

1 [Establishment of floodplain management programs and designation of floodplain  
2 administrator.]

3 **Ordinance establishing a floodplain management program by adding Article XX,**  
4 **sections 2A.280 - 2A.285 to the San Francisco Administrative Code; designating the**  
5 **City Administrator as the floodplain administrator; and providing requirements for**  
6 **designating floodplains and for construction and development in floodplains.**

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8 Note: All sections are new.

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

10 Section 1. Environmental Findings. The Planning Department has determined that the  
11 actions contemplated in this Ordinance are in compliance with the California Environmental  
12 Quality Act (California Public Resources Code sections 21000 et seq.). Said determination is  
13 on file with the Clerk of the Board of Supervisors in File No. \_\_\_\_\_ and is  
14 incorporated herein by reference.

15 Section 2. The San Francisco Administrative Code is hereby amended by adding  
16 Article XX, Sections 2A.280 – 2A.285, to read as follows:

17 Sec. 2A.280. FINDINGS AND PURPOSE

18 a. The Federal Emergency Management Agency (FEMA) is in the process of  
19 preparing a Flood Insurance Rate Map (FIRM) for the City and County of San Francisco. The  
20 map will provide flood risk information for flood insurance and floodplain management  
21 purposes under the National Flood Insurance Program (NFIP). FEMA has stated that it  
22 anticipates publishing the final FIRM in early 2009.

23 b. Under the NFIP, the Federal government provides financial backing to enable  
24 residents and businesses in the community to obtain affordable flood insurance in exchange  
25 for the adoption of floodplain management regulations by the community participating in the

1 program. Participation in the NFIP will enable businesses and residents within flood prone  
2 areas to obtain certain forms of loans and disaster assistance.

3 c. To join the NFIP, the City must adopt a Floodplain Management Ordinance that  
4 would require new structures, substantial improvements and substantial damage repairs in  
5 designated flood prone areas be protected against flood damage at the time of initial  
6 construction, and prohibit certain uses that would increase flood hazards.

7 d. The City's joining the NFIP and adopting floodplain regulations at this time will  
8 provide all City residents the opportunity to obtain flood insurance that will cover damages  
9 resulting from storm-caused flooding.

10 e. The floodplain management regulations in this ordinance are consistent with the  
11 NFIP requirements for communities, such as San Francisco, for which FEMA is in the process  
12 of preparing but has not completed a final FIRM. When FEMA issues a final FIRM  
13 designating special flood hazard areas in San Francisco, NFIP regulations require that the  
14 adopted floodplain management program be reviewed and modified by authorized community  
15 representatives as necessary to ensure consistency with NFIP requirements applicable to  
16 communities for which FEMA has published a final FIRM.

17 f. FEMA's publication of a final FIRM for San Francisco may affect new development in  
18 San Francisco, especially renovation and reuse of finger piers. This Board finds that new  
19 construction on the San Francisco waterfront is an important local and state concern. The  
20 San Francisco waterfront, transferred by the State of California to San Francisco in 1969, is a  
21 valuable public trust asset of the State that provides special maritime, navigational,  
22 recreational, cultural and historical benefits to the people of the region and the State. New  
23 development, including rehabilitation of historic structures, on land that is seaward of the  
24 reach of mean high tide can be reasonably safe from flooding, provided that adequate building  
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1 controls are in place. In 1997, the Port of San Francisco adopted a Waterfront Land Use Plan  
2 to guide development and use of the Port's waterfront property consistent with its trust  
3 obligations, and in 2006 the Port created a Capital Plan identifying public facilities necessary  
4 to maintaining a viable San Francisco waterfront. This Board urges the Port of San Francisco  
5 and FEMA to develop, before publication of final FIRM, long-term floodplain management  
6 controls that both address any flooding hazard risks and allow the City to implement the  
7 Waterfront Land Use Plan and the Capital Plan, as they may be amended, and achieve the  
8 goals of that Plan, including the preservation of historic piers.

9 g. The floodplain management regulations adopted by this ordinance were developed  
10 by the City Administrator, in consultation with the Department of Building Inspection, the  
11 Planning Department, the Department of Public Works, the Public Utilities Commission, the  
12 Port of San Francisco, the San Francisco International Airport, the San Francisco  
13 Redevelopment Agency and the City Attorney's Office.

14 h. The City and County of San Francisco adopts the following floodplain management  
15 regulations under its authority to adopt regulations designed to promote the public health,  
16 safety, and general welfare of its residents granted by Article II, sections 5 and 7 of the  
17 California Constitution. Such regulations are intended to remain in effect until FEMA adopts a  
18 final FIRM, at which time the City and FEMA will need to review and revise these regulations  
19 under federal requirements consistent with the purposes of this ordinance.

20 i. The purpose of this ordinance is to promote the public health, safety, and general  
21 welfare, and minimize public and private losses due to flood conditions in specific areas by  
22 imposing provisions designed to:

- 23 1. Protect human life and health;
- 24 2. Minimize expenditure of public money for costly flood control projects;

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- 1                   3. Minimize the need for rescue and relief efforts associated with flooding and  
2                   generally undertaken at the expense of the general public;
- 3                   4. Minimize prolonged business interruptions;
- 4                   5. Minimize damage to public facilities and utilities such as water and gas  
5                   mains; electric, telephone and sewer lines; and streets and bridges located in  
6                   areas of special flood hazard;
- 7                   6. Help maintain a stable tax base by providing for the sound use and  
8                   development of areas of special flood hazard so as to minimize future  
9                   blighted areas caused by flood damage;
- 10                  7. Ensure that potential buyers are notified that property is in an area of special  
11                  flood hazard; and
- 12                  8. Ensure that those who occupy the areas of special flood hazard assume  
13                  responsibility for their actions.

14                  Sec. 2A.281. DEFINITIONS

15                  a. "Area of special flood hazard" means the land in the floodplain within a community  
16                  subject to a one percent or greater chance of flooding in any given year.

17                  b. "Base flood" means a flood that has a one percent chance of being equaled or  
18                  exceeded in any given year (also called the "100 year flood").

19                  c. "Building" - see "Structure."

20                  d. "Flood" or "flooding" means:

- 21                    1. A general and temporary condition of partial or complete inundation of  
22                    normally dry land areas from: the overflow of inland or tidal waters; the unusual and rapid  
23                    accumulation or runoff of surface waters from any source; or mudslides (i.e., mudflows) which  
24                    are proximately caused by flooding.

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1                   2. The collapse or subsidence of land along the shore of a lake or other body of  
2 water as a result of erosion or undermining caused by waves or currents of water exceeding  
3 anticipated cyclical levels or suddenly caused by an unusual and unforeseeable event which  
4 results in flooding as defined in this definition.

5                   e. "Floodplain or flood prone area" means any land area designated by the City  
6 Administrator as susceptible to being inundated by 100-year flood.

7                   f. "Floodplain Administrator" is the City Administrator.

8                   g. "Floodplain management" means the operation of a program of corrective and  
9 preventive measures for reducing flood damage and preserving and enhancing, where  
10 possible, natural resources in the floodplain, including but not limited to emergency  
11 preparedness plans, flood control works, floodplain management regulations, and open space  
12 plans.

13                  h. "Floodplain management regulations" means this ordinance and other zoning  
14 ordinances, subdivision regulations, building codes, health regulations, special purpose  
15 ordinances (such as grading and erosion control) and other application of police power which  
16 control development in flood prone areas. This term includes applicable federal, state or local  
17 regulations that provide standards for preventing and reducing flood loss and damage.

18                  i. "Functionally dependent use" means a use that cannot perform its intended purpose  
19 unless it is located or carried out in close proximity to water. The term includes, but is not  
20 limited to, docking facilities, port facilities that are necessary for the loading and unloading of  
21 cargo or passengers, and ship building and ship repair facilities,

22                  j. "Historic structure" means any structure that is  
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1                   1. Listed individually in the National Register of Historic Places or preliminarily  
2 determined by the Secretary of the Interior as meeting the requirements for individual listing  
3 on the National Register;

4                   2. Certified or preliminarily determined by the Secretary of the Interior as  
5 contributing to the historical significance of a registered historic district or a district  
6 preliminarily determined by the Secretary to qualify as a registered historic district;

7                   3. Individually listed on a state inventory of historic places in states with historic  
8 preservation programs which have been approved by the Secretary of Interior; or

9                   4. Individually listed on a local inventory of historic places in communities with  
10 historic preservation programs, including, but not limited to those structures that have been  
11 certified either by an approved state program as determined by the Secretary of the Interior or  
12 directly by the Secretary of the Interior in states with approved programs.

13                   5. Determined to be an historic resource in accordance with the City and  
14 County of San Francisco Planning Department's CEQA Review Procedures for Historic  
15 Resources.

16                   6. In an historic district that is listed in the National Register of Historic Places.

17                   k. "New construction" means structures for which the "start of construction"  
18 commenced on or after the effective date of floodplain management regulations adopted  
19 pursuant to this ordinance, and includes any substantial improvements to such structures.

20                   l. "One hundred year flood" or "100 year flood" means a flood that has a one percent  
21 chance of being equaled or exceeded in any given year.

22                   m. "Start of construction" includes substantial improvement and other proposed new  
23 development and means the date the building permit was issued, provided the actual start of  
24 construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement  
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1 was within 180 days from the date of the permit. The actual start means either the first  
2 placement of permanent construction of a structure on a site, such as the pouring of slab or  
3 footings, the installation of piles, the construction of columns, or any work beyond the stage of  
4 excavation. Permanent construction does not include land preparation, such as clearing,  
5 grading, and filling; nor does it include the installation of streets and/or walkways; nor does it  
6 include excavation for a basement, footings, piers, or foundations or the erection of temporary  
7 forms; nor does it include the installation on the property of accessory buildings, such as  
8 garages or sheds not occupied as dwelling units or not part of the main structure. For a  
9 substantial improvement, the actual start of construction means the first alteration of any wall,  
10 ceiling, floor, or other structural part of a building, whether or not that alteration affects the  
11 external dimensions of the building.

12 n. "Structure" means a walled and roofed building that is principally above ground; this  
13 includes a gas or liquid storage tank or a manufactured home.

14 o. "Substantial damage" means damage of any origin sustained by a structure  
15 whereby the cost of restoring the structure to its before damaged condition would equal or  
16 exceed 50 percent of the market value of the structure before the damage occurred. The term  
17 does not include any alteration of or exterior addition to a damaged "historic structure,"  
18 provided that the alteration or addition will not preclude the structure's continued designation  
19 as a "historic structure."

20 p. "Substantial improvement" means any reconstruction, rehabilitation, addition, or  
21 other proposed new development of a structure, the cost of which equals or exceeds 50  
22 percent of the market value of the structure before the "start of construction" of the  
23 improvement. This term includes structures that have incurred "substantial damage",  
24 regardless of the actual repair work performed. The term does not, however, include either:  
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1                   1. Any project for improvement of a structure to correct existing violations or  
2 state or local health, sanitary, or safety code specifications which have been identified by the  
3 local code enforcement official and which are the minimum necessary to assure safe living  
4 conditions, or

5                   2. Any alteration of, or attached exterior addition to, an "historic structure,"  
6 provided that the alteration or addition will not preclude the structure's continued designation  
7 as an "historic structure."

8                   Sec. 2A.282. ADMINISTRATION

9                   a. FLOODPLAIN ADMINISTRATOR. The City Administrator shall be the Floodplain  
10 Administrator, as defined by federal and state floodplain management laws and regulations,  
11 and for purposes of the City's participation in the National Flood Insurance Program  
12 administered by the United States Department of Homeland Security. The duties and  
13 responsibilities of the Floodplain Administrator shall include, but not be limited to providing  
14 oversight and guidance for the administration of floodplain management requirements and  
15 policies; designating flood prone areas within City jurisdiction by obtaining, reviewing, and  
16 reasonably using appropriate base flood data available from federal, state or other sources;  
17 maintaining and updating flood prone area maps in a form sufficient for public review and use;  
18 and providing floodplain management reports and information as required by applicable  
19 federal, state and local requirements. The City Administrator may delegate some or all of  
20 these duties and responsibilities to appropriate City staff.

21                   b. As provided by Appendix D to the San Francisco Charter and in accordance with  
22 Chapter 1A of the San Francisco Building Code, the Department of Building Inspection is  
23 responsible for reviewing all development permit applications to determine whether the permit  
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1 requirements of this ordinance have been satisfied, whether all other required state and  
2 federal permits have been obtained; and whether the site is reasonably safe from flooding.

3 c. As provided by Section 4.114 of the San Francisco Charter, the San Francisco Port  
4 Commission, acting by and through its Chief Harbor Engineer, is responsible for reviewing all  
5 development permit applications for buildings and structures within the Port Commission's  
6 jurisdiction to determine whether the permit requirements of this ordinance have been  
7 satisfied, whether all other required state and federal permits have been obtained; and  
8 whether the site is reasonably safe from flooding. All building standards for construction in  
9 Port areas designated by the City Administrator as flood prone shall be consistent with the  
10 requirements of this ordinance and applicable federal and state floodplain management  
11 regulations, and shall become effective when such building standards are adopted by the Port  
12 Commission.

13 d. All building standards for construction on City-owned property located outside the  
14 boundaries of the City and in areas designated by FEMA as flood prone shall be consistent  
15 with the requirements of this ordinance and applicable federal and state floodplain  
16 management regulations. Each City department with jurisdiction over the operations and  
17 maintenance of such property shall determine whether the building standards requirements of  
18 this ordinance have been satisfied, whether all other required state and federal permits have  
19 been obtained; and whether the site is reasonably safe from flooding.

20 Sec. 2A.283. PROVISIONS FOR FLOOD HAZARD REDUCTION

21 a. Permits. A permit or other applicable approval shall be obtained for all proposed  
22 construction of buildings and structures located within a floodplain or flood prone area  
23 designated as such by the City Administrator, and shall be issued in accordance with  
24 applicable procedures for authorizing such construction within the appropriate City  
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1 departments' jurisdiction. No building, structure or land shall be constructed, located,  
2 extended, converted, or altered within a floodplain or flood prone area without full compliance  
3 with the requirements of this ordinance and other applicable regulations.

4 b. Standards Of Construction.

5 1. If a proposed building site is in a flood-prone area, all new construction and  
6 substantial improvements shall:

7 A. Be designed (or modified) and adequately anchored to prevent  
8 flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and  
9 hydrostatic loads, including the effects of buoyancy.

10 B. Be constructed:

- 11 i. With materials and utility equipment resistant to flood damage;
- 12 ii. Using methods and practices that minimize flood damage;

13 C. With electrical, heating, ventilation, plumbing and air conditioning  
14 equipment and other service facilities that are designed and/or located so as to prevent water  
15 from entering or accumulating within the components during conditions of flooding.

16 2. The Chief Harbor Engineer of the Port of San Francisco and the Floodplain  
17 Administrator shall consult and coordinate with FEMA to create appropriate building standards  
18 for developing any finger piers located in flood prone areas in Port jurisdiction, before  
19 publication of FEMA's final FIRM for San Francisco. No later than October 1, 2008, the  
20 Floodplain Administrator shall provide a report to the Board of Supervisors regarding the  
21 creation of such building standards.

22 c. Standards For Subdivisions. If a subdivision proposal is in a flood-prone area, any  
23 such proposals shall be reviewed to assure that:

1                   1. All such proposals are consistent with the need to minimize flood damage  
2 within the flood prone area;

3                   2. All public utilities and facilities such as sewer, gas, electrical, and water  
4 systems are located and constructed to minimize or eliminate flood damage; and

5                   3. Adequate drainage is provided to reduce exposure to flood hazards.

6                   d. Standards For Utilities. All new and replacement water supply and sanitary sewage  
7 systems shall be designed to minimize or eliminate:

8                   1. Infiltration of flood waters into the systems, and

9                   2. Discharge from the systems into floodwaters.

10                  e. Variances.

11                   1. A variance from the standards provided by the section may be granted by the  
12 appropriate approval authority for a parcel of property with physical characteristics so unusual  
13 that complying with the requirements of this ordinance would create an exceptional hardship  
14 to the applicant or the surrounding property owners. Variances shall be issued upon a  
15 determination that the variance is the minimum necessary, considering the flood hazard, to  
16 afford relief. Variance determinations shall include a showing of good and sufficient cause  
17 that:

18                   A. Failure to grant the variance would result in exceptional hardship to  
19 the applicant; and

20                   B. The granting of a variance will not result in increased flood heights,  
21 additional threats to public safety, or extraordinary public expense, create a nuisance, cause  
22 fraud and victimization of the public, or conflict with existing local laws or ordinances.

23                   2. Notwithstanding subsection 2A.284(e)(1) above, variances may be issued for  
24 new construction, substantial improvement, and other proposed new development to be  
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1 erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with  
2 existing structures constructed below the base flood level.

3 3. Notwithstanding subsection 2A.284(e)(1) above, variances shall be issued  
4 for:

5 A. The repair or rehabilitation of, or exterior addition to, historic structures  
6 upon a determination that the proposed repair, rehabilitation or addition will not preclude the  
7 structure's continued designation as an historic structure.

8 B. New construction, substantial improvement, and other proposed new  
9 development necessary for the conduct of a functionally dependent use, provided that the  
10 structure or building is protected by methods that minimize flood damages, and that issuance  
11 of the variance does not result in additional threats to public safety or create a public  
12 nuisance.

13 Section 2A.284. LIABILITY. The degree of flood protection required by this ordinance  
14 is considered reasonable for regulatory purposes and is based on scientific and engineering  
15 considerations. This ordinance shall not create liability on the part of the City and County of  
16 San Francisco, any officer or employee thereof, the State of California, or the Federal  
17 Insurance Administration, Federal Emergency Management Agency, for any flood damages  
18 that result from reliance on this ordinance or any administrative decision made hereunder.

19 Section 2A.285. SEVERABILITY. This ordinance and the various parts thereof are  
20 hereby declared to be severable. Should any section of this ordinance be declared by the  
21 courts to be unconstitutional or invalid, such decision shall not affect the validity of the  
22 ordinance as a whole, or any portion thereof other than the section so declared to be  
23 unconstitutional or invalid.

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1 APPROVED AS TO FORM:  
2 DENNIS J. HERRERA, City Attorney

3 By: \_\_\_\_\_  
4 John Roddy  
5 Deputy City Attorney

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