

FILE NO. 051142

1 [Construction and Demolition Debris Recovery.]

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3 **Ordinance amending the Building Code by amending Chapter 13 of the Building Code**
4 **to change the title of the Chapter from "Energy Conservation" to "Resource**
5 **Conservation" and adding Chapter 13B entitled "Construction and Demolition Debris**
6 **Recovery Program;" ~~Section 106.3.2.6;~~ **amending the Health Code by adding Sections**
7 **288 and 288.1; and amending the Environment Code by adding Chapter ~~13~~14, entitled**
8 **Construction and Demolition Debris Recovery Ordinance, to establish a**
9 **comprehensive program to require the recovery rather than landfill disposal of**
10 **construction and demolition debris generated in San Francisco by prohibiting disposal**
11 **of such debris with garbage; imposing requirements and conditions in building**
12 **permits; establishing a program to register construction and demolition debris**
13 **transporters and processing facilities; and establishing enforcement mechanisms**
14 **including penalties; amending the Police Code Section 39-1 to implement the new**
15 **program; setting an operative date; and making environmental findings.****

16 Note: Additions are *single-underline italics Times New Roman*;
17 deletions are *strikethrough italics Times New Roman*.
18 Board amendment additions are double underlined.
19 Board amendment deletions are ~~strikethrough normal~~.

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

20 Section 1. Findings. The Board of Supervisors hereby finds and declares:

21 A. San Francisco is committed to protecting the public health, safety, welfare and
22 environment. This requires commitment that our air, water and land be healthy and safe.
23 The construction and demolition of buildings used for housing, recreation and commerce is
24 elemental to public well being, but can also result in the generation of pollution and the waste
25 of natural resources. In order for our City to reduce waste, preserve resources and protect

1 public health during building construction and demolition, the Board of Supervisors intends to
2 require debris from building projects to be recovered.

3 B. This ordinance enacts a new Chapter of the Environment Code and makes
4 amendments to the Building Code and the Health Code in order to establish a comprehensive
5 program to effectuate the City's goals.

6 C. On October 11, 2005, the Planning Department determined that the actions
7 contemplated in this Ordinance are categorically exempt from the California Environmental
8 Quality Act (California Public Resources Code sections 121000 et seq.). Said determination
9 is on file with the Clerk of the Board of Supervisors in File No. _____ and is incorporated
10 herein by reference.

11 Section 2. The San Francisco Building Code is hereby amended by adding Chapter
12 13B Section 106.3.2.6, to read as follows:

13 SEC. 1301B. 106.3.2.6 TITLE.

14 This chapter shall be known as the "Construction and Demolition Debris Recovery
15 Program".

16 SEC. 1302B. 106.3.2.6 RECOVERY OF CONSTRUCTION AND DEMOLITION
17 DEBRIS.

18 Under the requirements set forth herein and in Chapter ~~1413~~ of the Environment Code, all
19 construction and demolition debris in amounts of one cubic yard or greater generated in the course
20 of a construction or demolition project subject to a permit pursuant to Section 106.1 of the
21 Building Code must be transported off the site by a registered transporter, unless transported by the
22 owner of the site permittee, and handled, processed and otherwise managed by a registered facility
23 for recovery of the materials. All persons subject to these requirements, including an An

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1 applicant for any building permit shall comply with the requirements for construction and demolition
2 debris recovery set forth in Chapter ~~1413~~ of the Environment Code.

3 SEC. ~~106.3.2.6.1~~ ~~1303B.~~ DEFINITIONS.

4 "Construction and Demolition Debris" shall mean building materials and solid waste generated
5 from construction and demolition activities, including, but not limited to, fully-cured asphalt, concrete,
6 brick, rock, soil, lumber, gypsum wallboard, cardboard and other associated packaging, roofing
7 material, ceramic tile, carpeting, fixtures, plastic pipe, metals, tree stumps, and other vegetative matter
8 resulting from land clearing and landscaping for construction, deconstruction, demolition or land
9 developments. This term does not include refuse regulated under the 1932 Refuse Collection and
10 Disposal Initiative Ordinance or sections of the Municipal Code that implement the provisions of that
11 ordinance or materials source separated for reuse or recycling. Hazardous waste, as defined in
12 California Health and Safety Code section 25100 et seq., as amended, is not Construction and
13 Demolition Debris for purposes of this Chapter.

14 "Registered Transporter " or "Registered Facility" shall mean a person who holds a valid
15 registration issued by the Director of the Department of the Environment pursuant to Chapter ~~1413~~ of
16 the Environment Code. "Transporter" does not include a person that owns and operates only vehicles
17 with no more than ~~2~~ two axles and no more than ~~2~~ two tires per axle.

18 SEC. ~~106.3.2.6.2~~ ~~1304B~~ PERMIT CONDITION.

19 The provisions of Chapter ~~1413~~ of the Environment Code and any approvals or conditions
20 imposed in writing by the Department of the Environment are conditions of the permit issued by the
21 Department under section 106.1, and a violation of Chapter ~~1413~~ or such approvals or conditions
22 shall be deemed non-compliance with the permit.

23 SEC. ~~106.3.2.6.3~~ ~~1305B.~~ PERMIT NOTIFICATION.

1 Permit application materials shall bear notice of and reference to the above requirements and
2 the owner's responsibility for compliance with such requirements.

3 Section 3. The San Francisco Health Code is hereby amended by adding Section 288
4 to read as follows:

5 SEC. 288. CONSTRUCTION AND DEMOLITION DEBRIS.

6 No commercial establishment, dwelling, householder or other person or entity, including the
7 City and County of San Francisco, shall place out for regular refuse collection any construction and
8 demolition debris. Unless otherwise required by Chapter ~~1443~~ of the Environment Code or acceptable
9 in an on-site residential or commercial recycling or composting collection program, construction and
10 demolition debris must be disposed of at a construction and demolition debris facility registered
11 pursuant to Chapter 14 of the Environment Code. For purposes of this section, construction and
12 demolition debris means building materials and solid waste generated by construction and demolition
13 activities, including but not limited to: fully-cured asphalt, concrete, brick, rock, soil, lumber, gypsum
14 wallboard, cardboard and other associated packaging, roofing material, ceramic tile, carpeting,
15 fixtures, plastic pipe, metals, tree stumps, and other vegetative matter resulting from land clearing and
16 landscaping for construction, deconstruction, demolition or land developments. Construction and
17 demolition debris does not include any refuse regulated under the 1932 Refuse Collection and Disposal
18 Initiative Ordinance or sections of the Municipal Code that implement the provisions of that ordinance.
19 Hazardous waste, as defined in California Health and Safety Code section 25100 et seq., as amended,
20 is not construction and demolition debris for purposes of this section.

21 Section 4. The San Francisco Health Code is hereby amended by adding Section
22 288.1 to read as follows:

23 SEC. 288.1. PENALTY.

1 Any person, firm or corporation violating any of the provisions of Section 288 of this Article
2 shall be guilty of an infraction and, upon conviction thereof, shall be punished for the first offense by a
3 fine of not less than \$80 nor more than \$100; and for a second offense by a fine of not less than \$150
4 nor more than \$200; and for each additional offense by a fine of not less than \$250 nor more than
5 \$500. In the alternative, any person, firm or corporation violating any of the provisions of Section 288
6 of this Article may be assessed an administrative penalty not to exceed \$300 for each violation. Such
7 penalty shall be assessed, enforced and collected in accordance with Section 39-1 of the Police Code.

8 Section 5. The San Francisco Environment Code is hereby amended by adding
9 Chapter ~~43~~14, which shall be entitled Construction and Demolition Debris Recovery
10 Ordinance, and to read as follows:

11 SEC. ~~43~~1400. FINDINGS.

12 The Board of Supervisors finds and declares the following:

13 A. People who live in, work in or visit San Francisco generate 1.8 million tons of solid
14 waste annually with more than half of these materials recovered through waste prevention, recycling
15 and composting.

16 B. The State of California through its California Integrated Waste Management Act of
17 1989, Assembly Bill 939 (AB 939), requires that each local jurisdiction in the state divert 50% of
18 discarded materials (base year 1990) from landfill. Every city and county in California, including the
19 City, could face fines up to \$10,000 a day for not meeting the above mandated goal.

20 C. The Source Reduction and Recycling Element (SRRE) for San Francisco adopted by the
21 Board of Supervisors in 1992, recognized the importance of recovering wood, metals, and inerts from
22 construction and demolition activities in order to meet the state mandated waste reduction goal.

1 D. The Board of Supervisors adopted Resolution No. 679-02 setting a goal of 75%
2 diversion from landfill by 2010 and promoting the highest and best use of recovered materials and
3 authorizing the Commission on the Environment to adopt a zero waste goal, which it set as 2020.

4 E. The Green Building Ordinance, Chapter 7 of the Environment Code, establishes
5 LEED™ Silver level as the standard for all City building projects, which can include and includes
6 the goal of diverting 75% of construction and demolition debris from landfill for each project.

7 F. There are facilities both within the City and in nearby surrounding areas that can
8 effectively reuse, recycle or otherwise recover the constituent elements of the materials generated by
9 construction and demolition activity and thereby divert such materials from landfill.

10 G. Construction and demolition waste recovery programs reduce the amount of materials
11 generated and hauled to landfill, decrease worker exposure to hazards, improve worker safety, reduce
12 truck trips and traffic and improve air quality, thereby enhancing the health, safety and welfare of San
13 Franciscans.

14 H. This Chapter requires construction and demolition debris to be transported by a
15 registered vehicle and processed by a registered facility in order to ensure proper handling and to
16 recover an additional estimated 100,000 tons from landfill disposal annually.

17 I. State law requires the California Integrated Waste Management Board to adopt a model
18 construction and demolition debris ordinance and requires that Board to take into account a city's
19 efforts to encourage or require recovery of construction and demolition debris in determining whether
20 a city has met the mandated 50% recovery rate and other solid waste reduction and recycling
21 requirements. This Chapter would help the City maintain the levels required by the state mandate and
22 achieve the City's goals of 75% landfill diversion by 2010 and zero waste by 2020.

23 J. In keeping with the Precautionary Principle, codified in Chapter 1 of the Environment
24 Code, this Chapter requires proper handling of construction debris as a deterrent to unsafe and

1 wasteful practices. In this way, the City will create and maintain a healthy, viable environment for
2 current and future generations, and will become a model of sustainability.

3 SEC. 431401. DEFINITIONS.

4 For the purposes of this Chapter, the following words have the following meanings:

5 (a) "Alternative Daily Cover" or "ADC" shall mean materials, other than soil, that have
6 been approved by the California Integrated Waste Management Board or a successor agency for use as
7 an overlay on an exposed landfill face.

8 (b) "Bio-mass Conversion" shall mean the controlled combustion, when separated from
9 other solid waste and used for producing electricity or heat, of wood, woodchips, woodwaste, tree and
10 brush prunings. Bio-mass conversion does not include the controlled combustion of recyclable pulp or
11 recyclable paper materials, sludge, medical or hazardous waste.

12 (c) "Construction and Demolition Debris" shall mean building materials and solid waste
13 generated from construction and demolition activities, including, but not limited to, fully-cured asphalt,
14 concrete, brick, rock, soil, lumber, gypsum wallboard, cardboard and other associated packaging,
15 roofing material, ceramic tile, carpeting, fixtures, plastic pipe, metals, tree stumps, and other
16 vegetative matter resulting from land clearing and landscaping for construction, deconstruction,
17 demolition or land developments. This term does not include: refuse regulated under the 1932 Refuse
18 Collection and Disposal Initiative Ordinance or sections of the Municipal Code that implement the
19 provisions of that ordinance or materials source separated for reuse or recycling. Hazardous
20 waste, as defined in California Health and Safety Code section 25100 et seq., as amended, is not
21 Construction and Demolition Debris for purposes of this Chapter.

22 (d) "Department" shall mean the San Francisco Department of the Environment.

23 (e) "Director" shall mean the Director of the Department of the Environment or his or her
24 designee.

1 (f) "Facility" shall mean a facility that receives and processes construction and demolition
2 debris into its component material types for reuse, recycling, and disposal of residuals.

3 (g) "Permittee" shall mean any individual, firm, limited liability company, association,
4 partnership, public or private corporation or any other entity who is issued a permit pursuant to
5 Section 106.1 of the Building Code.

6 (h) "Person" shall mean a natural person, a firm, joint stock company, business concern,
7 association, partnership or corporation or governmental entity, including the City and County of
8 San Francisco and its departments, boards and commissions, and its or their successors or
9 assigns, or agents. A governmental entity may also be a "person" for purposes of obtaining a
10 registration for a facility.

11 (h)(i) "Recover" or "Recovery" shall mean any activity, including source reduction,
12 deconstruction and salvaging, reuse, recycling and composting, which causes materials to be recovered
13 for use as a resource and diverted from disposal.

14 (i)(j) "Registered Transporter" or "Registered Facility" shall mean a person who holds a
15 valid registration issued by the Director pursuant to this Chapter.

16 (j) "Transport" or "Transportation" shall mean transportation of construction and
17 demolition debris. "Transport" or "Transportation" does not include transportation of less than
18 one cubic yard of construction and demolition debris or transportation in a vehicle that has no
19 more than two axles and no more than two tires per axle.

20 (k) "Transporter" shall mean a person that transports construction and demolition debris
21 as defined in this Chapter. "Transporter" does not include a person that owns and operates
22 only vehicles with no more than 2 axles and no more than 2 tires per axle. "Transporter" does
23 not include a person that owns the property at which the construction and demolition debris
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1 ~~was generated. permittee transporting Construction and Demolition debris from the permitted~~
2 ~~site.~~

3 ~~(l) "Vehicle" shall mean a vehicle used to transport construction and demolition debris as~~
4 ~~those terms are defined in this Chapter., other than a vehicle with not more than two axles~~
5 ~~and not more than two tires per axle. A vehicle with not more than two axles and not more~~
6 ~~than two tires per axle is not subject to this Chapter.~~

7 ~~SEC. 431402. REQUIREMENT FOR REGISTRATION APPLICABILITY OF CHAPTER.~~

8 ~~(a) Pursuant to Section 106.3.2.6 of the Building Code, every permittee must~~
9 ~~comply with the provisions of this Chapter.~~

10 ~~(b) Except as provided in this Chapter, no person, other than permittee the owner or~~
11 ~~lessee of the property where the construction and demolition debris was generated, may~~
12 ~~transport and no person may process construction and demolition debris from a project subject to~~
13 ~~Section 106.3.2.6 of the Building Code unless that person has a registration from the Department~~
14 ~~as provided in this Chapter. All construction and demolition debris, regardless of transport or~~
15 ~~volume, must be processed at a registered facility.~~

16 ~~SEC. 431403. RESERVED REQUIREMENTS FOR PERMITTEES.~~

17 ~~All construction and demolition debris generated in the course of a project subject to a permit~~
18 ~~pursuant to Section 106.3.2.6 of the Building Code, if transported, must be transported off the~~
19 ~~site by a registered transporter, unless transported by the permittee, and must be handled,~~
20 ~~processed and otherwise managed for recovery at a registered facility.~~

21 ~~SEC. 431404. REGISTRATION REQUIREMENT FOR FACILITIES AND TRANSPORTERS.~~

22 ~~(a) A person subject to Section 431402 shall apply for a registration by filing with the~~
23 ~~Director an application form prescribed by the Director, which contains the following information, and~~
24 ~~the information set forth in Section 431405.~~

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1 (i) For construction and demolition debris processing facilities: the name and address of
2 the person who owns the facility; the name and address of the person who operates the facility; a
3 statement that the owner or operator has all permits, authorizations or licenses required by any local,
4 state or federal agency to operate the facility and all necessary insurance.

5 (ii) For transporters of construction and demolition debris: the name and address of the
6 person who owns the vehicle(s); a statement that the vehicle(s) and each operator has all permits,
7 authorizations or licenses and any insurance required by any local, state or federal agency to operate
8 the vehicle(s). An owner of a vehicle may obtain a single registration covering all vehicles and all
9 debris boxes or other containers, provided that each vehicle is clearly and prominently marked as
10 belonging to that owner (with the name of the business entity). The owner of the vehicle(s) is
11 responsible for compliance by any operator of a vehicle owned by that person being used to transport
12 construction and demolition debris.

13 (b) The person who owns the facility or the vehicle(s) must certify the accuracy of the
14 information submitted in the application form under penalty of perjury.

15 (c) The Director must act on an application form within 15 days of receipt.

16 (d) If the Director determines that the information required by the application form is not
17 complete , the Director will provide written notice to the potential registrant of the remaining
18 information needed.

19 (e) If the Director determines that the application form is complete, the Director shall issue
20 a registration containing the following minimum information: a reference to the general terms and
21 conditions specified in Section ~~43~~1406; the name and address of the registrant, the name and address
22 of the facility (if applicable); the effective and expiration date of the registration; and a registration
23 number assigned by the Director.

24 SEC. ~~43~~1405. REGISTRATION CRITERIA.

1 The owner of the facility or the transporter shall include the following information in the
2 application form described in Section ~~4314~~404.

3 (a) For Facilities.

4 (i) The facility meets an overall minimum recovery rate of 65 percent for construction and
5 demolition debris (based on the most recent month), which may include materials used as ADC or bio-
6 mass conversion, provided that the facility can demonstrate that the use as ADC or bio-mass
7 conversion is the highest and best use. The recovery rate will be determined by the total quantity of
8 materials delivered to established recycling and composting markets divided by the total quantity
9 received by the registered facility. Highest and best use for ADC does not include ADC which is
10 generated by intentional crushing or grinding of construction and demolition debris that has not been
11 processed to remove wood, metal, wallboard, glass and other materials for which markets or uses other
12 than ADC are available. Consistent with this section, the Director shall adopt regulations pursuant to
13 Section ~~4314~~412 to specify how the recovery rate will be calculated and when ADC or bio-mass
14 conversion is considered to be the highest and best use of a particular material.

15 (ii) The facility has and is implementing a hazardous waste load checking program to
16 minimize hazardous waste accepted at the facility.

17 (iii) The facility has no outstanding notices of violation from any federal, state or local
18 agency that could affect the permits, authorizations or licenses required for its continued operation.

19 (iv) The facility agrees to submit annual reports to the Director on forms and by dates
20 specified by the Director pursuant to Section ~~4314~~412. The reports must include, with respect to San
21 Francisco materials only, the following information: the total quantity of material received at the
22 registered facility, the breakdown of all of the specific recycled commodities, the end use of the
23 recycled commodity (reuse, recycling, composting, ADC, bio-mass conversion) landfill destination for
24 residuals, and the recovery ratio for the report period by processing area.

1 (v) For each truckload received at a discrete facility processing area, the facility agrees to
2 provide each vehicle with a uniquely numbered tag receipt specifying, at a minimum, the facility name
3 and processing area, the quantity of material received and the current recovery rate for that processing
4 area. The receipt will also include the identity of the transporter and the permit application number
5 issued by the Department of Building Inspections, if any, associated with that load.

6 (vi) The facility agrees to comply with the provisions of this Chapter; provide documentation
7 to support the information in the application form, including the Section ~~431404~~404(b) certification, to the
8 Director upon request; and allow the Director to make inspections of the facility in order to verify the
9 information in the application form and required reports.

10 (b) For Transporters.

11 (i) The owner has no outstanding notices of violation from any federal, state or local
12 agency that could affect the permits, authorizations or licenses required for continued operation of his
13 or her vehicles.

14 (ii) The owner agrees to submit to the Director, upon request, the receipts specified in
15 subsection (a)(v).

16 (iii) The owner agrees that for each truckload of materials delivered to a facility, the
17 operator of the vehicle will provide to the facility the permit application number, if any, associated
18 with that load.

19 (iv) The owner of the vehicle agrees to comply with the provisions of this Chapter; provide
20 documentation to support the information in the application form, including the Section ~~431404~~404(b)
21 certification, to the Director upon request; and allow the Director to make inspections of vehicles in
22 order to verify the information in the application form and reports.

23 (v) The owner agrees that all vehicles will operate in accordance with state and federal
24 laws and motor carrier regulations and in accordance with best business practices to ensure against
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1 leakage and unsafe loads. All Construction and Demolition Debris must be transported in either a fully
2 enclosed vehicle or container and must be covered to minimize any potential spillage or littering.

3 SEC. 431406. GENERAL TERMS AND CONDITIONS FOR REGISTERED FACILITIES AND
4 TRANSPORTERS.

5 The following terms and conditions shall apply to each registration:

6 (a) A registration is valid for two years.

7 (b) Each registrant must submit a registration renewal on a form specified by the Director
8 thirty (30) days prior to the expiration date of the registration. Except as provided in this subsection, if
9 a registrant submits a properly completed renewal form thirty (30) days prior to the expiration date,
10 the current registration will continue in full force and effect until the Director issues a registration or
11 all administrative and judicial appeals have been exhausted or the time for appeal has expired. A
12 person may not renew a registration during a period of suspension, either by filing a renewal form or
13 by operation of law. At the end of the suspension period, the person may apply for a registration.

14 (c) All records required to be kept by registered facilities and transporters shall be kept for
15 at least three (3) years.

16 (d) A registration is not transferable.

17 (e) A registration does not take the place of any license required by state, federal or local
18 law nor does compliance with the requirements of this Chapter relieve any party of compliance with
19 any other applicable State, federal or local law.

20 (f) A copy of proof of registration shall be prominently displayed at any registered facility
21 and kept in a registered vehicle.

22 (g) Within thirty (30) days of a change of any of the information required on a registration
23 or renewal form, a registrant must file an amendment to the registration on a form prescribed by the
24 Director.

1 (h) Each registrant must notify the Director, in writing, within twenty-four (24) hours of the
2 time a permit, authorization or license required by any local, state or federal agency to operate the
3 facility or vehicle terminates, expires or is revoked or suspended.

4 SEC. ~~431~~407. TRADE SECRETS.

5 (a) If a person believes that any information required to be reported or disclosed by this
6 Chapter contains a trade secret, the person shall provide the information to the Director and shall
7 notify the Director in writing of that belief, detailing the basis of the belief as to each specific item of
8 information the person claims is a trade secret. For purposes of this Chapter, "trade secret" shall have
9 the same meaning as it has under state law. The person designating information as a trade secret shall
10 specify a name and street address for notification purposes and shall be responsible for updating such
11 information. The Director shall not disclose any properly substantiated trade secret which is so
12 designated by a person except as required by this Chapter or as otherwise required by law.

13 (b) Information designated as trade secret may be disclosed to an officer or employee of the
14 City and County of San Francisco, the State of California, or the United States of America for use in
15 connection with the official duties of such officer or employee acting under authority of law for the
16 protection of health, without liability on the part of the City.

17 (c) When the Director or other City official or employee receives a request for information
18 that has been designated as, or which the City determines may be, a trade secret, the City shall notify
19 the person or business of the request. The City may request further evidence or explanation from the
20 person as to why the information requested is a trade secret. If the City determines that the information
21 does not constitute a trade secret, the City shall notify the person or business of that conclusion and
22 that the information will be released by a specified date in order to provide the person or business the
23 opportunity to obtain a court order prohibiting disclosure.

1 (d) In adopting this Chapter, the Board of Supervisors does not intend to authorize or
2 require the disclosure to the public of any trade secrets protected under the laws of the State of
3 California.

4 (e) This Section is not intended to empower a person or business to refuse to disclose any
5 information, including but not limited to trade secrets, to the Director or other City Departments
6 required under this Chapter.

7 (f) Notwithstanding any other provision of this Chapter, any officer or employee of the City
8 and County of San Francisco, or former officer or employee or contractor with the City or employee
9 thereof, who by virtue of such employment of official position has obtained possession or has had
10 access to information, the disclosure of which is prohibited by this Section, and who, knowing that
11 disclosure of the information is prohibited, knowingly and willfully discloses the information in any
12 manner to any person or business not entitled to receive it, shall be guilty of a misdemeanor.

13 SEC. 431408. RESERVED.

14 SEC. 431409. LIST OF REGISTERED FACILITIES AND REGISTERED TRANSPORTERS.

15 The Director will maintain a current list of registered facilities and registered transporters
16 available at the Department's Office and on its website. The Director will update the list at least every
17 sixty (60) days. The Director will work with the Department of Building Inspection and other City
18 departments to ensure availability of this information to the public.

19 SEC. 431410. ENFORCEMENT.

20 (a) The Director has authority to administer all provisions of this Chapter and to enforce its
21 provisions by any lawful means available for such purpose. The Department of Building Inspection
22 shall work together with the Director to coordinate enforcement of this Chapter with enforcement of
23 relevant provisions of the Building Code.

1 (b) In order to carry out the provisions of this Chapter, the Director has the authority to
2 inspect any registered facility or registered transporter. This right of entry will be exercised only at
3 reasonable hours, and with the consent of the owner of the vehicle or facility or with a proper
4 inspection warrant. The Director will inspect each registered facility and transporter at least once
5 annually.

6 (c) Suspension of registration. Whenever the Director finds that information in a person's
7 application, registration or any required report is inaccurate, a person does not have the appropriate
8 permits, authorizations or licenses to operate the registered facility or vehicle, or that a person is
9 violating or has violated this Chapter or the terms of a registration, the Director may issue an order
10 suspending the registration as provided in this Section. The Director's order to suspend must include a
11 written statement of the reasons for the suspension and must provide the person with an opportunity to
12 respond in writing before the order becomes effective. The order shall provide the effective date and
13 end date of the suspension. The suspension period will be no more than: one (1) month for the first
14 violation; six (6) months for the second; and twelve months (12) for any subsequent violations. The
15 Director's decision shall be final.

16 (d) A final decision of the Director to suspend a registration may be appealed to the Board
17 of Appeals in the manner prescribed in Article I of the San Francisco Business and Tax Regulations
18 Code. Any person who fails to appeal the Director's decision to the Board of Appeals within the time
19 specified may not challenge a decision or final order of the Director in any judicial proceedings
20 brought to enforce the decision or order or for other remedies.

21 Within ninety (90) days of the decision of the Board of Appeals, a person may file with a Court
22 of competent jurisdiction a petition for writ of mandate to review the Board of Appeals decision,
23 provided that the responsible party has exhausted its administrative remedies. Any person who fails to
24 file a petition within this 90-day period may not challenge a decision or final order of the Board of

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1 Appeals in any judicial proceedings brought to enforce the decision or order or for other remedies.
2 Section 1094.5 of the California Code of Civil Procedure shall govern any proceedings conducted
3 pursuant to this Section. In all proceedings pursuant to this Section, the Court shall affirm the Board
4 of Appeal's decision if it is based upon substantial evidence in the whole record. This Section does not
5 prohibit the Court from granting any appropriate relief within its jurisdiction.

6 (e) The Director may request the City Attorney or the District Attorney, as the case may be,
7 to commence an action to enforce this Chapter.

8 (i) Civil Penalties. Any person who violates this Chapter shall be civilly liable to
9 the City and County of San Francisco for a civil penalty in an amount not to exceed one-thousand
10 dollars (\$1,000) for each day in which the violation occurs. Each day that such violation continues
11 shall constitute a separate violation. For a second violation of the Chapter, the civil penalty will be not
12 less than one thousand dollars (\$1,000) and not more than five thousand dollars (\$5,000) for each day
13 in which the violation occurs. In determining civil penalties, the court shall consider the extent of harm
14 caused by the violation(s), the nature and persistence of the violation(s), the length of time over which
15 the violation(s) occur(s), the frequency of past violations, any action taken to mitigate the violation,
16 and the financial burden to the violator.

17 (ii) Criminal Penalties. Each violation shall be considered a separate misdemeanor
18 punishable by a fine not exceeding than one thousand dollars (\$1,000), or imprisonment not to exceed
19 six (6) months in the County Jail, or both. In determining criminal penalties, the court shall consider
20 the extent of harm caused by the violation(s), the nature and persistence of the violation(s), the length
21 of time over which the violation(s) occur(s), the frequency of past violations, any action taken to
22 mitigate the violation, the financial burden to the violator, and such other factors as deemed relevant
23 and material.

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1 (f) Remedies under this Section are in addition to and do not supersede or limit any and all
2 other remedies, civil or criminal.

3 SEC. ~~43~~1411. REPORTS.

4 Within two (2) years of the effective date of this Chapter, the Director shall report to the
5 Commission on the Environment on the results of this ordinance, including the quantity recovered from
6 landfill, and any recommended amendments of the ordinance.

7 SEC. ~~43~~1412. FORMS, REGULATIONS AND GUIDELINES.

8 (a) Consistent with the intent of this Chapter, and after consultation with other City
9 departments, public notice and a public meeting, the Director may adopt forms, regulations, and
10 guidelines as directed by this Chapter and as necessary and appropriate to implement this Chapter.

11 (b) The Department shall provide assistance and consulting to persons subject to this
12 Chapter regarding compliance with this Chapter.

13 (c) The Director, consistent with this Chapter, may waive any specific requirement of this
14 Chapter if the person seeking the waiver has demonstrated that strict application of the specific
15 requirement would create practical difficulties not generally applicable to other persons in similar
16 circumstances. The Director shall specify in writing the basis for any waiver under this Section.

17 SEC. ~~43~~1413. COST OF IMPLEMENTATION.

18 The Director shall determine the cost of implementing this Chapter. The Director may request
19 that relevant City departments provide work orders to the Director to cover the cost of implementing
20 and maintaining the program required by this Chapter.

21 SEC. ~~43~~1414. RESERVED ACTIVITIES ON CITY PROPERTY.

22 All departments, boards, commissions and agencies of the City and County of San
23 Francisco that authorize construction or improvements on land under their jurisdiction under
24 circumstances where no permit needs to be obtained pursuant to the San Francisco Building
25

1 Code shall adopt rules and regulations to ensure that construction and demolition debris is
2 recovered and procedures as set forth in this Chapter and Health Code section 288 are
3 followed. The Directors of the Department of the Environment and Building Inspection shall
4 assist the departments, boards, commissions and agencies to ensure that these requirements
5 are met.

6 SEC. 431415. DISCLAIMER OF LIABILITY.

7 The degree of protection required by this Chapter is considered to be reasonable for regulatory
8 purposes. The standards set forth in this Chapter are minimal standards and do not imply that
9 compliance will ensure proper handling of construction and demolition debris. This Chapter shall not
10 create liability on the part of the City, or any of its officers or employees for any damages that result
11 from reliance on this Article or any administrative decision lawfully made in accordance with this
12 Chapter. All persons handling construction and demolition debris within the City should be and are
13 advised to conduct their own inquiry as to the handling of such materials. In undertaking the
14 implementation of this Chapter, the City is assuming an undertaking only to promote the general
15 welfare. It is not assuming, nor is it imposing on its officer and employees, an obligation for breach of
16 which it is liable in money damages to any person who claims that such breach proximately caused
17 injury.

18 SEC. 431416. DUTIES ARE DISCRETIONARY.

19 Subject to the limitations of due process and applicable requirements of State or federal laws,
20 and notwithstanding any other provisions of this Code whenever the words “shall” or “must” are used
21 in establishing a responsibility or duty of the City, its elected or appointed officers, employees or
22 agents, it is the legislative intent that such words establish a discretionary responsibility or duty
23 requiring the exercise of judgement and discretion.

24 SEC. 431417. SEVERABILITY.

25

1 If any section, subsection, sentence, clause, or phrase of this Chapter is for any reason held to
2 be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall
3 not affect the validity of the remaining portions of the Chapter. The Board of Supervisors hereby
4 declares that it would have passed this Chapter and each and every section, subsection, sentence,
5 clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of this
6 Chapter would be subsequently declared invalid or unconstitutional.

7 Section 6. This ordinance shall take effect ~~120 (one hundred and twenty) days after~~
8 ~~adoption by the Board of Supervisors~~ on July 1, 2006.

9 Section 7. If any section, subsection, sentence, clause, or phrase of this ordinance is
10 for any reason held to be invalid or unconstitutional by a decision of any court of competent
11 jurisdiction, such decision shall not affect the validity of the remaining portions of the Chapter.
12 The Board of Supervisors hereby declares that it would have passed this ordinance and each
13 and every section, subsection, sentence, clause, or phrase not declared invalid or
14 unconstitutional without regard to whether any portion of this ordinance would be
15 subsequently declared invalid or unconstitutional.

16 Section 8. The San Francisco Police Code is hereby amended by amending Section
17 39-1 to read as follows:

18 SEC. 39-1. PROCEDURE FOR ASSESSMENT AND COLLECTION OF ADMINISTRATIVE
19 PENALTIES FOR SPECIFIED LITTERING AND NUISANCE VIOLATIONS.

20 (a) This Section shall govern the imposition, assessment and collection of
21 administrative penalties imposed pursuant to Sections 37, 38 and 63 of the Police Code,
22 Sections 41.13, 283.1, 287, 288.1 and 600 of the Health Code, and Sections 170, 173, 174,
23 174.2, 184.63 and 724.5 of the Public Works Code.

24 (b) The Board of Supervisors finds:
25

1 (1) That it is in the best interest of the City and its citizens to provide an alternative,
2 administrative penalty mechanism for enforcement of the littering and nuisance violations
3 covered by this section in addition to the existing enforcement mechanisms authorized under
4 the California Penal Code; and

5 (2) That the administrative penalty scheme established by this section is not
6 intended to be punitive in nature, but is instead intended to compensate the public for the
7 injury and damage caused by the prohibited conduct. The administrative penalties authorized
8 under this section are intended to be reasonable and not disproportionate to the damage or
9 injury to the City and the public caused by the prohibited conduct.

10 (c) Administrative Citation. Where an officer or employee designated in Section 38
11 determines that there has been a violation of a local litter or nuisance law that authorizes
12 imposition of an administrative penalty, the officer or employee may issue an administrative
13 citation to the person and/or entity responsible for the violation. For purposes of this Section,
14 an entity is responsible if an officer, employee or agent of the entity commits the violation. The
15 citation shall inform the person or entity responsible of the date, time, place and nature of the
16 violation and the amount of the proposed penalty, and shall state that the penalty is due and
17 payable to the City Treasurer within 15 City business days from the date of the notice, if not
18 contested within the time period specified. The citation shall also state that the person or
19 entity responsible has the right, pursuant to Subsection (d), to request administrative review of
20 the citing officer or employee's determination as to the violation and assessment of penalties,
21 and shall set forth the procedure for requesting administrative review. The Director shall
22 serve the administrative citation as follows:

23 1. Where there is a nexus between the violator and a specific property:
24
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1 (A) One copy of the Notice shall be posted in a conspicuous place upon the building
2 or property.

3 (B) One copy of the Notice shall be served upon each of the following:

4 (i) The person, if any, in real or apparent charge and control of the premises
5 or property involved;

6 (ii) The owner of record.

7 Service required by subparagraph (B) may be made by personal service or by certified
8 mail.

9 2. Where the issuing officer or employee is unable to ascertain a nexus between
10 the violation and property within the City, a completed copy of the administrative citation may
11 be served on the individual who has committed the violation by personal service or by certified
12 mail.

13 3. For purposes of this Section, there is a nexus where activity on the property has
14 caused, contributed to, or been a substantial factor in causing, the violation.

15 (d) Request for Hearing; Hearing.

16 (1) A person or entity that has been issued an administrative citation may request
17 administrative review in order to contest the citation issued in accordance with this section.
18 Administrative review shall be initiated by filing a request for administrative review with the
19 Director of Public Works within 15 City business days from the date of the citation. Failure to
20 request a hearing within the time specified in the citation shall be deemed an admission that
21 the cited person or entity committed the violation identified in the administrative citation.

22 (2) Whenever administrative review is requested pursuant to this Section, the
23 Director of Public Works shall, within five City business days of receipt of the request, notify
24 the requestor of the date, time, and place of the administrative review hearing by certified
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1 mail. Such hearing shall be held no later than thirty (30) calendar days after the Director
2 receives the request, unless time is extended by mutual agreement of the affected parties.

3 (3) The administrative review hearing shall be conducted by a neutral hearing of
4 officer from outside the Department of Public Works and the department whose employee
5 issued the citation, assigned by the Director of Administrative Services. The Director of
6 Administrative Services may issue rules as needed to implement this requirement. The
7 parties may present evidence and testimony to the hearing officer. All testimony shall be
8 under oath. The hearing officer shall ensure that a record of the proceedings is maintained.
9 The burden of proof to uphold the violation shall be on the City, but the administrative citation
10 shall be prima facie evidence of the violation.

11 (4) The hearing officer shall issue a decision including a summary of the issues and
12 the evidence presented, and findings and conclusions, within ten (10) calendar days of the
13 conclusion of the hearing. The hearing officer may uphold the penalty imposed by the citation,
14 reduce the penalty, or dismiss the citation. A copy of the decision shall be served by certified
15 mail upon the person or entity contesting the violation. The decision shall be a final
16 administrative determination. An aggrieved party may seek judicial review of the decision
17 pursuant to California Code of Civil Procedure Sections 1094.5 and 1094.6.

18 (e) Payment and Collection of Penalty.

19 (1) Where a person or entity has not made a timely request for administrative
20 review, the penalty shall be due and payable to the City Treasurer on or before 15 City
21 business days from the date of issuance.

22 (2) Where a person or entity has made a timely request for administrative review,
23 and the penalty has been upheld in whole or in part upon review, any administrative penalty
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1 imposed by the hearing officer shall be due and payable not later than ten City business days
2 from the date of the notice of decision issued under subparagraph (d)(4).

3 (3) If a penalty due and payable under paragraphs (1) or (2) remains unpaid after
4 the specified due date, the Director of Public Works shall send the violator written notice that
5 the penalty is overdue. Penalties that remain unpaid 30 days after the due date shall be
6 subject to a late payment penalty of ten percent (10%) plus interest at the rate of one percent
7 (1%) per month on the outstanding balance, which shall be added to the penalty amounts
8 from the date that payment is due. Persons and entities against whom administrative
9 penalties are imposed shall also be liable for the costs and attorney's fees incurred by the City
10 and County in bringing any civil action to enforce the provisions of this section, including
11 obtaining a judgment for the amount of the administrative penalty and other costs and
12 charges.

13 (4) Where there is a nexus between the violation and property in the City owned by
14 the violator, the Director shall further inform the violator that if the amount due is not paid
15 within 30 days from the date of the notice, the Director shall initiate proceedings to make the
16 amount due and all additional authorized costs and charges, including attorneys fees. a lien
17 on the property. Such liens shall be imposed in accordance with Chapter 10, Article XX of the
18 Administrative Code.

19 (f) The revenues generated by penalties from an administrative citation issued
20 pursuant to this Section may be expended only by the department that is responsible for
21 issuing the administrative citation, except that each department other than Public Works that
22 issues administrative citations pursuant to this Section shall reimburse the Department of
23 Public Works for the costs incurred by the Department of Public Works in administering review
24 of those citations issued by the other department. The revenues from administrative citations
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1 issued by Class 8280 Environmental Control Officers and 8282 Senior Environmental Control
2 Officers may be expended exclusively by the Department of Public Works for the purpose of
3 funding litter enforcement and abatement except where the use or expenditure of those
4 revenues is specifically directed by law to another program within the Department of Public
5 Works.

6 Section 9. The San Francisco Building Code is hereby amended by changing the title
7 of Chapter 13 from "Energy Conservation" to "Resource Conservation".

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9 APPROVED AS TO FORM:
10 DENNIS J. HERRERA, City Attorney

11 By: _____
12 Rona H. Sandler
13 Deputy City Attorney
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