

1 [Public Works - Administrative Penalties for Excavation]  
 2 AMENDING PART II, CHAPTER X OF THE SAN FRANCISCO MUNICIPAL CODE (PUBLIC  
 3 WORKS CODE) BY AMENDING ARTICLE 2.4, SECTIONS 2.4.80 AND 2.4.81 TO ALLOW  
 4 THE DIRECTOR OF PUBLIC WORKS TO CHARGE MUNICIPAL EXCAVATORS THAT  
 5 VIOLATE ARTICLE 2.4 WITH ADMINISTRATIVE PENALTIES AND TO INCREASE THE  
 6 ADMINISTRATIVE PENALTY ASSESSED FOR EXCAVATION WORK WITHOUT A PERMIT.

7 Note: Additions are underlined; deletions are in ((double parentheses)).

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

9 Section 1. Article 2.4 of Part II, Chapter X of the San Francisco Municipal Code (Public  
 10 Works Code) is hereby amended by amending Sections 2.4.80 and 2.4.81 to read as follows:

11 **SEC. 2.4.80. VIOLATION OF ARTICLE.** (a) The Director shall have authority to  
 12 enforce this Article against violations thereof. Upon the Director's determination that a Person  
 13 has violated any provision of this Article, the Standard Plans and Specifications, notices,  
 14 orders, or regulations of the Department; any term, condition, or limitation of any Permit; or is  
 15 subject to any outstanding fees, Deposits, or other charges, the Director shall serve notice on  
 16 said Person to abate the violation. Any Person whom the Director determines to be  
 17 responsible for violating this Article may be subject to any or all of the enforcement  
 18 mechanisms specified in Sections 2.4.81, 82, and 83.

19 (b) ((Violations by)) Municipal Excavators are not subject to the penalties and fines  
 20 specified in Sections ((2.4.81, 82, and 83)) 2.4.82 and .83; however, Municipal Excavators  
 21 that violate Article 2.4 may be subject to administrative penalties and costs as specified in  
 22 Section 2.4.81. The Director is empowered to charge Municipal Excavators with such  
 23 penalties and costs, abate violations by Municipal Excavators, or both. ((and)) The Director  
 24 may ((charge)) assess such penalties, costs, and abatement charges against ((the cost of  
 25

1 such abatement to)) the Deposit or budget of the Municipal Excavator, take other appropriate  
2 action against such Excavator within the Director's authority, or both.

3           **SEC. 2.4.81. ADMINISTRATIVE PENALTIES AND COSTS.** (a) **Notice of**  
4 **violation.** The Director shall notify the Person responsible for a violation that he or she has  
5 seventy-two (72) hours to correct or otherwise remedy the violation or be subject to the  
6 imposition of administrative penalties. For those violations subject to the incomplete  
7 Excavation provisions of Section 2.4.55(d), the Person responsible shall have twenty-four (24)  
8 hours to remedy the violation or be subject to the imposition of administrative penalties. For  
9 violations that create an imminent danger to public health, safety, or welfare or are otherwise  
10 subject to Section 2.4.73, the Director shall notify the Person responsible to immediately  
11 remedy the violation or be subject to the imposition of administrative penalties. The Director's  
12 notice of violation shall be a written, electronic, or facsimile communication and shall specify  
13 the manner in which the violation must be remedied.

14           (b) **Amount of administrative penalties.** Administrative penalties assessed pursuant  
15 to Subsection (a) shall not exceed one thousand dollars (\$1,000.00) per day, per violation.  
16 Notwithstanding the penalty limitation set forth above, a Person who excavates without a valid  
17 Permit may be assessed a penalty not to exceed ten thousand dollars (\$10,000.00) per day,  
18 per violation. In assessing the amount of the administrative penalty, the Director may  
19 consider any one or more of the following: the nature and seriousness of the misconduct, the  
20 number of violations, the persistence of the misconduct, the length of time over which the  
21 misconduct occurred, the willfulness of the violator's misconduct, and the violator's assets,  
22 liabilities, and net worth.

23           (c) **Enforcement costs.** In addition to the administrative penalty assessed pursuant  
24 to Subsection (a), the Director may assess enforcement costs to cover the reasonable costs  
25 incurred in enforcing the administrative penalty, including reasonable attorneys' fees. Any

1 enforcement costs imposed and recovered shall be distributed according to the purpose for  
2 which the Director imposed them.

3 (d) **Accrual of penalties and costs.** Penalties and costs assessed under this Section  
4 shall continue to accrue against the Person responsible for the violation until the violation of  
5 this Article is corrected or otherwise remedied in the judgment of the Director or the  
6 responsible party pays the assessed penalties and costs. If such penalties and costs are the  
7 subject of a request for administrative review or an appeal, then the accrual of such penalties  
8 and costs shall be stayed until the determination concerning the administrative penalties is  
9 final.

10 (e) **Notice imposing administrative penalties.** If the Person designated as the  
11 responsible party fails to remedy the violation within the time specified in the notice of  
12 violation, the Director shall notify in writing the responsible party of the Director's imposition of  
13 administrative penalties. This notice shall include the amount of the penalties and costs and  
14 declare that such penalties and costs are due and payable to the City Treasurer within thirty  
15 (30) calendar days. The notice also shall state that the Person designated as the responsible  
16 party has the right, pursuant to Subsection (g), to request administrative review of the  
17 Director's determination as to the designation of the responsible party and the assessment of  
18 penalties.

19 (f) **Finality of the Director's determination and collection of assessed penalties.**  
20 If no request for administrative review is filed pursuant to Subsection (g), the Director's  
21 determination is final. Thereafter, if the penalties and costs are not paid within the time  
22 specified in Subsection (e), the Director is empowered to pursue any method of collection of  
23 such penalties and costs authorized by local law including, but not limited to deductions of the  
24 Permittee's Deposit pursuant to Section 2.4.46(c).  
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1 (g) **Administrative review.** Any Person that is designated as the party responsible for  
2 a violation or is subject to an administrative penalty may seek administrative review of the  
3 designation or the assessment of the penalty within ten (10) calendar days of the date of  
4 notification imposing administrative penalties. Administrative review shall be initiated by filing  
5 with the Director a request for review that specifies in detail the basis for contesting the  
6 designation of the responsible party or the assessment of the penalty or cost.

7 (h) **Notice for and scheduling of administrative hearing.** Whenever an  
8 administrative review hearing is requested pursuant to Subsection (g), the Director, within ten  
9 (10) calendar days of the date of receipt of the request, shall notify the affected parties of the  
10 date, time, and place of the hearing by certified mail. Such hearing shall be held no later than  
11 thirty (30) calendar days after the Director received the request for administrative review,  
12 unless extended by mutual agreement of the affected parties. The Director shall appoint a  
13 hearing officer for such hearing.

14 (i) **Submittals for the administrative review hearing.** The parties to the hearing  
15 shall submit written information to the hearing officer including, but not limited to, the following:  
16 the statement of issues to be determined by the hearing officer and a statement of the  
17 evidence to be offered at the hearing.

18 (j) **Conduct of the administrative review hearing.** The administrative review hearing  
19 is a public hearing and shall be tape recorded. Any party to the hearing may at his or her own  
20 expense, cause the hearing to be recorded by a certified court reporter. During the hearing,  
21 evidence and testimony may be presented to the hearing officer. Written decisions and  
22 findings shall be rendered by the hearing officer within ten (10) calendar days of the hearing.  
23 Copies of the findings and decision shall be served upon the parties to the hearing by certified  
24 mail. A notice that a copy of the findings and decisions is available for inspection between the  
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1 hours of 9:00 a.m. and 5:00 p.m. Monday through Friday shall be posted at the offices of the  
2 Department of Public Works.

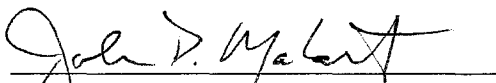
3 (k) **((Appeals of the)) Director's decision on the hearing officer's**  
4 **recommendation.** The decision of the hearing officer shall be a recommendation to the  
5 Director, and the Director, within five (5) calendar days of receipt of such recommendation,  
6 shall adopt, modify, or deny such recommendation. The Director's decision on the hearing  
7 officer's recommendation is final. Such decision shall be served upon the parties to the  
8 hearing and posted in the same manner as the hearing officer's decision as set forth in  
9 Subsection (j). ((Within twenty (20) calendar days after service of the Director's decision, any  
10 aggrieved party may seek review of the decision by the municipal court according to the  
11 procedures set forth in California Government Code Section 53069.4.))

12 (l) **Finality of Director's decision.** ((If no notice of appeal of the Director's decision is  
13 timely filed, the)) The Director's decision shall be deemed final. If any imposed administrative  
14 penalties and costs have not been deposited at this time, the Director may proceed to collect  
15 the penalties and costs pursuant to Subsection (f).

16 APPROVED AS TO FORM:

17 LOUISE H. RENNE, City Attorney

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19 By:

  
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20 JOHN D. MALAMUT  
21 Deputy City Attorney  
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SUPERVISOR KATZ  
BOARD OF SUPERVISORS

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7/7/99



# City and County of San Francisco

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

## Tails Ordinance

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**File Number:** 991177

**Date Passed:**

Ordinance amending Public Works Code Sections 2.4.80 and 2.4.81 to allow the Director of Public Works to charge municipal excavators that violate Article 2.4 with administrative penalties and to increase the administrative penalty assessed for excavation work without a permit.

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August 16, 1999 Board of Supervisors — PASSED, ON FIRST READING

Ayes: 10 - Ammiano, Becerril, Bierman, Brown, Katz, Kaufman, Leno, Newsom, Yaki, Yee

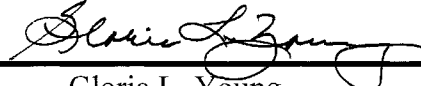
Absent: 1 - Teng

August 23, 1999 Board of Supervisors — FINALLY PASSED

Ayes: 11 - Ammiano, Becerril, Bierman, Brown, Katz, Kaufman, Leno, Newsom, Teng, Yaki, Yee

File No. 991177

I hereby certify that the foregoing Ordinance  
was **FINALLY PASSED** on August 23, 1999  
by the Board of Supervisors of the City and  
County of San Francisco.



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Gloria L. Young  
Clerk of the Board

SEP - 3 1999

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Date Approved



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Mayor Willie L. Brown Jr.