information provided in the application and shall make separate written recommendations to the Director concerning compliance with the codes that they administer. (Added by Ord. 275-05, File No. 051250, App. 11/30/2005; Ord. 225-06, File No. 060032, Effective without the signature of the Mayor; Ord. 225-07, File No. 070667, App. 10/2/2007)

SEC. 3306. NOTICE OF HEARING ON PERMIT APPLICATION.

(a) After receiving written approval of the permit application from other City Departments as set out in Section 3305, and notice from the Department of Building Inspection that it has approved a building permit, the Director shall fix a time and place for a public hearing on the application, which date shall not be more than 45 days after the Director's receipt of the written approval of the permit application from other City Departments.

(b) No fewer than 10 days before the date of the hearing, the permit applicant shall cause to be posted a notice of such hearing in a conspicuous place on the property at which the proposed medical cannabis dispensary is to be operated. The applicant shall comply with any requirements regarding the size and type of notice specified by the Director. The applicant shall maintain the notice as posted the required number of days. (Added by Ord. 275-05, File No. 051250, App. 11/30/2005; Ord. 225-06, File No. 060032, Effective without the signature of the Mayor)

SEC. 3307. ISSUANCE OF MEDICAL CANNABIS DISPENSARY PERMIT.

(a) Within 14 days following a hearing, the Director shall either issue a provisional permit or mail a written statement of his or her reasons for denial thereof to the applicant.

(b) In recommending the granting or denying of a provisional permit and in granting or denying the same, the Director shall give particular consideration to the capacity, capitalization, complaint history of the applicant and any other factors that in their discretion he or she deems necessary to the peace and order and welfare of the public. In addition, prior to granting a provisional permit, the Director shall review criminal history information provided by the Department of Justice for the purpose of certifying that each person applying for the permit and any other person who will be engaged in the management of the medical cannabis dispensary has not been convicted of a violent felony within the State of California, as defined in Penal Code section 667.5(c), or a crime that would have constituted a violent felony as defined in Penal Code section 667.5(c) if committed within the State of California. However, the Director may certify and issue a medical cannabis dispensary provisional permit to any individual convicted of such a crime if the Director finds that the conviction occurred at least five years prior to the date of the permit application or more than three years have passed from the date of the termination of a penalty for such conviction to the date of the permit application and, that no subsequent felony convictions of any nature have occurred.

(c) No medical cannabis dispensary provisional permit shall be issued if the Director finds:

(1) That the applicant has provided materially false documents or testimony; or

(2) That the applicant has not complied fully with the provisions of this Article; or

(3) That the operation as proposed by the applicant, if permitted, would not have complied will all applicable laws, including, but not limited to, the Building, Planning, Housing, Police, Fire, and Health Codes of the City, including the provisions of this Article and regulations issued by the Director pursuant to this Article; or

(4) That the permit applicant or any other person who will be engaged in the management of the medical cannabis dispensary has been convicted of a violent felony as defined in Penal Code section 667.5(c) within the State of California or a crime that would have constituted a violent felony as defined in Penal Code section 667.5(c) if committed within the State of California. However, the Director may issue a medical cannabis dispensary provisional permit to any individual convicted of such a crime if the Director finds that the conviction occurred at least five years prior to the date of the permit application or more than three years have passed from the date of the termination of a penalty for such conviction to the date of the permit application and, that no subsequent felony convictions of any nature have occurred; or

(5) That a permit for the operation of a medical cannabis dispensary, which permit had been issued to the applicant or to any other person who will be engaged in the management of the medical cannabis dispensary, has been revoked, unless more than five years have passed from the date of the revocation to the date of the application; or

(6) That the City has revoked a permit for the operation of a business in the City which permit had been issued to the applicant or to any other person who will be engaged in the management of the medical cannabis dispensary unless more than five years have passed from the date of the application to the date of the revocation.

(d) Applicants with provisional permits shall secure a Certificate of Final Completion and Occupancy as defined in San Francisco Building Code Section 307 and present it to the Director, and the Director shall issue the applicant a final permit.

(e) The Director shall notify the Police Department of all approved permit applications.

(f) The final permit shall contain the following language: "Issuance of this permit by the City and County of San Francisco is not intended to and does not authorize the violation of State or Federal law." (Added by Ord. 275-05, File No. 051250, App. 11/30/2005; Ord. 225-06, File No. 060032, Effective without the signature of the Mayor; Ord. 225-07, File No. 070667, App. 10/2/2007)

SEC. 3308. OPERATING REQUIREMENTS FOR MEDICAL CANNABIS DISPENSARY.

(a) Medical cannabis dispensaries shall meet all the operating criteria for the dispensing of medical cannabis as is required pursuant to California Health and Safety Code Section 11362.7 et seq., by this Article, and by the Director's administrative regulations for the permitting and operation of medical cannabis dispensaries.

(b) Medical cannabis dispensaries shall be operated only as collectives or cooperatives in accordance with California Health and Safety Code Section 11362.7 et seq. All patients or caregivers served by a medical cannabis dispensary shall be members of that medical cannabis dispensary's collective or cooperative.

(c) The medical cannabis dispensary shall receive only compensation for actual expenses, including reasonable compensation incurred for services provided to qualified patients or primary caregivers to enable that person to use or transport cannabis pursuant to California Health and Safety Code Section 11362.7 et seq., or for payment for out-of-pocket expenses incurred in providing those services, or both. Sale of medical cannabis for excessive profits is explicitly prohibited. Once a year, commencing in March 2008, each medical cannabis dispensary shall provide

to the Department a written statement by the dispensary's permittee made under penalty of perjury attesting to the dispensary's compliance with this paragraph.

(d) Medical cannabis dispensaries shall sell or distribute only cannabis manufactured and processed in the State of California that has not left the State before arriving at the medical cannabis dispensary.

(e) It is unlawful for any person or association operating a medical cannabis dispensary under the provisions of this Article to permit any breach of peace therein or any disturbance of public order or decorum by any tumultuous, riotous or disorderly conduct, or otherwise, or to permit such dispensary to remain open, or patrons to remain upon the premises, between the hours of 10 p.m. and 8 a.m. the next day. However, the Department shall issue permits to two medical cannabis dispensaries permitting them to remain open 24 hours per day. These medical cannabis dispensaries shall be located in order to provide services to the population most in need of 24 hour access to medical cannabis. These medical cannabis dispensaries shall be located at least one mile from each other and shall be accessible by late night public transportation services. However, in no event shall a medical cannabis dispensary located in a Small-Scale Neighborhood Commercial District, a Moderate Scale Neighborhood Commercial District, or a Neighborhood Commercial Shopping Center District as defined in Sections 711, 712 and 713 of the Planning Code, be one of the two medical cannabis dispensaries permitted to remain open 24 hours per day.

(f) Medical cannabis dispensaries may not dispense more than one ounce of dried cannabis per qualified patient to a qualified patient or primary caregiver per visit to the medical cannabis dispensary. Medical cannabis dispensaries may not maintain more than ninety-nine (99) cannabis plants in up to 100 square feet of total garden canopy measured by the combined vegetative growth area. Medical cannabis dispensaries shall use medical cannabis identification card numbers to ensure compliance with this provision. If a qualified patient or a primary caregiver has a doctor's recommendation that this quantity does not meet the qualified patient's medical needs, the qualified patient or the primary caregiver may possess and the medical cannabis dispensary may dispense an amount of dried cannabis and maintain a number cannabis plants consistent with those needs. Only the dried mature processed flowers of female cannabis plant or the plant conversion shall be considered when determining allowable quantities of cannabis under this Section.

(g) No medical cannabis shall be smoked, ingested or otherwise consumed in the public right-of-way within fifty (50) feet of a medical cannabis dispensary. Any person violating this provision shall be deemed guilty of an infraction and upon the conviction thereof shall be punished by a fine of $100. Medical cannabis dispensaries shall post a sign near their entrances and exits providing notice of this policy.

(h) Any cultivation of medical cannabis on the premises of a medical cannabis dispensary must be conducted indoors.

(i) All sales and dispensing of medical cannabis shall be conducted on the premises of the medical cannabis dispensary. However, delivery of cannabis to qualified patients with valid identification cards or a verifiable, written recommendation from a physician for medical cannabis and primary caregivers with a valid identification card outside the premises of the medical cannabis dispensary is permitted if the person delivering the cannabis is a qualified patient with a valid identification card or a verifiable, written recommendation from a physician for medical cannabis or a primary caregiver with a valid identification card who is a member of the medical cannabis dispensary.

(j) The medical cannabis dispensary shall not hold or maintain a license from the State Department of Alcohol Beverage Control to sell alcoholic beverages, or operate a business that sells alcoholic beverages. Nor shall alcoholic beverages be consumed on the premises or on in the public right-of-way within fifty feet of a medical cannabis dispensary.

(k) In order to protect confidentiality, the medical cannabis dispensary shall maintain records of all qualified patients with a valid identification card and primary caregivers with a valid identification card using only the identification card number issued by the State or City pursuant to California Health and Safety Code Section 11362.7 et seq. and City Health Code Article 28.

(l) The medical cannabis dispensary shall provide litter removal services twice each day of operation on and in front of the premises and, if necessary, on public sidewalks within hundred (100) feet of the premises.

(m) The medical cannabis dispensary shall provide and maintain adequate security on the premises, including lighting and alarms reasonably designed to ensure the safety of persons and to protect the premises from theft.

(n) Signage for the medical cannabis dispensary shall be limited to one wall sign not to exceed ten square feet in area, and one identifying sign not to exceed two square feet in area; such signs shall not be directly illuminated. Any wall sign, or the identifying sign if the medical cannabis dispensary has no exterior wall sign, shall include the following language: "Only individuals with legally recognized Medical Cannabis Identification Cards or a verifiable, written recommendation from a physician for medical cannabis may obtain cannabis from medical cannabis dispensaries." The required text shall be a minimum of two inches in height. This requirement shall remain in effect so long as the system for distributing or assigning medical cannabis identification cards preserves the anonymity of the qualified patient or primary caregiver.

(o) All print and electronic advertisements for medical cannabis dispensaries, including but not limited to flyers, general advertising signs, and newspaper and magazine advertisements, shall include the following language: "Only individuals with legally recognized Medical Cannabis Identification Cards or a verifiable, written recommendation from a physician for medical cannabis may obtain cannabis from medical cannabis dispensaries." The required text shall be a minimum of two inches in height except in the case of general advertising signs where it shall be a minimum of six inches in height. Oral advertisements for medical cannabis dispensaries, including but not limited to radio and television advertisements shall include the same language. This requirement shall remain in effect so long as the system for distributing or assigning medical cannabis identification cards preserves the anonymity of the qualified patient or primary carver.

(p) The medical cannabis dispensary shall provide the Director and all neighbors located within 50 feet of the establishment with the name phone number and facsimile number of an on-site community relations staff person to whom one can provide notice if there are operating problems associated with the establishment. The medical cannabis dispensary shall make every good faith effort to encourage neighbors to call this person to try to solve operating problems, if any, before any calls or complaints are made to the Police Department or other City officials.

(q) Medical cannabis dispensaries may sell or distribute cannabis only to members of the medical cannabis dispensary's' collective or cooperative. (r) Medical cannabis dispensaries may sell or distribute cannabis only to those members with a medical cannabis identification card or a verifiable, written recommendation from a physician for medical cannabis. This requirement shall remain in effect so long as the system for distributing or assigning medical cannabis identification cards preserves the anonymity of the qualified patient or primary caregiver.

(s) It shall be unlawful for any medical cannabis dispensary to employ any person who is not at least 18 years of age.

(t) It shall be unlawful for any medical cannabis dispensary to allow any person who is not at least 18 years of age on the premises during hours of operation unless that person is a qualified patient with a valid identification card or primary caregiver with a valid identification card or a verifiable, written recommendation from a physician for medical cannabis.

(u) Medical cannabis dispensaries that display or sell drug paraphernalia must do so in compliance with California Health and Safety Code §§ 11364.5 and 11364.7.

(v) Medical cannabis dispensaries shall maintain all scales and weighing mechanisms on the premises in good working order. Scales and weighing mechanisms used by medical cannabis dispensaries are subject to inspection and certification by the Director.

(w) Medical cannabis dispensaries that prepare, dispense or sell food must comply with and are subject to the provisions of all relevant State and local laws regarding the preparation, distribution and sale of food.

(x) The medical cannabis dispensary shall meet any specific, additional operating procedures and measures as may be imposed as conditions of approval by the Director in order to insure that the operation of the medical cannabis dispensary is consistent with the protection of the health, safety and welfare of the community, qualified patients and primary caregivers, and will not adversely affect surrounding uses.

(y) Medical cannabis dispensaries shall be accessible as required under the California Building Code. Notwithstanding the foregoing, if a medical cannabis dispensary cannot show that it will be able to meet the disabled access standard for new construction, it shall meet the following minimum standards:

(1) An accessible entrance;

(2) Any ground floor service area must be accessible, including an accessible reception counter and access aisle to the employee workspace behind; and,

(3) An accessible bathroom, with a toilet and sink, if a bathroom is provided, except where an unreasonable hardship exemption is granted.

(4) A "limited use/limited access" (LULA) elevator that complies with ASME A17.1 Part XXV or an Article 15 elevator may be used on any accessible path of travel, but vertical or inclined platform lifts may not.

(5) Any medical cannabis dispensary that distributes medical cannabis solely through delivery to qualified patients or primary caregivers and does not engage in on-site distribution or sales of medical cannabis shall be exempt from the requirements of this subsection 3308(y).

(z) Any medical cannabis dispensary in a building that began the Landmark Initiation process (as codified by Article 10 of the San Francisco Planning Code) by August 13, 2007 is exempt from the requirements set forth in section 3308(y) of this legislation until September 1, 2008.

(aa) Prior to submission of a building permit application, the applicant shall submit its application to the Mayor's Office on Disability. The Mayor's Office on Disability shall review the application for access compliance and forward recommendations to the Department of Building Inspection. (Added by Ord. 275-05, File No. 051250, App. 11/30/2005; Ord. 225-07, File No. 070667, App. 10/2/2007)

SEC. 3309. PROHIBITED OPERATIONS.

All medical cannabis dispensaries operating in violation of California Health and Safety Code Sections 11362.5 and 11326.7 et seq., or this Article are expressly prohibited. No entity that distributed medical cannabis prior to the enactment of this Article shall be deemed to have been a legally established use under the provisions of this Article, and such use shall not be entitled to claim legal nonconforming status for the purposes of permitting, (Added by Ord. 275-05, File No. 051250, App. 11/30/2005)

SEC. 3310. DISPLAY OF PERMIT.

Every permit to operate a medical cannabis dispensary shall be displayed in a conspicuous place within the establishment so that the permit may be readily seen by individuals entering the premises. (Added by Ord. 275-05, File No. 051250, App. 11/30/2005)

SEC. 3311. SALE OR TRANSFER OF PERMITS.

(a) Upon sale, transfer or relocation of a medical cannabis dispensary, the permit and license for the establishment shall be null and void unless another permit has been issued pursuant to this Article; provided, however, that

upon the death or incapacity of the permittee, the medical cannabis dispensary may continue in business for six months to allow for an orderly transfer of the permit.

(b) If the permittee is a corporation, a transfer of 25 percent of the stock ownership of the permittee will be deemed to be a sale or transfer and the permit and license for the establishment shall be null and void unless a permit has been issued pursuant to this Article; provided, however that this subsection shall not apply to a permittee corporation, the stock of which is listed on a stock exchange in this State or in the City of New York, State of New York, or which is required by law, to file periodic reports with the Securities and Exchange Commission. (Added by Ord. 275-05, File No. 051250, App. 11/30/2005)

SEC. 3312. RULES AND REGULATIONS.

(a) The Director shall issue rules and regulations regarding the conduct of hearings concerning the denial, suspension or revocation of permits and the imposition of administrative penalties on medical cannabis dispensaries.

(b) The Director may issue regulations governing the operation of medical cannabis dispensaries. These regulations shall include, but need not be limited to:

(1) A requirement that the operator provide patients and customers with information regarding those activities that are prohibited on the premises;

[INTENTIONALLY LEFT BLANK]

(2) A requirement that the operator prohibit patrons from entering or remaining on the premises if they are in possession of or are consuming alcoholic beverages or are under the influence of alcohol;

(3) A requirement that the operator require employees to wash hands and use sanitary utensils when handling cannabis;

(4) A description of the size and type of notice of hearing to be posted in a conspicuous place on the property at which the proposed medical cannabis dispensary is to be operated and the number of days said notice shall remain posted; and

(5) A description of the size and type of sign posted near the entrances and exits of medical cannabis dispensaries providing notice that no medical cannabis shall be smoked, ingested or otherwise consumed in the public right of way within fifty (50) feet of a medical cannabis dispensary and that any person violating this policy shall be deemed guilty of an infraction and upon the conviction thereof shall be punished by a fine of $100.

(c) Failure by an operator to do either of the following shall be grounds for suspension or revocation of a medical cannabis dispensary permit: (1) comply with any regulation adopted by the Director under this Article, or (2) give free access to areas of the establishment to which patrons have access during the hours the establishment is open to the public, and at all other reasonable times, at the direction of the Director, or at the direction of any City fire, planning, or building official or inspector for inspection with respect to the laws that they are responsible for enforcing. (Added by Ord. 275-05, File No. 051250, App. 11/30/2005; Ord. 225-06, File No. 060032, Effective without the signature of the Mayor)

SEC. 3313. INSPECTION AND NOTICES OF VIOLATION.

(a) The Director may inspect each medical cannabis dispensary regularly and based on complaints, but in no event fewer than two times annually, for the purpose of determining compliance with the provisions of this Article and/or the rules and regulations adopted pursuant to this Article. If informal attempts by the Director to obtain compliance with the provisions of this Article fail, the Director may take the following steps:

(1) The Director may send written notice of noncompliance with the provisions of this Article to the operator of the medical cannabis dispensary. The notice shall specify the steps that must be taken to bring the establishment into compliance. The notice shall specify that the operator has 10 days in which to bring the establishment into compliance.

(2) If the Director inspector determines that the operator has corrected the problem and is in compliance with the provisions of this Article, the Director may so inform the operator.

(3) If the Director determines that the operator failed to make the necessary changes in order to come into compliance with the provisions of this Article, the Director may issue a notice of violation.

(b) The Director may not suspend or revoke a permit issued pursuant to this Article, impose an administrative penalty, or take other enforcement action against a medical cannabis dispensary until the Director has issued a notice of violation and provided the operator an opportunity to be heard and respond as provided in Section 3316.

(c) If the Director concludes that announced inspections are inadequate to ascertain compliance with this Article (based on public complaints or other relevant circumstances), the Director may use other appropriate means to inspect the areas of the establishment to which patrons have access. If such additional inspection shows noncompliance, the Director may issue either a notice of noncompliance or a notice of violation, as the Director deems appropriate.

(d) Every person to whom a permit shall have been granted pursuant to this Article shall post a sign in a conspicuous place in the medical cannabis dispensary. The sign shall state that it is unlawful to refuse to permit an inspection by the Department of Public Health, or any City peace, fire, planning, or building official or in-

spector, conducted during the hours the establishment is open to the public and at all other reasonable times, of the areas of the establishment to which patrons have access.

(e) Nothing in this Section shall limit or restrict the authority of a Police Officer to enter premises licensed or permitted under this Article (i) pursuant to a search warrant signed by a magistrate and issued upon a showing of probable cause to believe that a crime has been committed or attempted, (ii) without a warrant in the case of an emergency or other exigent circumstances, or (iii) as part of any other lawful entry in connection with a criminal investigation or enforcement action. (Added by Ord. 275-05, File No. 051250, App. 11/30/2005)

SEC. 3314. VIOLATIONS AND PENALTIES.

(a) Any dispensary, dispensary operator or dispensary manager who violates any provision of this Article or any rule or regulation adopted pursuant to this Article may, after being provided notice and an opportunity to be heard, be subject to an administrative penalty not to exceed $1,000 for the first violation of a provision or regulation in a 12-month period, $2,500 for the second violation of the same provision or regulation in a 12-month period; and $5, 000 for the third and subsequent violations of the same provision or regulation in a 12-month period.

(b) The Director may not impose an administrative penalty or take other enforcement action under this Article against a medical cannabis dispensary until the Director has issued a notice of violation and provided the operator an opportunity to be heard and respond as provided in Section 3316.

(c) Nothing herein shall prohibit the District Attorney from exercising the sole discretion vested in that officer by law to charge an operator, employee, or any other person associated with a medical cannabis dispensary with violating this or any other local or State law. (Added by Ord. 275-05, File No. 051250, App. 11/30/2005)

SEC. 3315. REVOCATION AND SUSPENSION OF PERMIT.

(a) Any permit issued for a medical cannabis dispensary may be revoked, or suspended for up to 30 days, by the Director if the Director determines that:

(1) the manager, operator or any employee has violated any provision of this Article or any regulation issued pursuant to this Article;

(2) the permittee has engaged in any conduct in connection with the operation of the medical cannabis dispensary that violates any State or local laws, or any employee of the permittee has engaged in any conduct that violates any State or local laws at permittee's medical cannabis dispensary, and the permittee had or should have had actual or constructive knowledge by due diligence that the illegal conduct was occurring;

(3) the permittee has engaged in any material misrepresentation when applying for a permit;

(4) the medical cannabis dispensary is being managed, conducted, or maintained without regard for the public health or the health of patrons;

(5) the manager, operator or any employee has refused to allow any duly authorized City official to inspect the premises or the operations of the medical cannabis dispensary;

(6) based on a determination by another City department, including the Department of Building Inspections, the Fire Department, the Police Department, and the Planning Department, that the medical cannabis dispensary is not in compliance with the laws under the jurisdiction of the Department.

(b) The Director may not suspend or revoke a permit issued pursuant to this Article or take other enforcement action against a medical cannabis dispensary until the Director has issued a notice of violation and provided the operator an opportunity to be heard and respond as provided in Section 3316.

(c) Notwithstanding paragraph (b), the Director may suspend summarily any medical cannabis dispensary permit issued under this Ar-

ticle pending a noticed hearing on revocation or suspension when in the opinion of the Director the public health or safety requires such summary suspension. Any affected permittee shall be given notice of such summary suspension in writing delivered to said permittee in person or by registered letter.

(d) If a permit is revoked no application for a medical cannabis dispensary may be submitted by the same person for three years. (Added by Ord. 275-05, File No. 051250, App. 11/30/2005)

SEC. 3316. NOTICE AND HEARING FOR ADMINISTRATIVE PENALTY AND/OR REVOCATION OR SUSPENSION.

(a) If the Director determines that a medical cannabis dispensary is operating in violation of this Article and/or the rules and regulations adopted pursuant to this Article, he or she shall issue a notice of violation to the operator of the medical cannabis dispensary.

(b) The notice of violation shall include a copy of this Section and the rules and regulations adopted pursuant to this Article regarding the conduct of hearings concerning the denial, suspension or revocation of permits and the imposition of administrative penalties on medical cannabis dispensaries. The notice of violation shall include a statement of any informal attempts by the Director to obtain compliance with the provisions of this Article pursuant to Section 3313(a). The notice of violation shall inform the operator that:

(1) The Director has made an initial determination that the medical cannabis dispensary is operating in violation of this Article and/or the rules and regulations adopted pursuant to this Article; and

(2) The alleged acts or failures to act that constitute the basis for the Directors initial determination; and

(3) That the Director intends to take enforcement action against the operator, and the nature of that action including the administrative penalty to be imposed, if any, and/or the suspension or revocation of the operator's permit; and

(4) That the operator has the right to request a hearing before the Director within fifteen (15) days of receipt of the notice of violation in order to allow the operator an opportunity to show that the medical cannabis dispensary is operating in compliance with this Article and/or the rules and regulations adopted pursuant to this Article.

(c) If no request for a hearing is. filed with the Director within the appropriate period, the initial determination shall be deemed final and shall be effective fifteen (15) days after the notice of initial determination was served on the alleged violator. The Director shall issue an Order imposing the enforcement action and serve it upon the party served with the notice of initial determination. Payment of any administrative penalty is due within 30 days of service of the Director's Order. Any administrative penalty assessed and received in an action brought under this Article shall be paid to the Treasurer of the City and County of San Francisco. The alleged violator against whom an administrative penalty is imposed also shall be liable for the costs and attorney's fees incurred by the City in bringing any civil action to enforce the provisions of this Section, including obtaining a court order requiring payment of the administrative penalty.

(d) If the alleged violator files a timely request for a hearing, within fifteen (15) days of receipt of the request, the Director shall notify the requestor of the date, time, and place of the hearing. The Director shall make available all documentary evidence against the medical cannabis dispensary no later than fifteen (15) days prior to the hearing. Such hearing shall be held no later than forty-five (45) days after the Director receives the request, unless time is extended by mutual agreement of the affected parties.

(e) At the hearing, the medical cannabis dispensary shall be provided an opportunity to refute all evidence against it. The Director shall conduct the hearing. The hearing shall be conducted pursuant to rules and regulations adopted by the Director.

(f) Within twenty (20) days of the conclusion of the hearing, the Director shall serve written notice of the Director's decision on the alleged violation. If the Director's decision is that the alleged violator must pay an administrative penalty, the notice of decision shall state that the recipient has ten (10) days in which to pay the penalty. Any administrative penalty assessed and received in an action brought under this Article shall be paid to the Treasurer of the City. The alleged violator against whom an administrative penalty is imposed also shall be liable for the costs and attorney's fees incurred by the City in bringing any civil action to enforce the provisions of this Section, including obtaining a court order requiring payment of the administrative penalty. (Added by Ord. 275-05, File No. 051250, App. 11/30/2005)

SEC. 3317. APPEALS TO BOARD OF APPEALS.

(a) **Right of Appeal.** The final decision of the Director to grant, deny, suspend, or revoke a permit, or to impose administrative sanctions, as provided in this Article, may be appealed to the Board of Appeals in the manner prescribed in Article 1 of the San Francisco Business and Tax Relations Code. An appeal shall stay the action of the Director.

(b) **Hearing.** The procedure and requirements governing an appeal to the Board of Appeals shall be as specified in Article 1 of the San Francisco Business and Tax Regulations Code. (Added by Ord. 275-05, File No. 051250, App. 11/30/2005)

SEC. 3318. BUSINESS LICENSE AND BUSINESS REGISTRATION CERTIFICATE.

(a) Every medical cannabis dispensary shall be required to obtain a business license from the City in compliance with Article 2 of the Business and Tax Regulations Code.

(b) Every medical cannabis dispensary shall be required to obtain a business registration certificate from the City in compliance with Article 12 of the Business and Tax Regulations Code. (Added by Ord. 275-05, File No. 051250, App. 11/30/2005)

SEC. 3319. DISCLAIMERS AND LIABILITY.

By regulating medical cannabis dispensaries, the City and County of San Francisco is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury. To the fullest extent permitted by law, the City shall assume no liability whatsoever, and expressly does not waive sovereign immunity, with respect to the permitting and licensing provisions of this Article, or for the activities of any medical cannabis dispensary. To the fullest extent permitted by law, any actions taken by a public officer or employee under the provisions of this Article shall not become a personal liability of any public officer or employee of the City. This Article (the "Medical Cannabis Act") does not authorize the violation of state or federal law. (Added by Ord. 275-05, File No. 051250, App. 11/30/2005)

SEC. 3320. SEVERABILITY.

If any provision of this Article or the application of any such provision to any person or circumstance, shall be held invalid, the remainder of this Article, to the extent it can be given effect, or the application of those provisions to persons or circumstances other than those to which it is held invalid, shall not be affected thereby, and to this end the provisions of this Article are severable. (Added by Ord. 275-05, File No. 051250, App. 11/30/2005)

SEC. 3321. ANNUAL REPORT BY DIRECTOR.

(a) Once a year, commencing in January 2007, the Director shall make a report to the Board of Supervisors that:

(1) sets forth the number and location of medical cannabis dispensaries currently permitted and operating in the City;

(2) sets forth an estimate of the number of medical cannabis patients currently active in the City;

(3) provides an analysis of the adequacy of the currently permitted and operating medical cannabis dispensaries in the City in meeting the medical needs of patients;

(4) provides a summary of the past year's violations of this Article and penalties assessed.

(b) Upon receipt of this Report, the Board of Supervisors shall hold a hearing to consider whether any changes to City law, including but not limited to amendments to the Health Code or Planning Code, are warranted. (Added by Ord. 275-05, File No. 051250, App. 11/30/2005)

[INTENTIONALLY LEFT BLANK]

ARTICLE 34: HEALTHY PRODUCTS, HEALTHY CHILDREN ORDINANCE*

SEC. 34.1. FINDINGS.

Phthalates

(a) Phthalates are a family of chemicals that are used as an additive in a number of consumer products and are used to make plastics flexible for use in children's toys, shower curtains, medical supplies, and building materials.

(b) Phthalate additives are not bound tightly within the plastic and may leach out of the product. Leaching may occur especially as a result of mechanical stress such as chewing or bending, and upon exposure to fats, saliva and warm temperatures.

(c) Phthalates have been shown to cause reproductive harm including genital defects, sperm damage, reduced testosterone production, and premature deliveries.

(d) Government agencies and scientific bodies in the European Union (EU) have recognized the potential harm of six specific types of phthalates: DEHP, DBP, BBP, DINP, DIDP, and DNOP especially to infants and young children; and as a result, these chemicals are banned from use in children's products in the EU.

(e) The United States Consumer Product Safety Commission has established a voluntary program to eliminate one type of phthalate, DEHP, from children's toys.

(f) Studies and testing indicate that regardless of this voluntary phase-out, toys sold in the United States still contain DEHP, especially toys made from PVC plastic.

(g) Consumers are not able to make informed purchasing decisions regarding children's products because there is no requirement to list phthalates content on product labels.

Bisphenol-A

(h) Bisphenol-A (BPA) is a building block of polycarbonate plastic used in such products as clear plastic baby bottles and water bottles, and in other materials such as the epoxy resin coatings that line food containers.

(i) BPA has been shown to leach out of the polycarbonate plastic upon exposure to heat and mechanical scrubbing and has been detected in the liquid contained in plastic bottles that have been exposed to heat.

(j) BPA mimics the hormone estrogen and is therefore considered to be an endocrine disruptor. The hormone systems of young children are uniquely susceptible to low doses of estrogenic substances. Scientific studies have shown that BPA at very low doses can affect brain chemistry and structure, behavior, the immune system, enzyme activity, the male reproductive system, and the female reproductive system in a variety of animals, including snails, fish, frogs, and mammals.

Editor's Note:

Ord. 86-07, File No. 070078, Approved April 27, 2007, amended Ch. 34, in its entirety, to read as herein set out. Prior to inclusion of said ordinance, Ch. 34 was entitled, "Sale of Toys and Child Care Articles Made with Bishenol-A."

(k) Scientific bodies within the US government and the European Union have concluded that animal studies such as those carried out on BPA are a vital guide to identifying health risks for humans, but have thus far concluded that no restrictions on BPA in consumer products are warranted at this time.

(l) The Department of Public Health and Department of the Environment will continue to monitor emerging literature on the potential health effects of exposure to BPA.

(m) Consumers are not able to make informed purchasing decisions regarding children's products because there is no requirement to list BPA content on product labels. (Ord. 86-07, File No. 070078, App. 4/27/2007)

SEC. 34.2. TITLE; PREAMBLE.

(a) This Chapter may be known as the "Healthy Products, Healthy Children Ordinance."

(b) In response to concerns about the scope and implementation of Ordinance No. 120-06 expressed by the San Francisco Department of Public Health following the measure's adoption in June 2006, the Board of Supervisors hereby amends the ordinance to focus on child care products and toys likely to be placed in children's mouths and containing specified phthalates and on child feeding products containing specified phthalates. The Board further urges the State of California to take action to prohibit or restrict the sale of children's products containing Bisphenol-A, and will consider further possible legislative action by the City should no such protective action be taken by the State. (Ord. 86-07, File No. 070078, App. 4/27/2007)

SEC. 34.3. DEFINITIONS

For the purposes of this Chapter, the following terms have the following meanings:

(1) "Toy" means a product designed and made for the amusement of a child or for his or her use in play and capable of being placed in a child's mouth.

(2) "Child care product" means a product designed or intended by the manufacturer to help children sleep or relax or to help children with sucking or teething, and capable of being placed in a child's mouth.

(3) "Child feeding product" means a product designed or intended by the manufacturer to facilitate the feeding of children. A "child feeding product" shall not include any medical device.

(4) "Distribution in commerce," "distribute in commerce," or "distributed in commerce" shall include offering items for sale, whether or not an actual sale of the item occurs. (Ord. 86-07, File No. 070078, App. 4/27/2007)

SEC. 34.4. PROHIBITING THE SALE OF TOYS, CHILD CARE PRODUCTS AND CHILD FEEDING PRODUCTS MADE WITH PHTHALATES.

(a) No person or entity shall manufacture, sell, or distribute in commerce within the City any toy, child care product, or child feeding product listed by the City pursuant to Section 34.6 which has been made with or contains di (2-ethylhexyl) phthalate (DEHP) in concentrations exceeding 0.1 percent.

(b) No person or entity shall manufacture, sell, or distribute in commerce within the City any toy, child care product, or child feeding product listed by the City pursuant to Section 34.6 which has been made with or contains di butyl phthalate (DBP) in concentrations exceeding 0.1 percent.

(c) No person or entity shall manufacture, sell, or distribute in commerce within the City any toy, child care product, or child feeding product listed by the City pursuant to Section 34.6 which has been made with or contains benzyl butyl phthalate (BBP) in concentrations exceeding 0.1 percent.

(d) No person or entity shall manufacture, sell, or distribute in commerce within the City any toy, child care product, or child feeding product listed by the City pursuant to Section 34.6 which has been made with or contains diisononyl phthalate (DINP) in concentrations exceeding 0.1 percent.

(e) No person or entity shall manufacture, sell, or distribute in commerce within the City any toy, child care product, or child feeding product listed by the City pursuant to Section 34.6 which has been made with or contains diisodecyl phthalate (DIDP) in concentrations exceeding 0.1 percent.

(f) No person or entity shall manufacture, sell, or distribute in commerce within the City any toy, child care product, or child feeding product listed by the City pursuant to Section 34.6 which has been made with or contains di-n-octyl phthalate (DNOP) in concentrations exceeding 0.1 percent. (Ord. 86-07, File No. 070078, App. 4/27/2007)

SEC. 34.5. LEAST-TOXIC ALTERNATIVES.

(a) Manufacturers within the City and County of San Francisco should use the least toxic alternative when replacing phthalates in accordance with this Chapter.

(b) Manufacturers should not replace phthalates pursuant to this Chapter with carcinogens rated by the United States Environmental Protection Agency as A, B, or C carcinogens, or substances listed as known or likely carcinogens, known to be human carcinogens, likely to be human carcinogens, as described in the "List of Chemicals Evaluated for Carcinogenic Potential," or known to the State of California to cause cancer as listed in the California Safe Drinking Water Act (Chapter 4 (commencing with Section 116270) of Part 12 of the California Health and Safety Code).

(c) Manufacturers should not replace phthalates pursuant to this Chapter with reproductive toxicants that cause birth defects, reproductive harm, or developmental harm as identified by the United States Environmental Protection Agency or listed in the California Safe Drinking Water Act (Chapter 4 (commencing with Section 116270) of Part 12 of the California Health and Safety Code). (Ord. 86-07, File No. 070078, App. 4/27/2007)

SEC. 34.6. IMPLEMENTATION AND ENFORCEMENT.

(a) Within 18 months of the adoption of the ordinance creating this Chapter, the Department of Public Health, in consultation with the Department of the Environment, shall compile and promulgate a list of specific products covered by the provisions of Section 34.4, focusing on toys and child care products likely to be placed in a child's mouth, such as teething rings, rubber ducks, plastic books, and child feeding products, such as bottles, plates, or pacifiers. This list shall be updated on an on-going basis as information becomes available and resources permit, and shall be posted in Departmental web sites.

(b) Within 18 months of the adoption of the ordinance creating this Chapter, the Department of Public Health, in consultation with the Department of the Environment, shall develop an implementation plan that includes publicizing the list of proscribed products and notifying merchants and other parties of their responsibilities under the Chapter.

(c) Six months after a product has been placed on the Department of Public Health's list of proscribed products under subsection (a), the manufacture, sale, or distribution in commerce within the City of such product may be punished by administrative penalties in the amount of $100.00 for the first violation, $250.00 for the second violation within a twelve-month period, and $500 for the third and subsequent violations within a twelve-month period.

(d) Twelve months after a product has been placed on the Department of Public Health's list of proscribed products under subsection (a), the manufacture, sale, or distribution in commerce within the City of such product shall be a misdemeanor, punishable by a fine of up to $1,000.00, imprisonment in the county jail for a term not to exceed six months, or both.

(e) For purposes of subsections (c) and (d), each individual item that is manufactured, sold, or distributed in commerce contrary to the provisions of this Chapter shall constitute a separate violation.

(f) Any person or entity who manufactures, sells, or distributes in commerce within the City any toy or child care product capable of being placed in a child's mouth, or any child feeding product, shall advise the Department of the Environment of all information in its possession, custody, or control that reasonably may demonstrate that the product has been made with or contains the phthalates listed in Section 34.4 in concentrations exceeding 0.1 percent.

(g) The Department of Public Health, in consultation with the Department of the Environment, shall issue rules and regulations necessary or appropriate for the implementation and enforcement of this Chapter. The regulations shall describe the roles of City agencies and the responsibilities of retailers, distributors, and manufacturers of toys, child care products, and child feeding products doing business in the City. The Department, shall by regulation, require retailers and distributors of toys, child care products, and child feeding products doing business in the City to take reasonable steps to obtain and forward to the Department information from manufacturers regarding the phthalate content of such products.

(h) Violations of any Departmental regulations issued pursuant to this Article may be punished by administrative penalties in the amount of $100.00 for the first violation, $250.00 for the second violation of the same regulation within a twelve-month period, and $500.00 for the third and subsequent violations of the same regulation within a twelve-month period. (Ord. 86-07, File No. 070078, App. 4/27/2007)

SEC. 34.7. TOYS, CHILD CARE PRODUCTS, AND CHILD FEEDING PRODUCTS MADE WITH BISPHENOL-A.

The Board of Supervisors urges the State of California to continue its investigations into the health effects of Bisphenol-A and to identify safer alternatives to its use, especially in toys, child care products, and child feeding products.

If, by January 1, 2008, the State of California has not banned or significantly restricted the use of Bisphenol-A in toys, child care products, and child feeding products, the Department of Public Health, in consultation with the Department of the Environment, shall make recommendations to the Board of Supervisors on regulating the manufacture, sale, or distribution in commerce within the City of such products and the Board of Supervisors shall conduct hearings on those recommendations. (Ord. 86-07, File No. 070078, App. 4/27/2007)

SEC. 34.8. DISCLAIMER.

In adopting and implementing this Chapter, the City and County of San Francisco is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury. (Ord. 86-07, File No. 070078, App. 4/27/2007)

SEC. 34.9. SEVERABILITY.

If any of the provisions of this Chapter or the application thereof to any Person or circumstance is held invalid, the remainder of those provisions, including the application of such part or provisions to persons or circumstances other than those to which it is held invalid, shall not be affected thereby and shall continue in full force and effect. To this end, the provisions of this Chapter are severable. (Ord. 86-07, File No. 070078, App. 4/27/2007)

ARTICLE 36: CHILD COUGH AND COLD MEDICINE WARNING ORDINANCE

SEC. 3601. SHORT TITLE.

This Ordinance shall be entitled the "Child Cough and Cold Medicine Warning Ordinance." (Added by Ord. 4-08, File No. 071089, App. 1/14/2008)

SEC. 3602. DEFINITIONS.

For the purposes of this Ordinance, the following words shall have the following meanings:

(a) "Business" means a fixed location within the City and County of San Francisco, whether indoors or outdoors, at which merchandise is offered for sale at retail and that is required to obtain a valid San Francisco business registration certificate from the San Francisco Tax Collector's office.

(b) "Cough of Cold Medicine" means drugs available "over the counter" or "OTC" and without a doctor's prescription that are used to suppress coughs and/or reduce symptoms associated with colds and includes nasal decongestants, antitussives, and antihistamines ingested orally.

(c) "Department" means the Department of Public Health.

(d) "Director" means the Director of the Department of Public Health.

(e) "Marketing for use in children" means cold and cough medications contained in packaging that promotes the use of the product in children and that contains the words "child" or "children" and/or includes a picture of a child on the packaging.

(f) "Person" means an individual, trust, file, joint stock company, corporation, cooperative, partnership, or association. (Added by Ord. 4-08, File No. 071089, App. 1/14/2008)

SEC. 3603. WARNING REQUIRED AT POINT OF SALE.

All owners, managers, and proprietors in charge of businesses selling, or displaying for the purpose of marketing for use in children, cough or cold medicines, shall post a warning sign in a manner that is prominent and accessible at the point of product selection. Such sign shall be printed on a white background with black text and in a legible manner with a depiction of a baby's face inside a circle with a slash through it next the following: "0-6" Such sign shall be in English, Spanish, and Chinese conveying the following warning:

> "WARNING" Based on a Federal Health Advisory Panel's recommendation to the FDA . . . Not recommended for children under 6 years. When misused, these products have caused illness and death in children under 6 years.

The warning must be legible and easily readable by the average person to the naked eye. (Added by Ord. 4-08, File No. 071089, App. 1/14/2008)

Sec. 3604. IMPLEMENTATION.

The Director, after a public hearing, may adopt and may amend guidelines, rules, regulations, and forms to implement this Ordinance. When businesses post a warning sigh, they do so to comply with City law and are not offering health care advice. Therefore, such businesses

are not responsible for the consumers' actions regarding the purchase of cold or cough medicines. (Added by Ord. 4-08, File No. 071089, App. 1/14/2008)

Sec. 3605. ENFORCEMENT AND PENALTIES.

(a) The Director may enforce the provisions of this Ordinance against violations by serving notice requiring the correction of any violation within a reasonable time specified by the Director. Upon the violator's failure to comply with the notice within the time period specified, the Director may request the City Attorney to maintain an action for injunction to enforce the provisions of this Ordinance and for assessment and recovery of a civil penalty for such violation.

(b) Any person that violates or refuses to comply with the provisions of this Ordinance shall be liable for a civil penalty, not to exceed $500.00 for each day such violation is committed or permitted to continue, which penalty shall be assessed and recovered in a civil action brought in the name of the people of the City and County of San Francisco, by the City Attorney, in any court of competent jurisdiction. Any penalty assessed and recovered in a civil action brought pursuant to this Section shall be paid to the Treasurer of the City and County of San Francisco.

(c) Any person who violates or refuses to comply with the provisions of this Ordinance shall be guilty of an infraction, and shall be deemed guilty of a separate offense for each day such violation or refusal shall continue. Every violation is punishable by (1) a fine not exceeding $100.00 for a first violation; (2) a fine not exceeding $200.00 for a second violation within one year; (3) a fine not exceeding $500.00 for each additional violation within one year.

(d) In undertaking the enforcement of this Ordinance, the City and County of San Francisco is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury. (Added by Ord. 4-08, File No. 071089, App. 1/14/2008)

Sec. 3606. OPERATIVE DATE.

This ordinance shall go into effect February 1, 2008, upon a determination that the FDA has failed to require that labels on cold and cough medicine reflect that the product is dangerous to children under 6 years. In the event that the FDA does require such warnings by February 1, 2008, this ordinance shall be repealed in its entirety. The determination as to whether the FDA has required such warnings shall be made by the Board of Supervisors. (Added by Ord. 4-08, File No. 071089, App. 1/14/2008)

Sec. 3607. SEVERABILITY.

If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Ordinance. The Board of Supervisors hereby declares that it would have passed this Ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of this Ordinance would be subsequently declared invalid or unconstitutional. (Added by Ord. 4-08, File No. 071089, App. 1/14/2008)

Sec. 3608. NO CONFLICT WITH FEDERAL OR STATE LAW.

Nothing in this ordinance shall be interpreted or applied so as to create any requirement, power, or duty in conflict with any federal or state law. (Added by Ord. 4-08, File No. 071089, App. 1/14/2008)

Sec. 3609. UNDERTAKING FOR THE GENERAL WELFARE.

In adopting and implementing this Ordinance, the City and County of San Francisco is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing in its officers and employees, an obli-

gation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury. (Added by Ord. 4-08, File No. 071089, App. 1/14/2008)

[INTENTIONALLY LEFT BLANK]

ARTICLE 37: TRANS FAT FREE RESTAURANT PROGRAM ORDINANCE

SEC. 3701. SHORT TITLE.

This Ordinance shall be entitled the "Trans Fat Free Restaurant Program Ordinance." (Added by Ord. 13-08, File No. 071607, App. 2/7/2008)

SEC. 3702. DEFINITIONS.

For the purposes of this Ordinance, the following words shall have the following meanings:

(a) "Department" means the Department of Public Health.

(b) "Director" means the Director of the Department of Public Health.

(c) "Food" means any article intended for use for food, drink, confection, or condiment, or any article that is used or integrated for use as a component of any such article.

(d) "Restaurant" means any retail eating establishment serving food to the general public, including a restaurant, coffee shop, cafeteria, cafe, luncheonette, sandwich stand, or soda fountain.

(e) "Trans Fat" or "Artificial Trans Fat" means trans fatty acid, which is produced by partial hydrogenation of vegetable oil. Trans fat, or partially hydrogenated oil, is commonly found in processed foods and used as cooking oil for frying in restaurants. A food shall be deemed to contain artificial trans fat if the food is labeled as, lists an ingredient, or has vegetable shortening, margarine or any kind of partially hydrogenated vegetable oil. A food whose nutrition facts label or other documentation from the manufacturer lists the trans fat content of the food at less than 0.5 grams per serving, shall not be deemed to contain artificial trans fat. (Added by Ord. 13-08, File No. 071607, App. 2/7/2008)

SEC. 3703. TRANS FAT FREE RESTAURANT PROGRAM.

In compliance with this Ordinance, the Department is authorized to develop and implement a City-wide Trans Fat Free Restaurant Program to encourage and recognize restaurants that discontinue storing, distributing, serving, or using any food, oil, shortening, or margarine containing artificial trans fat. (Added by Ord. 13-08, File No. 071607, App. 2/7/2008)

SEC. 3704. REGULATIONS.

The Director, after a public hearing, shall adopt and may amend guidelines, rules, regulations and forms to implement a Trans Fat Free Restaurant recognition program, including the application process, eligibility criteria, and qualification as a Trans Fat Free Restaurant. Eligibility and qualifications shall include, without limitation, thresholds and standards for storing, distributing, serving, or using trans fat. The regulations shall include the following:

(a) Qualified restaurants shall apply to participate in the Trans Fat Free Restaurant program and pay an annual registration fee of $250.00 and any related cost for time and materials above the $250.00.

(b) The Department will provide an official standardized decal to be posted at participating restaurants based on certification by the Department.

(c) The Department will periodically inspect participating restaurants to determine compliance with the program and the department shall charge an amount not to exceed appropriate cost of any related inspection cost.

(d) Restaurants qualifying for certification shall meet the criteria set for by the Department in the Regulations. (Added by Ord. 13-08, File No. 071607, App. 2/7/2008)

SEC. 3705. NOTICE.

The Director shall conduct outreach to all restaurants that are eligible to participate in programs established under this Ordinance and shall afford all eligible restaurants the same opportunities to participate in the program. The Director shall periodically post a list of Trans Fat Free Restaurants certified through the program on the Department's website. (Added by Ord. 13-08, File No. 071607, App. 2/7/2008)

SEC. 3706. OPERATIVE DATE.

This Ordinance shall become operative upon adoption by the City and County of San Francisco. (Added by Ord. 13-08, File No. 071607, App. 2/7/2008)

SEC. 3707. DISCLAIMER.

Recognition, including certification, by the City of a restaurant as a "Trans Fat Free Restaurant" shall not be construed as an endorsement by the City of the restaurant or confer any legal right or privilege onto the restaurant. The Department may discontinue any program established under this Ordinance at any time. (Added by Ord. 13-08, File No. 071607, App. 2/7/2008)

SEC. 3708. PENALTIES.

Intentional false or misleading statements or misrepresentations made by any person applying to the program regarding a restaurant's eligibility or qualifications for or compliance with the Trans Fat Free Restaurant program is a violation of this Ordinance and is subject to an administrative penalty up to $500 per violation in addition to any other available remedies. Whenever the Director finds that information in a business's application or any required submission is inaccurate or misleading or a business that has Trans Fat Free Restaurant recognition is violating or has violated the terms of the Trans Fat Free Restaurant program eligibility or qualifications, the Director may revoke that restaurant's recognition as a Trans Fat Free Restaurant, which revocation shall be final. (Added by Ord. 13-08, File No. 071607, App. 2/7/2008)

SEC. 3709. SEVERABILITY.

If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Ordinance. The Board of Supervisors hereby declares that it would have passed this Ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of this Ordinance would be subsequently declared invalid or unconstitutional. (Added by Ord. 13-08, File No. 071607, App. 2/7/2008)

SEC. 3710. NO CONFLICT WITH FEDERAL OR STATE LAW.

Nothing in the Ordinance shall be interpreted or applied so as to create any requirement, power, or duty in conflict with any federal or state law. (Added by Ord. 13-08, File No. 071607, App. 2/7/2008)

SEC. 3711. UNDERTAKING FOR THE GENERAL WELFARE.

In adopting and implementing this Ordinance, the City and County of San Francisco is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury. (Added by Ord. 13-08, File No. 071607, App. 2/7/2008)

INDEX

— **E** —

— G —

[INTENTIONALLY LEFT BLANK]

— **L** —

[INTENTIONALLY LEFT BLANK]

— **M** —

— N —

— S —

[INTENTIONALLY LEFT BLANK]

— T —

— **Z** —

[INTENTIONALLY LEFT BLANK]