

AMENDMENT OF THE WHOLE

FILE NO. 012186

ORDINANCE NO.

1 [Regulation of Diesel Backup Generators.]

2

3 **Ordinance amending the San Francisco Health Code by adding a new Article 30 to: (1)**  
4 **establish a registration program within the Department of Public Health for diesel**  
5 **backup generators used by facilities in the City and County of San Francisco; (2)**  
6 **require new backup diesel generators to have air emission control technologies; (3)**  
7 **limit the operation of diesel backup generators during non-emergency situations; (4)**  
8 **establish a recordkeeping requirement for the operation of diesel backup generators;**  
9 **and (5) provide for an enforcement mechanism for violations of the requirements of**  
10 **this Ordinance.**

11 Note: This entire Article is new.  
12 Board amendment additions are double underlined.  
13 Board amendment deletions are ~~strike through~~ normal.

13

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

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15 Section 1. The San Francisco Health Code is hereby amended by adding Article 30, to  
16 read as follows:

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17 **ARTICLE 30: REGULATION OF DIESEL BACKUP GENERATORS**

17

18 Sec 2001. Findings and Purpose

18

19 Sec 2002. Definitions

19

20 Sec. 2003. Certificate of Registration Required

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21 Sec. 2004. Application for Certificate

21

22 Sec. 2005. Issuance of Certificate

22

23 Sec. 2006. Requirements

23

24 Sec. 2007. Notification of the Department of Repair.

24

25 Sec. 2008. Renewals and Transfers

25

1           Sec. 2009. General Provisions and Disclaimer

2           Sec. 2010. Record keeping

3           Sec. 2011. Violations

4           Sec. 2012. Director's Authority

5           Sec. 2013. Enforcement Actions

6           Sec. 2014. Penalties

7           Sec. 2015. Director's Hearing

8           Sec. 2016. Collection

9           Sec. 2017. Fees Schedule

10          Sec. 2018. Annual Fee Adjustment

11          Sec. 2019. Delinquent Fees

12          Sec. 2020. Refund of Fees

13          Sec. 2021. Regulations

14          Sec. 2022. Disclaimer of Liability

15          Sec. 2023. Duties are Discretionary

16          Sec. 2024. Severability

17          Sec. 2025. Sunset Provision

18  
19          Sec. 2001. **FINDINGS AND PURPOSE.** The Board of Supervisors finds and declares the  
20 following:

21           (a)     Diesel Backup Generators emit large amounts of smog-forming nitrogen oxides (NO<sub>x</sub>),  
22 particulate matter with a diameter of 10 microns or less (PM<sub>10</sub>), sulfur oxides, and hydrocarbons  
23 contributing to ground-level ozone, and reduced visibility.

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1 (b) Diesel exhaust is linked to short and long-term adverse health effects in humans, which  
2 include lung cancer, aggravation of respiratory and cardiovascular disease, aggravation of existing  
3 asthma, acute respiratory symptoms, and chronic bronchitis and decreased lung function.

4 (c) In August of 1998, the California Air Resource Board listed diesel exhaust, specifically  
5 particulate emissions from diesel fueled engines, as a “toxic air contaminant.”

6 (d) According to the Bay Area Air Quality Management District (BAAQMD), Diesel Backup  
7 Generators tend to emit more pollutants than a new well-controlled power plant. In fact, even a clean  
8 diesel backup generator may emit more than 20 times as much NOx per kilowatt-hour as a new well-  
9 controlled power plant. Older dirtier Diesel Backup Generators may emit 200 times as much NOx.

10 (e) The Bay Area is currently designated nonattainment for the national ozone standards by  
11 the United States Environmental Protection Agency.

12 (f) The Bay Area is currently designated nonattainment for the state ozone and PM<sub>10</sub>  
13 standards by the California Air Resource Board.

14 (g) The City and County of San Francisco is concerned about the health hazards posed by  
15 diesel emissions polluting the air, and wishes to impose limitations on Diesel Backup Generator to  
16 reduce the emission of diesel exhaust.

17 Sec. 2002. DEFINITIONS. As used in this Article, the defined terms shall have the following  
18 meaning:

19 (a) “Certificate of Registration” or “Certificate” shall mean a certificate of registration  
20 issued pursuant to this Article.

21 (b) “Commission” shall mean the San Francisco Health Commission as established by  
22 Section 4.110 of the San Francisco Charter.

23 (c) “Department” shall mean the San Francisco Department of Public Health.

24 (d) “Diesel Backup Generator” shall mean any internal combustion engine or gas turbine  
25 with an output rating of 37.3 kilowatt (50 horsepower) or greater and used or designed to be used as a

1 Distributed Generation Unit which may be powered by distillate fuel, such as diesel. Diesel Backup  
2 Generator shall not include any portable internal combustion engine or gas turbine registered with the  
3 California Air Resources Board pursuant to the California Code of Regulations, Title 13, Chapter 9,  
4 Article 5.

5 (e) “Director” shall mean the Director of the Department or her or his designee.

6 (f) “Distributed Generation Unit” shall mean an electrical generation unit that produces  
7 electricity near the place of use.

8 (g) “Emergency Use” shall mean the temporary operation of the Diesel Backup Generator  
9 to provide electrical power during an actual Outage caused by sudden and reasonably unforeseen  
10 natural disaster such as earthquake, flood, fire, or other acts of Nature, or other events beyond the  
11 control of the Owner and/or the Operator, its officers, employees, and contractors.

12 (h) “Non-Emergency Use” shall mean any operation of the Diesel Backup Generator that  
13 does not qualify as Emergency Use.

14 (1) Non-Emergency Use shall include without limitations: (i) operation of a Diesel  
15 Backup Generator to test its ability to perform during an emergency and (ii) operation  
16 of a Diesel Backup Generator before or after an actual Outage.

17 (2) Non-Emergency Use shall not include: (i) reliability testing of the Diesel Backup  
18 Generator required by a government regulatory agency in accordance with federal or  
19 state laws or regulations; (ii) use of Diesel Backup Generators during emergency drills  
20 or maintenance of critical electrical components at sites that have been designated by  
21 the City’s Office of Emergency Services as the official Citywide emergency command  
22 and control centers; and (iii) testing of the Diesel Backup Generator required by any  
23 Repair performed on the generator.

24 (i) “Operator” shall mean any Person who is in control of or operates a Diesel Backup  
25 Generator.

1 (j) “Outage” shall mean the actual loss of normal electrical power service to a facility.

2 (k) “Owner” shall mean any Person who has equity in and/or legal title to the Diesel  
3 Backup Generator.

4 (l) “Person” shall mean an individual, trust, firm, joint stock company, corporation  
5 including a government corporation, partnership, association.

6 (m) “Registrant” shall mean any Person to whom a Certificate is issued pursuant to this  
7 Article and any authorized representative, agent or designee of such Person.

8 (n) “Repair” shall mean any work that restore to optimum or designed usage of the Diesel  
9 Backup Generator that has become damaged or non-functional, through the replacement,  
10 reconnection, reassembly, and/or adjustment of component(s) of the generator. Repair shall not  
11 include periodic maintenance or routine reliability testing recommended by the manufacturer of the  
12 Diesel Backup Generator.

13 Sec. 2003. CERTIFICATE OF REGISTRATION REQUIRED.

14 (a) **Pre-Existing Diesel Backup Generators.** Not later than one (1) year after the effective  
15 date of this Article, no Person shall own or operate a Diesel Backup Generator that was installed prior  
16 to the effective date of this Article unless the Person has obtained a Certificate pursuant to this Article.

17 (b) **New Diesel Backup Generators.** Except as otherwise provided herein, any Person  
18 owning or operating a Diesel Backup Generator that is installed after the effective date of this Article  
19 in any facility within the City and County of San Francisco shall submit an application pursuant to  
20 Section 2004 of this Article within 90 days of the installation.

21 Sec. 2004. APPLICATION FOR CERTIFICATE.

22 (a) Any Person required to obtain a Certificate pursuant to this Article shall file an  
23 application, providing such information as required by Subsection (b) and submitting the appropriate  
24 fees as specified in this Article. Applicant’s failure to submit the required information or fees shall  
25 render such submission incomplete and not accepted for filing.

- 1           (b) Applicant shall submit the following information:
- 2           (1) The Owner of the Diesel Backup Generator and its address;
- 3           (2) The Operator of the Diesel Backup Generator, if different from the Owner, and its  
4 address;
- 5           (3) The name and address of facility in which the Diesel Backup Generator will be used;
- 6           (4) The name of the manufacturer of the Diesel Backup Generator;
- 7           (5) The model name and/or number of the Diesel Backup Generator;
- 8           (6) The model year of the Diesel Backup Generator;
- 9           (7) The maximum energy output rating of the Diesel Backup Generator;
- 10          (8) Any emission control equipment associated with the Diesel Backup Generator, if any;
- 11          (9) A copy of the manufacturer's specifications of the emission rate of the Diesel Backup  
12 Generator for criteria and toxic air pollutants and the manufacturer's specifications for testing of the  
13 Diesel Backup Generator for reliability purposes, if available;
- 14          (10) The method of storage of the fuel for the Diesel Backup Generator; and
- 15          (11) Any other information that the Department deems appropriate.

16           Sec. 2005. ISSUANCE OF CERTIFICATE. Unless otherwise provided in this Article, upon  
17 the acceptance of a completed application for filing, the Department shall issue a Certificate.

18           Sec. 2006. REQUIREMENTS.

- 19          (a) Except as otherwise provided in this Section, the Certificate issued pursuant to this  
20 Article shall limit operating hours of a Diesel Backup Generator for Non-Emergency Use to 50 hours  
21 each year. Nothing in this Subsection shall prohibit or restrict the Owner or Operator from operating  
22 the Diesel Backup Generator for manufacturer's required liability testing that is beyond the hour  
23 limitations set forth in this Subsection; Provided that the Owner or Operator submits to the Department  
24 the manufacturer's specification which requires operation beyond the annual hour limitations set forth  
25 in this Subsection to test the Diesel Backup Generator for reliability purposes in which case the

1 maximum allowable annual hours of operation for Non-Emergency Uses shall be the hours specified in  
2 the manufacturer's specification.

3 (b) Any Diesel Backup Generator installed after the effective date of this Article shall have  
4 the best available control technologies as determined by the California Air Resource Board or the Bay  
5 Area Air Quality Management District installed to reduce air emissions.

6 (c) Owner and/or Operator shall conduct periodic maintenance of the Diesel Backup  
7 Generator as recommended by the engine manufacturer. The periodic maintenance shall be conducted  
8 at least once each calendar year.

9 (d) Owner and/or Operator of the Diesel Backup Generator shall equip the Diesel Backup  
10 Generator with a non-resettable totalizing meter that measures the hours of operation or fuel usage.

11 Sec. 2007. NOTIFICATION TO THE DEPARTMENT. Within ten (10) days from the  
12 completion of a Repair of a Diesel Backup Generator, the Owner and/or Operator shall submit to the  
13 Department documentation regarding the Repair. Such documentation includes, without limitations,  
14 (a) the name of the person performing the Repair, (b) the purpose of the Repair, (c) a description of the  
15 Repair work performed, (d) the amount of time for which the Diesel Backup Generator was operated to  
16 test the effectiveness of the Repair, and (e) for operation of the Diesel Backup Generator after a Repair  
17 that exceeds one (1) hour, documentation demonstrating to the satisfaction of the Director that such  
18 operation is needed to test the efficacy of the Repair .

19 Sec. 2008. RENEWALS AND TRANSFERS.

20 (a) Certificates issued pursuant to this Article shall be valid for a term of one (1) year.

21 (b) Every application for a renewal of a Certificate shall be made thirty (30) days before the  
22 expiration of such Certificate and shall be accompanied by the appropriate fees set forth in this Article.  
23 The renewal application shall include: (1) either (i) a certification from the Registrant that information  
24 in the original Certificate of Registration application and any addenda thereto have not changed, or  
25 (ii) updated information regarding the operation of the Backup Generator to the Department that is not

1 in the original Certificate of Registration application or addenda thereto and (2) a copy of the monthly  
2 logs kept pursuant to Section 2010 of this Article during the term of the prior Certificate.

3 (c) Any Certificate for which a properly completed application for renewal has been received  
4 by the Department pursuant to Subsection (b) of this Section shall remain in effect until: (1) the  
5 application for renewal is granted, (2) a decision has been made on the application and all appeals  
6 have been exhausted, or (3) the denial of the renewal application and the time for appeal has expired.

7 (d) The Department shall deny an application for renewal if the Owner and/or Operator failed  
8 to comply with any final order issued pursuant to this Article. The Registrant may file an appeal within  
9 thirty (30) days from the issuance of the Department's decision on the renewal application. Upon the  
10 receipt of a timely filed notice of appeal, the Director shall hold a public hearing pursuant to Section  
11 2015 of this Article. The Department's decision shall be final and deemed a Director's order if the  
12 Registrant fails to file a timely appeal.

13 (e) A Certificate shall be transferable upon a change in ownership of a Diesel Backup  
14 Generator; provided that, within thirty (30) days of a change in Ownership, the Department shall be  
15 notified of such change.

16 Sec. 2009. GENERAL PROVISIONS AND DISCLAIMER.

17 (a) A Certificate issued pursuant to this Article does not take the place of any permit or  
18 license required by State, federal, or local laws nor does compliance with the requirements of this  
19 Article relieve any party of compliance with any other applicable State, federal or local laws.

20 (b) Issuance of a Certificate does not constitute authorization to own or operate a Diesel  
21 Backup Generator if such ownership and/or operation violates provision of this Article or any other  
22 local, federal, or State laws or regulations.

23 Sec. 2010. RECORD KEEPING. Owner and/or Operator shall maintain a monthly  
24 maintenance and usage log for Diesel Backup Generators regulated under this Article which shall  
25 contain the following information: (1) total hours of operation; (2) hours of operation qualifying as



1 Emergency Use; (3) for each Emergency Use, a description of the nature of the emergency condition;  
2 (4) hours of operation caused by a Repair; (5) hours of operation attributable to reliability testing; (6)  
3 a record of maintenance performed on the Diesel Backup Generator; and (7) a record of all Repair  
4 performed on the Diesel Backup Generator. All records kept pursuant to this Section shall be kept for  
5 at least three (3) years and maintained at the facility where the Diesel Backup Generator is located  
6 unless the Owner and/or Operator receives prior approval from the Department to maintain such  
7 records at another location. Such records shall be available for inspection by the Department upon  
8 request.

9 Sec. 2011. **VIOLATIONS.** The following acts or omissions shall be a violation of this Article:

10 (a) Failure to maintain a current and valid Certificate issued pursuant to this Article;

11 (b) Failure to operate the Diesel Backup Generator pursuant to the terms and conditions of  
12 a Certificate issued pursuant to this Article;

13 (c) Failure to comply with any requirements of this Article;

14 (d) Fraud or willful misrepresentation, or any willfully inaccurate or false statement made  
15 in an application for or renewal of a Certificate;

16 (e) Fraud or willful misrepresentation, or any willfully inaccurate or false statement made  
17 in any report or record required by this Article.

18 Sec. 2012. **DIRECTOR'S AUTHORITY.**

19 The Director shall have the authority to administer and enforce all provisions of this Article.

20 The Director may issue Certificates for Diesel Backup Generators, deny, revoke or suspend any  
21 Certificate issued pursuant to this Article; enforce the provisions of this Article by any lawful means  
22 available for such purpose; and inspect records of and facilities with Diesel Backup Generators to  
23 determine compliance with this Article.

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1           Sec. 2013. ENFORCEMENT ACTIONS.

2           (a)     **Administrative Complaint Order.** Whenever the Department determines that a Person  
3 is in violation of this Article, the Department may issue an administrative complaint order requiring the  
4 Person to comply with this Article and to assess an administrative penalty set forth in Section 2014 of  
5 this Article. The order shall allege sufficient facts to show a violation of this Article. Such order shall  
6 be served personally or by certified mail, return receipt requested, upon the Person alleged to be in  
7 violation of this Article. A Person who is subject to the administrative complaint order may file an  
8 appeal to the Director within thirty (30) days from the issuance of the order. Upon the receipt a timely  
9 filed appeal, the Director shall hold a public hearing pursuant to Section 2015 of this Article. The  
10 administrative complaint order shall be final and shall be deemed a Director's order if the Person fails  
11 to file a timely appeal to the Director. Any administrative complaint order issued shall be approved as  
12 to form by the City Attorney.

13           (b)     **Order to Show Cause.** Whenever, the Director finds that an Owner and/or Operator is  
14 operating a Diesel Backup Generator in violation of this Article, any order or any Certificate issued  
15 pursuant to this Article, the Director may issue an order to show cause to the Owner and/or Operator  
16 on why the Certificate should not be revoked or suspended. The order to show cause shall specify the  
17 date and location of hearing for the order to show cause and shall be served personally or by certified  
18 mail, return receipt requested upon the Owner and/or Operator. The Director shall hold a hearing  
19 pursuant to Section 2015 of this Article.

20           (c)     **Injunctive Relief.**

21           (1)     Upon failure of any Person to comply with the requirements of this Article, a Certificate,  
22 any regulation, or any other order issued by the Director, the City Attorney, upon request by the  
23 Director, may petition the proper court for injunctive relief, payment of civil penalties, and any other  
24 appropriate remedy, including restraining such Person from continuing any prohibited activity and  
25 compelling compliance with lawful requirements.

1           (2)     In any civil action brought pursuant to this Article in which a temporary restraining  
2 order, preliminary injunction or permanent injunction is sought, it is not necessary to allege or prove  
3 at any state of the proceeding any of the following:

4           (A)     Irreparable damage will occur should the temporary restraining order, preliminary  
5 injunction, or permanent injunction not be issued;

6           (B)     The remedy at law is inadequate;  
7 The court shall issue a temporary restraining order, preliminary injunction, or permanent injunction in  
8 a civil action brought pursuant to this Article without the allegations and without the proof specified  
9 above.

10           Sec. 2014. PENALTIES.

11           (a)     Civil Penalties. Any Person found to be in violation of this Article shall be civilly liable  
12 to the City in an amount not to exceed six thousand dollars (\$6,000) per day per violation.

13           (b)     Administrative Penalties. Any Person found to be in violation of this Article shall be  
14 civilly liable to the Department in the amount as follows:

15           (1)     For failure to maintain a valid Certificate – up to \$200 per day.

16           (2)     For operating or allowing the operation of a Diesel Backup Generator beyond the  
17 allowable hours of operation for Non-Emergency Use – up to \$250 for each hour beyond the allowable  
18 hours. Fractional hours shall be rounded up the next whole hour.

19           (3)     For failing to submit required information or to maintain records of operation for the  
20 Diesel Backup Generator – up to \$425 per violation.

21           (4)     For providing false information or records to the Department – up to \$850 per violation.

22           (5)     For failing to comply with a final Director’s Order – up to \$2,000 per day.

23           (c)     Penalty Assessment. A civil penalty pursuant to Subsection (a) of this Section shall not  
24 be recoverable for a violation if an administrative penalty was imposed pursuant to Subsection (b) of

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1 this Section for the same violation. Each day in which a Person fails to comply with the requirements  
2 of this Article shall be a separate and distinct violation.

3 (d) **Factors Considered in Penalty Assessment.** In determining the appropriate amount of  
4 civil or administrative penalties, the court or the Director shall consider the following: (1) the nature  
5 and persistence of the violation, (2) the frequency of past violations, (3) any action taken to mitigate the  
6 violation, (4) the economic benefits accrued to the violator as a result of the violation, and (5) the  
7 financial burden to the violator.

8 (e) **Remedies not Exclusive.** Remedies under this Section are in addition to and do not  
9 supersede or limit any and all other remedies, civil or criminal that are available in law or equity.

10 Sec. 2015. **DIRECTOR'S HEARING.** Any hearing required by this Article shall be conducted  
11 as follows:

12 (a) The Director shall serve a notice of hearing or order to show cause at least thirty (30)  
13 days before the date of the public hearing to the Person alleged to be in violation of this Article. Such  
14 notice or order to show cause shall specify the purpose of the public hearing and notify the Person of  
15 the date, time, and the location of the public hearing. Notices of hearing or order to show cause shall  
16 also be given by publication in a newspaper of general circulation in the City for at least two (2) days  
17 and not less than ten (10) days before the date of the hearing. Written notices setting forth the date of  
18 the public hearings shall be sent to any interested party who has requested, in writing, to be notified of  
19 such hearings. Upon a written request from the Person submitted at least two (2) business days before  
20 the date of the public hearing, the Director may continue the date of the hearing once for not more than  
21 thirty (30) days. The Person requesting the continuance shall reimburse the Department for the costs  
22 of re-noticing the public hearing.

23 (b) In any public hearing held pursuant to this Section, all interested parties shall have the  
24 right to offer testimonial, documentary, and tangible evidence bearing on the issues, to see and copy all  
25 documents and other information the City relies on in the proceeding, to be represented by counsel,

1 and to confront and cross-examine any witness against them. Any public hearing held pursuant to this  
2 Section shall be electronically recorded.

3 (c) Within thirty (30) days after the date of the hearing, the Director shall issue a written  
4 decision and order containing finding of facts and statement of reasons in support of the decision.  
5 Such decision shall be served upon the Person alleged to be in violation of this Article either personally  
6 or by certified mail, return receipt requested, and shall be served on other interested party who  
7 provided testimony at the hearing by first class mail, if such party requested at or before the hearing  
8 that the order be sent to them. The Director's order shall be final. The order shall apprise the Person  
9 alleged to be in violation of this Article of his or her right to seek judicial review of the Director's  
10 Order pursuant to Section 1094.6 of the California Code of Civil Procedures.

11 Sec. 2016. **COLLECTION.**

12 (a) Costs and charges incurred by the Department by the reason of the abatement of any  
13 violation of this Article, including but not limited to inspection costs, and any final administrative  
14 penalties assessed against a Person for violation of this Article shall be an obligation owed to the City  
15 by the Person against whom the final administrative penalty was assessed. Such obligation may be  
16 collected by means of the imposition of a lien against the Person against whom the final administrative  
17 penalty was assessed if such Person is the property owner of the facility upon which the violation of  
18 this Article had occurred. The Department shall mail to the Person against whom the final  
19 administrative penalty was assessed a notice of the amounts due and a warning that a lien proceedings  
20 will be initiated against the Property on which the Backup Generator found to be in violation of this  
21 Article is located if the amounts are not paid within thirty (30) days after the mailing of the notice,  
22 when appropriate.

23 (b) Liens shall be created and assessed in accordance with the requirements of Article XX  
24 of Chapter 10 of the San Francisco Administrative Code (commencing with Section 10.230).

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1           Sec. 2017. FEE SCHEDULE.

2           (a)     All Applicants for a Certificate or a renewal of a Certificate shall submit an application  
3 fee of one hundred and sixty-three dollars (\$163).

4           (b)     In addition to the fee provided for in Subsection (a) of this Section, applicants who are  
5 not regulated under Article 21 of this Code shall pay and additional fees of one hundred and thirty  
6 dollars (\$130).

7           Sec. 2018. ANNUAL FEE ADJUSTMENT. After the effective date of this Article, on July 1<sup>st</sup>  
8 of each year, the fees set forth therein shall be increased by four percent (4%).

9           Sec. 2019. DELINQUENT FEES.

10          (a)     Any person who fails to submit a timely application to register or to renew a registration  
11 or fails to submit the application fee specified in Section 2016(a) of this Code shall be subject to a one-  
12 time late-penalty fee of one hundred and sixty-three dollars (\$163).

13          (b)     All fees shall be due and payable within 30 days of the date of issuance of a notice of  
14 payment due. In addition to any other penalties provided for in this Article, delinquent fees shall be  
15 subject to a penalty of ten percent (10%) plus interest at the rate of one percent (1%) per month on the  
16 outstanding balance which shall be added to the amount of the fee collected from the date that payment  
17 is due.

18          Sec. 2020. REFUND OF FEES.

19          Registration applicant shall not be entitled to a refund or rebate of a fee because the Certificate  
20 is denied or the application is withdrawn. Registration fees are not refundable if the Owner and/or  
21 Operator discontinues the use of the Diesel Backup Generator prior to the expiration of the Certificate.

22          Sec. 2021. REGULATIONS.

23          (a)     The Director may adopt and, from time to time, may amend reasonable regulations  
24 implementing the provisions and intent of this Article. The regulations shall be approved by the  
25 Commission at a public hearing. In addition to the notices required by law, before the Commission

1 approves the issuance or amendment of any rule or regulation pursuant to this Article, the Director  
2 shall provide a 30-day public comment period by providing published notice in an official newspaper of  
3 general circulation in the City and County of San Francisco of the intent to issue or amend the rule or  
4 regulation.

5 (b) Regulations promulgated by the Director and approved by the Commission shall be  
6 maintained in the Office of the Clerk of the Board of Supervisors.

7 **Sec.2022. DISCLAIMER OF LIABILITY.**

8 (a) The degree of protection required by this Article is considered reasonable for regulatory  
9 purposes. This Article shall not create liability on the part of the City, or any of its officers or  
10 employees for any damages that result from reliance on this Article or any administrative decision  
11 lawfully made pursuant to this Article.

12 (b) In undertaking this program to obtain disclosure of information relating to the location  
13 of Diesel Backup Generators, the City and County of San Francisco is assuming an undertaking only to  
14 promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an  
15 obligation for breach of which it is liable in money damages to any person who claims that such breach  
16 proximately caused injury.

17 (c) All inspections specified in this Article shall be at the discretion of the City and nothing  
18 in this Article shall be construed as requiring the City to conduct any such inspection nor shall any  
19 actual inspection made imply a duty to conduct any other inspection.

20 **Sec. 2023. DUTIES ARE DISCRETIONARY.** Subject to the limitations of due process,  
21 notwithstanding any other provision of this Code whenever the words "shall" or "must" are used in  
22 establishing a responsibility or duty of the City, its elected or appointed officers, employees, or agents,  
23 it is the legislative intent that such words establish a discretionary responsibility or duty requiring the  
24 exercise of judgment and discretion.

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1           Sec. 2024. SEVERABILITY. If any section, subsection, clause, phrase or portion of this  
2 Article is for any reason held invalid or unconstitutional by any court or federal or State agency of  
3 competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision  
4 and such holding shall not affect the validity of the remaining portions thereof.

5           Sec. 2025. SUNSET PROVISION. In the event that either the Bay Area Air Quality  
6 Management District or the California Air Resources Board adopts enforceable regulations applicable  
7 to Diesel Backup Generators regulated under this Article that are as or more stringent than the  
8 operational hours limitation for Non-Emergency Uses for such generators, the Director shall notify the  
9 Board of Supervisors of such regulations. This Article shall become null and void on the effective date  
10 of such regulations unless the Board of Supervisors amends this Article establishing a more stringent  
11 operational hours limitation for Non-Emergency Uses than such regulations.

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13  
14 APPROVED AS TO FORM:  
15 DENNIS J. HERRERA, City Attorney

16  
17 By: \_\_\_\_\_  
18 WILLIAM CHAN  
19 Deputy City Attorney