

File No. 121030

Committee Item No. 9

Board Item No. 8

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Rules

Date 12/6/12

Board of Supervisors Meeting

Date JANUARY 29, 2013

Cmte Board

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OTHER

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Completed by: Linda Wong

Date 12/3/12

Completed by: L.W.

Date 1/10/13

An asterisked item represents the cover sheet to a document that exceeds 25 pages. The complete document is in the file.

1 [Police Code - Enforcement Provisions for Clipper Cove Special-Use Area Adjacent to
2 Treasure Island]

3 **Ordinance amending San Francisco Police Code Section 1.1 "Mooring in Clipper
4 Cove" to further delineate enforcement provisions including infractions, provide for
5 administrative citations and penalties, specify procedures for changing rules and
6 regulations, and clarify existing provisions.**

7
8 NOTE: Additions are single-underline italics Times New Roman font;
9 deletions are ~~strike through italics Times New Roman font~~.
10 Board amendment additions are double-underlined Arial font;
11 Board amendment deletions are ~~strikethrough Arial font~~.

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

13
14 Section 1. The San Francisco Police Code is hereby amended by amending Section
15 1.1 to read as follows:

16
17 SEC. 1.1 ~~MOORING IN CLIPPER COVE~~ SPECIAL-USE AREA

18 (a) Special-Use Area. In order to promote the recreational use of Clipper Cove,
19 reduce existing and potential conflicts among recreational users of Clipper Cove, protect the
20 overall public health and safety of users of the Cove, and to eliminate adverse environmental
21 impacts to the San Francisco Bay, Clipper Cove is hereby designated a Special-~~u~~Use Area
22 as that term is defined and used in California's Harbors and Navigation Code (see, California
23 Harbors and Navigation Code §§651, 660). ~~Provided that the Treasure Island Development Authority~~
24 ~~("TIDA") has erected signage at the entrance to the Special-use Area informing boaters of the permit~~
25 ~~requirement and the method for obtaining a permit, it shall be unlawful for any person to moor or~~

1 ~~anchor any vessel in Clipper Cove for more than 24 hours without a valid permit issued by TIDA, or~~
2 ~~its designee, and it shall be unlawful for any person to moor or anchor any vessel in Clipper Cove for~~
3 ~~more than 24 hours after expiration or revocation of such permit.~~

4 (b) Clipper Cove Defined. For the purposes of Section 1.1 of this Code, Clipper Cove
5 is defined as that section of San Francisco Bay bounded by the south shore of Treasure
6 Island, the north shore of Yerba Buena Island, and the connecting causeway, west of a line
7 extending from the southeast corner of the finger pier known as "Pier 1" along the east side
8 of Treasure Island, at about latitude 37 [degrees] 49'11", longitude 122 [degrees] 21'40",
9 approximately 153 [degrees] 20' to the northeasterly point of Yerba Buena Island, at about
10 latitude 37 [degrees] 48'55", longitude 122 [degrees] 21'30".

11 (c) Permit Requirements.

12 (1) Treasure Island Development Authority ("TIDA") shall erect signage at the entrance to
13 the Clipper Cove Special-Use Area informing boaters of permit requirements and the method for
14 obtaining a permit:

15 (2) It shall be unlawful for a vessel to be moored, anchored, or otherwise allowed to remain
16 in Clipper Cove for more than 24 hours without a valid permit or permit extension issued by TIDA or
17 its designee; and,

18 (3) It shall be unlawful for any vessel to remain moored, anchored, or otherwise allowed to
19 remain in Clipper Cove after expiration or revocation of such permit.

20 (d) Salvage Prohibited. It shall be unlawful for any person to conduct salvage operations or
21 to be in possession of materials salvaged from Clipper Cove, without written permission from TIDA.

22 (e-e) Criminal Penalties. A violation of any of the provisions of Section 1.1 shall be a
23 misdemeanor or an infraction. The complaint charging the violation shall specify whether the
24 violation is a misdemeanor or infraction. Any violation may be charged and punished as a

1 misdeemeanor instead of an infraction; except that any violation of Section 1.1(d) "Salvage
2 Prohibited" shall be charged and punished as a misdemeanor.

3 (1) A person found guilty of ~~such violation~~ a misdemeanor shall be punished by
4 imprisonment in the county jail not exceeding six months, or by fine not exceeding one
5 thousand dollars (\$1,000.00), or both.

6 (2) A person found guilty of an infraction shall be punished by a fine of up to \$100 for a
7 first violation, and up to \$500 for a second violation within one year of the date of the first violation.
8 If a person is charged with a third violation within one year of the date of the second or subsequent
9 violation, it shall be charged as a misdemeanor.

10 (f) Administrative Citation and Penalty. The TIDA Director or designee may issue an
11 administrative citation that imposes an administrative fine for violation of any provision of this
12 Section 1.1 or the TIDA Clipper Cove Special-Use Area Rules and Regulations. San Francisco
13 Administrative Code Chapter 100 "Procedures Governing the Imposition of Administrative Fines" as
14 it may be amended from time to time is hereby incorporated in its entirety, and shall govern the
15 imposition, enforcement, collection and administrative review of administrative citations and penalties
16 issued under this Subsection (f).

17 (d-g) Removal and Storage of Vessels.

18 (1) Provided that TIDA has shall erected signage at the entrance to Clipper Cove
19 informing boaters that vessels moored, anchored, or otherwise allowed to remain in Clipper Cove
20 in violation of this ~~ordinance~~ Section 1.1 are subject to removal.

21 (2) TIDA, or its designee, may remove and store any vessel that is moored,
22 anchored, or otherwise allowed to remain in Clipper Cove in violation of this ordinance, 72
23 hours after notice is posted in accordance with this Ssubsection (e-g) of this Section. The
24 registered owner of any vessel removed and stored under this ~~ordinance~~ Section 1.1 shall be
25 responsible for reimbursing TIDA, or its designee, for the cost of such removal and storage.

1 (~~e-3~~) Not less than 72 hours prior to removing a vessel moored or anchored in
2 violation of this Section 1.1, TIDA, or its designee, shall securely attach to the vessel a
3 distinctive notice stating that the vessel will be removed for violation of this Section 1.1.

4 (~~f-4~~) Within 48 hours after the removal of a vessel pursuant to this Section 1.1,
5 excluding weekends and holidays, TIDA, or its designee, must send notice of removal of the
6 vessel by certified or first-class mail: to the registered, ~~documented~~ and legal owners, if known
7 or discovered before or after the removal, at their addresses of record with the Department of
8 Motor Vehicles, ~~and~~ the National Vessel Documentation Center, and to any other person that
9 TIDA, or its designee, knows has an interest in the vessel, by certified or first-class mail.

10 (5) The notice of removal required by Subsections 1.1(g)(3) and (g)(4) shall include the
11 following:

12 (~~1-A~~) TIDA's name, address, and telephone number, and, if applicable, the name,
13 address and telephone number of TIDA's designee;

14 (~~2 B~~) A description of the vessel;

15 (~~3 C~~) The location from which the vessel was removed;

16 (~~4 D~~) The location of the intended or actual place of storage;

17 (~~5 E~~) The authority and purpose for removal of the vessel;

18 (~~6 F~~) A statement that the vessel may be claimed and recovered within 15 days of
19 the date the notice of removal is issued upon payment of any costs incurred by TIDA, or its
20 designee, related to salvage and storage of the vessel, and that following expiration of the
21 15-day period the property will be sold or otherwise disposed of by TIDA or its designee;

22 (~~7 G~~) A statement that the registered or legal owners or any other person known to
23 have an interest in the property shall have the opportunity for a post-removal hearing before
24 TIDA, or its designee, to determine the validity of the removal and storage, if a request for a
25 hearing is made to TIDA, or its designee, in person, by telephone, by email or by regular mail

1 within 10 days from the date of notice; and that if the registered or legal owner or any other
2 person known to have an interest in the property disagrees with the decision of TIDA, or its
3 designee, after the hearing, he or she may seek review of the decision of TIDA, or its
4 designee, pursuant to Section 11523 of the Government Code §11523 and Harbors and
5 Navigation Code §526(b)(7) or their successor provisions.

6 (f) TIDA, or its designee, shall conduct any requested hearing within 48 hours of
7 the time it receives the request, excluding weekends and holidays. TIDA may authorize its
8 own officers or employees to conduct the hearing, but the hearing officer shall not be the
9 same person who directed the removal and storage of the vessel. The failure of either the
10 registered or legal owners or any other person known to have an interest in the property to
11 request or attend a scheduled hearing shall not affect the validity of the hearing.

12 (g) TIDA shall be responsible for the costs incurred for removal and storage if it is
13 determined in the post-storage hearing that reasonable valid grounds for the removal and
14 storage ~~are~~ were not established.

15 (h) TIDA Clipper Cove Special-Use Area Rules and Regulations.

16 (1) The Treasure Island Development Authority Board of Directors shall periodically review
17 the TIDA Clipper Cove Special-Use Area Rules and Regulations regarding permits and related
18 matters, and update as appropriate in conformance with this Section 1.1, California Harbors and
19 Navigation Code, other applicable laws and regulations, and as otherwise deemed appropriate by the
20 TIDA Board.

21 (2) A public hearing shall be conducted before any adoption, amendment, or repeal of any
22 rule or regulation. At least ten days' public notice shall be given for such public hearing. All such
23 rules and regulations shall be filed with the Clerk of the Board of Supervisors.


24 (i) The remedies, penalties and procedures provided under this Section are cumulative and
25 are not intended to be exclusive of any other available remedies, penalties and procedures.

1
2 Section 2. Effective Date. This ordinance shall become effective 30 days from the
3 date of passage.
4

5 Section 3. This section is uncodified. In enacting this Ordinance, the Board intends to
6 amend only those words, phrases, paragraphs, subsections, sections, articles, numbers,
7 punctuation, charts, diagrams, or any other constituent part of the Police Code that are
8 explicitly shown in this legislation as additions, deletions, Board amendment additions, and
9 Board amendment deletions in accordance with the "Note" that appears under the official title
10 of the legislation.
11
12
13

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

16 By:


17 Marie Corlett Blits
18 Deputy City Attorney
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25

LEGISLATIVE DIGEST

[Police Code – Enforcement provisions for Clipper Cove Special-Use Area adjacent to Treasure Island]

Ordinance amending San Francisco Police Code by amending section 1.1 "Mooring in Clipper Cove" to further delineate enforcement provisions including infractions, provide for administrative citations and penalties, specify procedures for changing rules and regulations, and clarify existing provisions.

Existing Law

The Clipper Cove area adjacent to Treasure Island was designated as a Special-Use Area by the Board of Supervisors in 2009 pursuant to the California Harbors and Navigation Code, "to promote the recreational use of Clipper Cove, reduce existing and potential conflicts among recreational users of Clipper Cove, protect the overall public health and safety of users of the Cove, and to eliminate adverse environmental impacts to the San Francisco Bay." (Police Code §1.1.)

Under current Police Code §1.1, vessels are required to obtain a permit in order to remain in Clipper Cove more than 24 hours, and may not remain in the Cove after expiration or revocation of any permit. Any violation of these provisions is a misdemeanor. In addition, upon specified notice, TIDA or its designee may remove and store any vessel that is in Clipper Cove in violation of the ordinance, and recover costs incurred for removal and storage.

Amendments to Current Law

The proposed legislation would provide for better enforcement of this Special-Use Area by:

1. Making it unlawful for any person to conduct salvage operations or possess materials salvaged from Clipper Cove, without written permission from TIDA (Section 1.1(d));
2. Adding infraction violations, and establishing penalties for infractions (\$100 for a first violation, and up to \$500 for a second violation within one year of the first; any third violation within a year of the second will be charged as a misdemeanor; Section 1.1(e)(2));
3. Allowing all violations of Section 1.1 to be charged as either misdemeanors or infractions, except that a Section 1.1(d) salvage violation will only be chargeable as a misdemeanor (Section 1.1(e));

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4. Allowing the TIDA Director or designee to issue administrative citations that impose fines for violations of Police Code §1.1 or the TIDA Clipper Cove Special Use-Area Rules and Regulations, consistent with San Francisco Administrative Code Chapter 100 "Procedures Governing the Imposition of Administrative Fines" (Section 1.1(f)); and,
5. Providing a process for review and revision of Clipper Cove Rules and Regulations regarding permits and related matters, by providing for periodic review by the TIDA Board of Directors, which will provide at least 10 days public notice and conduct a public hearing before any adoption, amendment or repeal of any rule or regulation; and, the rules and regulations will be filed with the Clerk of the Board of Supervisors. (Section 1.1(h)).

The proposed legislation would also update the title from "Mooring in Clipper Cove," to "Clipper Cove Special-Use Area;" and clarify text throughout the ordinance by changing "moored" to "moored, anchored or otherwise allowed to remain in Clipper Cove." It would also clarify text throughout the ordinance to more appropriately reference the California Government Code and California Harbors and Navigation Code.

Background Information

[Please see the TIDA report to the Board of Supervisors recommending adoption of the proposed legislation, for background information.]

**Treasure Island Development Authority
City and County of San Francisco**

Ordinance amending San Francisco Police Code by amending section 1.1 "Mooring in Clipper Cove" to further delineate enforcement provisions including infractions, provide for administrative citations and penalties, specify procedures for changing rules and regulations, and clarify existing provisions.

SUMMARY OF PROPOSED ACTION

This item seeks to amend San Francisco Police Code Section 1.1 to limit salvage operations and possession of salvaged materials, revise penalties for misdemeanor violations of San Francisco Police Code Section 1.1, establish penalties associated with Infraction charges, allow Treasure Island Development Authority issuance of Administrative Citations, and specify procedures for Treasure Island Development Authority review and revision of the Clipper Cove Rules and Regulations.

BACKGROUND

On August 11, 2009, the San Francisco Board of Supervisors approved Ordinance 193-09 adding Section 1.1 to the San Francisco Police Code (hereafter referred to as "SFPC Section 1.1") designating Clipper Cove as a Special Use Area for the purpose of Treasure Island Development Authority (TIDA) issuance of Anchorage Permits and San Francisco Police Department (SFPD) enforcement of vessels anchored in Clipper Cove without appropriate Anchorage Permit. Subsequent to approval of SFPC Section 1.1 the Treasure Island Development Authority Board of Directors (the "Authority Board") approved the Clipper Cove Anchorage Permit Policies and Procedures (the "Anchorage Policy") and the Clipper Cove Rules and Regulations ("Cove Rules and Regulations"), at its December 9, 2009 meeting, and amended on June 10, 2010. In accordance with the Ordinance, Project Office staff erected signage at Clipper Cove detailing the Special Use Area, and the existence of Cove Rules and Regulations and Anchorage Permit requirements.

In just under three years of subsequent regulation and enforcement of SFPC Section 1.1, the Cove Rules and Regulations and the Anchorage Policy, Project Office staff and the San Francisco Police Department have identified specific revisions to SFPC Section 1.1 which would serve to increase both agencies ability to enforce SFPC Section 1.1 and the Cove Rules and Regulations.

Project Office staff and the San Francisco Police Department have worked with the Office of the City Attorney to draft proposed amendments to SFPC Section 1.1 that will strengthen enforceability of SFPC Section 1.1 and further specify penalties for violations of SFPC 1.1, as well as provide for issuance of Administrative Citations by Project Office staff, while causing little to no discernible impact on responsible recreational boaters anchoring in Clipper Cove.

The proposed amendments to SFPC Section 1.1 are as follows:

- 1.) Limitations on salvage operations and possession of salvaged materials**
Amended language found in Section 1.1 (d) specifies that it shall be unlawful for any person to conduct salvage operations or to be in possession of materials salvaged from Clipper Cove without prior written permission from TIDA. Language found in Section 1.1 (e) establishes that any violation of Section 1.1(d) shall be charged and punished as a misdemeanor offense.
- 2.) Revision of penalties for violation of SFPC Section 1.1**
Amended language in Section 1.1 (e) allows for most violations to be charged as either a misdemeanor or an infraction. The original Ordinance only allowed for violations to be charged as misdemeanors, creating the potential for “over-charging” an otherwise inadvertent violation and also proving difficult for SFPD issuance of charges in certain instances. Any violation of Section 1.1 may now be charged and punished as a misdemeanor or an infraction, except for a violation of Section 1.1(d) (regarding salvage), which is an automatic misdemeanor charge.
- 3.) Establishment of penalties associated with Infraction charges**
Section 1.1(e) 2 specifies any person charged and found guilty of an infraction shall be punished by a fine of up to \$100 for a first violation and up to \$500 for a second violation within one year of the date of the first violation. Section 1.1 (e) 2 also specifies that if a person is charged with a third violation within one year of the date of the second or subsequent violation, this third violation shall then be charged as a misdemeanor. The punishments for any person charged and found guilty of a misdemeanor remain unchanged from the original Ordinance.
- 4.) TIDA issuance of Administrative Citations**
Section 1.1 (f) allows for TIDA to issue administrative citations that impose an administrative fine for violation of any provision of this Section 1.1 or the TIDA Clipper Cove Special-Use Area Rules and Regulations. These citations do not allow for TIDA to charge violations of Section 1.1 as an infraction or misdemeanor (although SFPD may do so); and are only contemplated to be issued in “non-signature” circumstances to avoid conflict and confrontation between TIDA staff and potentially belligerent or non-cooperative vessel owners, operators or passengers. Section 1.1 (f) also designates City and County of San Francisco Administrative Code Chapter 100 "Procedures Governing the Imposition of Administrative Fines" as the mechanism governing the imposition, enforcement, collection and administrative review of these TIDA-issued administrative citations and associated penalties. These administrative fines shall be paid to the Treasure Island Project Office. A copy of City and County of San Francisco Administrative Code Chapter 100 is attached to this Staff Summary as Exhibit A.
- 5.) TIDA review and revision of Cove Rules and Regulations**
Section 1.1 (h) stipulates a requirement for properly noticed public hearing ahead of TIDA amendment, adoption or revision of the Cove Rules and Regulations, as appropriate in conformance with SFPC Section 1.1, California Harbor and

Navigation Code, other applicable laws and regulations, and as otherwise deemed appropriate by the TIDA Board of Directors.

6.) Clarification of Language

Language throughout the Ordinance has been revised to appropriately reference the California Government Code and California Harbors & Navigations Code. References to the existing state of vessels in Clipper Cove has been amended from “moored in Clipper Cove” to “moored, anchored or otherwise allowed to remain Clipper Cove”. Revision to the title of the Ordinance from “Mooring in Clipper Cove” to “Clipper Cove Special Use Area” is also proposed.

At its October 10, 2012 meeting, the Authority Board approved Resolution 12-44-10/10 endorsing the proposed amendments to the Ordinance and urging the Board of Supervisors to consider and approve the proposed amendments. Due to the fact that the proposed amendments to SFPC Section 1.1 will allow TIDA to impose administrative fines for violations, and allow SFPD to enforce the Cove Rules and Regulations, TIDA will conduct a properly noticed public hearing before adoption, amendment or repeal of any section of the Cove Rules and Regulations. The Revised Clipper Cove Rules and Regulations shall be presented to the Authority Board for hearing and consideration for approval at its November 14, 2012 meeting, and an appropriate Notice of Public Hearing will be publicly distributed no sooner than ten days prior to the November Authority Board meeting

RECOMMENDATION:

Approve the ordinance amending San Francisco Police Code Section 1.1 as described above.

Mirian Saez, Director of Island Operations

CHAPTER 100: PROCEDURES GOVERNING THE IMPOSITION OF ADMINISTRATIVE FINES

- Sec. 100.1. Findings and Scope of Chapter.
- Sec. 100.2. Definitions.
- Sec. 100.3. Issuance and Service of Citations.
- Sec. 100.4. Notice to Owner of Real Property.
- Sec. 100.5. Determination of the Amount of the Administrative Fine When the Citation is Issued.
- Sec. 100.6. When Fines Due; Payment of Fine; Late Payment Fee; Notices by Charging Official.
- Sec. 100.7. Remedies Available to City for Non-Payment of Fines; Liens.
- Sec. 100.8. Right to Appeal.
- Sec. 100.9. Appeal Procedure; Appointment of Hearing Officer.
- Sec. 100.10. Charging Official Required to Submit Supporting Documents.
- Sec. 100.11. Hearing Procedures.
- Sec. 100.12. Requirement to Exhaust Administrative Remedies.
- Sec. 100.13. Advance Deposit Hardship Waiver—Undue Hardship.
- Sec. 100.14. Determination of the Hearing Officer.
- Sec. 100.15. Right to Judicial Review.
- Sec. 100.16. Controller May Adopt Regulations.

Sec. 100.1. FINDINGS AND SCOPE OF CHAPTER.

(a) The City and County of San Francisco (the "City") has a significant interest in encouraging compliance with its laws. To that end, City Codes often include a variety of remedies, including the right of City departments to issue citations to violators and to require such persons to pay an administrative fine.

(b) Moreover, the imposition of administrative fines is not intended to be punitive in nature, but is instead intended to compensate the public for the injury and damage caused by the prohibited conduct. The fines are intended to be reasonable and not disproportionate to the damage or injury to the City and the public caused by the prohibited conduct.

(c) To date, the City has not enacted an ordinance establishing standard procedures for the imposition, enforcement, collection, and administrative review of administrative citations and fines for violation of City ordinances. Rather, the Board has enacted a variety of ordinances authorizing administrative fines but has included separate procedures in each ordinance.

(d) The Board adopts this Chapter to provide standard procedures for the imposition, enforcement, collection, and administrative review of administrative citations and fines. However, the Board recognizes that these procedures may not be appropriate to use in whole or in part for all City ordinances. Therefore, this Chapter applies only to citation procedures set forth in an ordinance that incorporates this Chapter, subject to any exceptions provided in that ordinance.

(e) The procedures set forth in this Chapter are adopted pursuant to Government Code Section 53069.4 which governs the imposition, enforcement, collection, and administrative review of administrative citations and fines by local agencies, and pursuant to the City's home rule power over its municipal affairs.

(f) The determination by the City to impose, enforce, collect and provide administrative review of administrative fines pursuant to this Chapter is solely at the City's discretion and is only one option available to the City to seek redress for the violation of its ordinances. By adopting this Chapter, and subsequent legislation incorporating the procedures in this Chapter, the Board does not intend to limit the ability of the City to use any other remedy, civil or criminal, which may be available in a particular case. The City may use the procedures set forth in this Chapter as an alternative to, or in conjunction with, any other available remedy.

(g) In compliance with Government Code Section 53069.4(a)(2), if an ordinance pertains to building, plumbing, electrical, or other similar structural or zoning issues, the ordinance shall provide a reasonable period of time for a person responsible for a continuing violation of the ordinance to correct or otherwise remedy the violation prior to imposition of administrative fines, unless the violation creates an immediate danger to health or safety.

(Added by Ord. 73-08, File No. 071670, App. 4/30/2008)

Sec. 100.2. DEFINITIONS.

The following definitions shall apply to this Chapter.

(a) "Charging official" means a City officer or employee with authority to enforce the ordinance for which citations may issue or a person designated by the charging official to act on his or her behalf.

(b) "Citation" means an administrative citation issued pursuant to this Chapter stating that the charging official has determined that there has been a violation of one or more provisions of a City ordinance, which ordinance incorporates this Chapter in whole or in part.

(c) "Controller" means the Controller for the City and County of San Francisco or a person designated by the Controller to act on his or her behalf.

(d) "Fine" means the dollar amount of the administrative fine that the person cited is required to pay for violation of an ordinance as set forth by the charging official in the citation.

(e) "Person" means a natural person, firm, association, organization, partnership, business trust, company, corporation, limited liability company, joint venture, or club, or its manager, lessee, agent, servant, officer or employee.

(f) "Serve" or "service" means either personal delivery or deposit in the United States Mail, first class, in a sealed envelope postage prepaid. Service shall include a declaration under penalty of perjury setting forth the date of personal delivery or, for service by mail, the date of deposit in the mail. Service by personal delivery shall be deemed complete on the date of the delivery. Service by mail shall be deemed complete on the date of deposit in the mail.

(g) "Violation" means a violation of an ordinance for which the charging official has authority to issue a citation.

(Added by Ord. 73-08, File No. 071670, App. 4/30/2008)

Sec. 100.3. ISSUANCE AND SERVICE OF CITATIONS.

(a) (1) a charging official determines that a violation of an ordinance for which that official has enforcement authority has occurred, the charging official may issue and serve a citation on any person responsible for the violation.

(2) Where there is a nexus between the violation and real property located in the City as set forth in Section 100.4, the charging official may also provide notice of the citation to the owner of the real property as provided in Section 100.4. The City may not impose a lien on the property under Section 100.7(b) unless the charging official provides this notice.

(b) The citation shall contain the following information:

(1) The name of the person to whom the citation is issued;

(2) Identification of the provision or provisions of the ordinance violated. The charging official may issue a single citation for multiple violations of an ordinance or for violation of multiple provisions of an ordinance;

(3) A description of the condition or circumstances constituting the violation(s), including the address or location and date of the violation;

(4) The amount of the fine imposed for each violation;

(5) The date by which the fine must be paid, the procedure for making payment (including to whom payment must be made and acceptable forms of payment), and the consequences of the failure to pay;

(6) The right to seek administrative review of the citation by filing an appeal with the Controller within 30 days of the date that the citation is served and notice that the failure to appeal will make the issuance of the citation a final action by the City for which there is no further administrative review and no judicial review; and

(7) The date the citation is issued and the name and signature of the charging official.

(c) When serving a citation, the charging official shall also serve a form for appealing the citation pursuant to the procedure as set forth in Section 100.9. The form shall be prescribed by the Controller and shall include a description of the procedure for seeking administrative review of the citation, including the deadline for filing the appeal and the requirement in Section 100.9 that the person appealing either deposit the amount of the fine set forth in the citation or file an application for an advance deposit hardship waiver. The appeal form shall require the appellant to provide a mailing address, a street address, a telephone number, and any other contact information that the Controller determines appropriate. The failure by the charging official to serve the appeal form with the citation shall not invalidate the citation or require any change in the procedures provided in this Chapter.

(Added by Ord. 73-08, File No. 071670, App. 4/30/2008)

Sec. 100.4. NOTICE TO OWNER OF REAL PROPERTY.

(a) Where there is a nexus between the violation and real property located in the City, the charging official may provide notice of the citation to the owner of the real property as set forth in this Subsection and that unpaid fines for the citations may become a lien on the property. If the charging official gives this notice, the official shall do so within three City business days of service of the notice on the person cited.

- (1) Post one copy of the citation in a conspicuous place upon the building or real property.
- (2) Serve one copy of the citation on each of the following:
 - (A) The person, if any, in real or apparent charge or control of the premises or property involved;
 - (B) The owner of record.

(b) When serving a copy of the citation as provided in Subsection (a)(2), the charging official shall include written notice of the following:

(1) That the owner of the property has the right to seek administrative review of the citation by filing an appeal with the Controller within 30 days of the date of service of the notice to the property owner.

(2) That the failure by all persons authorized to appeal the citation under this Chapter to file such an appeal will make the issuance of the citation a final action by the City as to all such persons, for which there is no further administrative review and no judicial review.

(c) For purposes of this Chapter, there is a nexus between a violation and real property where an activity or condition on the real property has caused, contributed to, or been a substantial factor in causing, the violation.

(d) The City may not impose a lien on the property under Section 100.7(b) unless the charging official provides notice to the property owner as set forth in this Section.

(Added by Ord. 73-08, File No. 071670, App. 4/30/2008)

Sec. 100.5. DETERMINATION OF THE AMOUNT OF THE ADMINISTRATIVE FINE WHEN THE CITATION IS ISSUED.

(a) Unless the ordinance under which the citation is issued otherwise provides, the amount of the fine set by the charging official shall be governed by this Section:

(1) The amount of the fine for violation of an ordinance that also makes violation an infraction shall be (1) up to \$100.00 for a first violation of the ordinance; (2) up to \$200.00 for a second violation of the same ordinance within one year of the date of the first violation; and (3) up to \$500.00 for each additional violation of the same ordinance within one year of the date of a second or subsequent violation.

(2) The amount of the fine for violation of an ordinance that also makes violation a misdemeanor shall be up to \$1000.00.

(3) The amount of the fine for violation of an ordinance that does not provide for a criminal penalty shall be up to \$1000.00.

(4) In determining the amount of the fine, the charging official may take any or all of the following factors into consideration:

- (A) The duration of the violation;
- (B) The frequency, recurrence and number of violations by the same violator;
- (C) The seriousness of the violation;
- (D) The good faith efforts of the violator to correct the violation;

- (E) The economic impact of the fine on the violator;
- (F) The injury or damage, if any, suffered by any member of the public;
- (G) The impact of the violation on the community;
- (H) The amount of City staff time, which was, expended investigating or addressing the violation;
- (I) The amount of fines imposed by the charging official in similar situations;
- (J) Such other factors as justice may require.

(Added by Ord. 73-08, File No. 071670, App. 4/30/2008)

Sec. 100.6. WHEN FINES DUE; PAYMENT OF FINE; LATE PAYMENT FEE; NOTICES BY CHARGING OFFICIAL.

- (a) The citation shall set forth the date by which the fine is required to be paid, which date shall allow at least 30 days for payment from the date that the citation is served. The fine shall be due and payable on or before the date set forth in the citation, unless the person cited has filed a timely appeal in compliance with the requirements of Section 100.9.
- (b) The due date for fines set forth in citations for which an appeal has been filed under Section 100.9 are due and payable on the date required under Sections 100.9(c)(2) and (d) and 100.14(b).
- (c) Fines that remain unpaid 30 days after the due date shall be subject to a late payment penalty of 10 percent plus interest at the rate of 1 percent per month on the outstanding balance, which shall be added to the penalty amount from the date that payment is due.
- (d) All fines and late payment fees shall be payable to the City and deposited in the City's general fund, unless the payment is made pursuant to an ordinance that provides otherwise.
- (e) If the fine is unpaid by the date that it is due under this Chapter, the charging official shall serve notice within 30 days of the delinquency that fines not paid by the due date are subject to a late payment penalty as provided in Subsection (c). Where there is a nexus between the violation and real property against which the City may impose a lien for non-payment of the citation as provided in Section 100.7(b), the charging official may serve notice to the owner of such property that the person cited has not timely paid the citation and that the charging official may initiate proceedings to make the amount due and all additional authorized costs and charges, including attorneys fees, a lien on the property. If the charging official does not provide the notice set forth in this Subsection, the City may not impose a lien on the property under Section 100.7(b).

(Added by Ord. 73-08, File No. 071670, App. 4/30/2008)

Sec. 100.7. REMEDIES AVAILABLE TO CITY FOR NON-PAYMENT OF FINES; LIENS.

- (a) The amount of any fine not paid within the time required under this Chapter, including the amount of any applicable late payment charges, constitutes a debt to the City. The City may file a civil action or pursue any other legal remedy to collect such money. In any civil action to obtain payment of the fine, and any late payment penalties, the City shall be entitled to obtain a judgment for the amount of the unpaid fines and penalty payments and, in addition, for the costs and attorneys' fees incurred by the City in bringing any civil action to enforce the provisions of this Section.
- (b) Where there is a nexus between the violation and real property located in the City as defined in Section 100.4

(c), the charging official may initiate proceedings to make the payment amount due and all additional authorized costs and charges, including attorneys' fees, a lien on the property. Such liens shall be imposed in accordance with San Francisco Administrative Code Sections 10.230— 10.237, or any successor provisions. Before initiating lien proceedings, the charging official shall send a request for payment under San Francisco Administrative Code Section 10.230A.

(Added by Ord. 73-08, File No. 071670, App. 4/30/2008)

Sec. 100.8. RIGHT TO APPEAL.

Any person who has been served with a citation, including property owners who receive notice of the citation under Section 100.4, may seek administrative review of the citation by filing an appeal with the Controller as provided in Section 100.9. The grounds for any such appeal shall be that there was no violation of the ordinance for which the citation was issued or that the person cited did not commit the violation.

(Added by Ord. 73-08, File No. 071670, App. 4/30/2008)

Sec. 100.9. APPEAL PROCEDURE; APPOINTMENT OF HEARING OFFICER.

(a) Any person who seeks the administrative review of a citation may file an appeal no later than 30 days from the date of service of the citation. An appeal shall be deemed filed on the date that the Controller receives it. At the time that the appeal is filed, the appellant must either deposit with the Controller the full amount of the fine required under the citation or must file an application for an advance deposit hardship waiver, as set forth in Section 100.13. The Controller shall promptly send notice to the charging official of an appeal filed in compliance with this Subsection.

(b) The Controller shall take the following actions within 10 days of receiving an appeal filed with the deposit required in Subsection (a): (1) appoint a hearing officer, (2) set a date for the hearing, which date shall be no less than 10 and no more than 60 days from the date that the appeal was filed, and (3) send written notice of the hearing date to the appellant and the charging official.

(c) The Controller shall, within 10 days of receiving an appeal filed with an application for an advance deposit hardship waiver, determine whether to grant or deny the waiver, as set forth in Section 100.13.

(1) If the Controller grants the waiver, the Controller shall promptly (1) appoint a hearing officer, (2) set a date for the hearing, which date shall be no less than 10 and no more than 60 days from the date that the appeal was filed, and (3) send written notice of the hearing date to the appellant and the charging official.

(2) If the Controller denies the waiver, the Controller shall serve the determination on the applicant and the charging official and shall require the applicant to make the required deposit within 10 days from service of the notice. If the person fails to comply with the requirement within 10 days, the Controller shall consider the appeal withdrawn and shall serve written notice to the person who filed the appeal and to the charging official that the appeal has been withdrawn. Upon receiving notice of the withdrawn appeal, the charging official shall serve written notice on the person cited that the fine set forth in the citation is due and payable on or before the tenth day after service of the notice.

(d) Upon receiving an appeal that is filed without either the required deposit or an application for an advance deposit hardship waiver, the Controller shall provide written notice to the person who filed the appeal that such person must either make the deposit or file the waiver application. The Controller shall provide the person 10 days from service of the notice to comply. If the person fails to comply with the requirement within 10 days, the Controller shall consider the appeal withdrawn and shall serve written notice on the person who filed the appeal and the charging official that the appeal has been withdrawn. Upon receiving notice of the withdrawn appeal, the charging official shall serve written notice that the fine set forth in the citation is due and payable on or before the tenth day after service of the notice.

(e) If the person cited fails to pay the fine within the 10 days required under Subsections (c)(2) or (d), the charging official shall serve notice of the late payment penalty that will become due for fines that remain unpaid 30 days after the due date as provided in Section 100.6(c). Where there is a nexus between the violation and real property against which the City may impose a lien for non-payment of the citation as provided in Section 100.7(b), the charging official may serve a copy of this notice on the owner of the property and, if such notice is given, shall also provide notice that the charging official may initiate lien proceedings to make the amount due under the citation and all additional authorized costs and charges, including attorneys fees, a lien on the property. If the charging official does not provide the notice to the property owner required under this Subsection, the City may not impose a lien on the property under Section 100.7(b).

(f) When more than one person files an appeal of a citation, payment by any appellant shall satisfy the deposit requirement for all appellants.

(g) The provisions of this Section 100.9 requiring the Controller or Charging Official to act by a specific date are directory. The failure of the Controller or Charging Official to take action within the time specified shall not deprive that person of jurisdiction over the matter or of the right to take action at a later time, unless to do so would unreasonably prejudice persons issued citations. This Subsection 100.9(g) shall not apply to the requirements of this Section governing notice to the owners of real property where there is a nexus between the violation and the property as defined in Section 100.4(c).

(Added by Ord. 73-08, File No. 071670, App. 4/30/2008)

Sec. 100.10. CHARGING OFFICIAL REQUIRED TO SUBMIT SUPPORTING DOCUMENTS.

Upon receiving notice that the Controller has scheduled a hearing on an appeal, the charging official shall, within three City business days, serve the appellant and the hearing officer with records, materials, photographs, and other evidence on which the charging official intends to rely at the hearing to support the citation. The charging official may serve this information at any earlier time; if the Controller has not yet appointed a hearing officer, the charging official may serve the information on the Controller, who shall provide it to the person appointed as hearing officer. If the charging official does not serve the information required under this Section within three City business days, the hearing officer may grant a request by the charging official to allow later service and may find good cause to continue the hearing because of the delayed service.

(Added by Ord. 73-08, File No. 071670, App. 4/30/2008)

Sec. 100.11. HEARING PROCEDURES.

(a) The hearing officer shall conduct all appeal hearings under this Chapter and shall be responsible for deciding all matters relating to the hearing procedures not otherwise specified in this Chapter or in regulations adopted by the Controller. The charging official shall have the burden of proof in the hearing. The hearing officer may continue the hearing at his or her own initiative or at the request of either party. The hearing officer may request additional information from the charging official or the person cited.

(b) The hearing need not be conducted according to technical rules of evidence and witnesses. Any relevant evidence is admissible if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs.

(c) The following provisions shall also apply to the appeal procedure:

(1) A citation that complies with the requirements of Section 100.3(b) and any additional evidence submitted by the charging official pursuant to Section 100.10 shall be prima facie evidence of the facts contained therein;

(2) The appellant shall be given the opportunity to present evidence concerning the citation; and

(3) The hearing officer may accept testimony by declaration under penalty of perjury relating to the citation from any party if he or she determines it appropriate to do so under the circumstances of the case.

(Added by Ord. 73-08, File No. 071670, App. 4/30/2008)

Sec. 100.12. REQUIREMENT TO EXHAUST ADMINISTRATIVE REMEDIES.

(a) The failure of the person cited to take the actions set forth in Subsection (c) shall constitute a failure to exhaust administrative remedies and shall preclude the person cited from obtaining judicial review of the validity of the citation.

(b) Where there is a nexus between the violation for which a citation issued and real property as defined in Section 100.4(c), the failure of the owner of such property to take the actions set forth in Subsection (c) shall constitute a failure to exhaust administrative remedies and shall preclude the property owner from obtaining judicial review of the validity of the citation.

(c) This Section applies to the following:

(1) The failure to file an appeal within the time required by Section 100.9(a).

(2) The failure to file an application for a waiver of the deposit requirement within the time required by Section 100.9, unless another appellant has deposited the amount of the fine.

(3) The failure to complete the appeal by depositing the amount of the fine within the time required by Section 100.9, unless another appellant has done so.

(Added by Ord. 73-08, File No. 071670, App. 4/30/2008)

Sec. 100.13. ADVANCE DEPOSIT HARDSHIP WAIVER - UNDUE HARDSHIP.

(a) Any person may seek a waiver from the deposit requirement set forth in Section 100.9(a).

(b) The person requesting a waiver shall file an application on a form prescribed by the Controller, with supporting materials, no later than 30 days from the date of service of the citation. The supporting materials shall include a declaration under penalty of perjury setting forth the circumstances demonstrating that the deposit requirement would impose an undue hardship on the applicant, as well as any documents or other information that the applicant wants the Controller to consider in support of the application for a waiver.

(c) The Controller shall determine within 10 days of receiving the application whether to grant or deny a waiver, setting forth the reason for the determination. The Controller shall serve the written determination on the applicant and the charging official. The Controller's written determination shall be a final administrative determination.

(Added by Ord. 73-08, File No. 071670, App. 4/30/2008)

Sec. 100.14. DETERMINATION OF THE HEARING OFFICER.

(a) After considering all of the testimony and evidence submitted by the parties, the hearing officer shall issue a written decision upholding, modifying or vacating the citation and shall set forth the reasons for the determination. The determination of the hearing officer shall be a final administrative determination.

(b) If the hearing officer upholds the citation, the City shall retain the amount of the fine that the appellant deposited with the City. If no appellant has deposited the fine with the City, the hearing officer shall set forth in the decision a schedule for payment of the fine. The person cited shall pay the fine by the date or dates set forth in the hearing officer's schedule and the failure to do so shall result in the assessment of late payment fees as set forth in Section 100.6(c).

(c) If the hearing officer vacates the citation, the City shall promptly refund the deposit. If the hearing officer partially vacates the citation, the City shall promptly refund that amount of the deposit that corresponds to the hearing officer's determination. The refund shall include interest at the average rate earned on the City's portfolio for the period of time that the City held the deposit as determined by the Controller.

(d) The hearing officer shall serve the appellant and the charging official with a copy of the determination and notice of the right of the appellant to seek judicial review pursuant to California Government Code Section 53069.4.

(e) Absent good cause, the hearing officer shall hear multiple appeals of a citation at the same time.

(Added by Ord. 73-08, File No. 071670, App. 4/30/2008)

Sec. 100.15. RIGHT TO JUDICIAL REVIEW.

(a) Any person aggrieved by the action of the hearing officer taken pursuant to this Chapter may obtain review of the administrative decision by filing a petition for review in accordance with the timelines and provisions set forth in California Government Code Section 53069.4.

(b) If a final order of a court of competent jurisdiction determines that the City has not properly imposed a fine pursuant to the provisions of this Chapter, and if the fine has been deposited with the City as required by Section 100.9, the City shall promptly refund the amount of the deposited fine, consistent with the court's determination, together with interest at the average rate earned on the City's portfolio for the period of time that the City held the fine amount as determined by the Controller.

(Added by Ord. 73-08, File No. 071670, App. 4/30/2008)

Sec. 100.16. CONTROLLER MAY ADOPT REGULATIONS.

The Controller may adopt regulations governing the citation and hearing procedure set forth in this Chapter.

(Added by Ord. 73-08, File No. 071670, App. 4/30/2008)

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EDWIN M. LEE
MAYOR

POLICE DEPARTMENT
CITY AND COUNTY OF SAN FRANCISCO

THOMAS J. CAHILL HALL OF JUSTICE
850 BRYANT STREET
SAN FRANCISCO, CALIFORNIA 94103-4603



GREGORY P. SUHR
CHIEF OF POLICE

November 16, 2012

Ms. Linda Wong
Rules Committee Clerk
Board of Supervisors
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102-4689

Dear Ms. Wong:

RE: Legislation Introduced:
File No. 121030 – Enforcement Provisions for Clipper Cove Special-Use Adjacent to
Treasure Island


The San Francisco Police Department has reviewed the above proposed legislation which would amend Police Code Section 1.1, "Mooring in Clipper Cove."

After review by the supervisors of the San Francisco Police Marine Unit, it was determined that the proposed amendment would have no affect on enforcement efforts done by the SFPD. Any enforcement based on the new regulation allowing administrative infraction citation of unattended boat would be done by the Treasure Island Development Authority (TIDA).

Although the SFPD has authority to cite *attended* boats, our only involvement with the enforcement of this regulation would be to assist TIDA in situations where misdemeanors are at issue and not for the infractions addressed by this legislation.

If I can be of further assistance, please contact my office.

Sincerely,


GREGORY P. SUHR
Chief of Police

/cf

Print Form

Introduction Form

By a Member of the Board of Supervisors or the Mayor

Time stamp
or meeting date

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee:
An ordinance, resolution, motion, or charter amendment.
- 2. Request for next printed agenda without reference to Committee.
- 3. Request for hearing on a subject matter at Committee:
- 4. Request for letter beginning "Supervisor inquires"
- 5. City Attorney request.
- 6. Call File No. from Committee.
- 7. Budget Analyst request (attach written motion).
- 8. Substitute Legislation File No.
- 9. Request for Closed Session (attach written motion).
- 10. Board to Sit as A Committee of the Whole.
- 11. Question(s) submitted for Mayoral Appearance before the BOS on

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission Youth Commission Ethics Commission
- Planning Commission Building Inspection Commission

Note: For the Imperative Agenda (a resolution not on the printed agenda), use a different form.

Sponsor(s):

Subject:

The text is listed below or attached:

Signature of Sponsoring Supervisor: 

For Clerk's Use Only:

