

1 [Construction Dust Control.]

2

3 **Ordinance amending the San Francisco Building Code by adding Section 106.3.2.6 to**
 4 **require applicants for building and demolition permits to require implementation of**
 5 **dust control measures for any demolition or construction project that has the potential**
 6 **to create dust and with specific provisions for projects that will expose or disturb soil,**
 7 **with provision for waiver by the Director for construction activities on sites less than**
 8 **one quarter acre that are unlikely to result in any visible windblown dust; amending the**
 9 **San Francisco Health Code by adding Article 22B to require, for projects over one**
 10 **quarter acre, that the project sponsor obtain approval of a dust control plan from the**
 11 **Director of Public Health unless the Director waives these requirements and to charge**
 12 **fees to defray the costs of implementation; adopting findings.**

13 Note: Additions are *single-underline italics Times New Roman*;
 14 deletions are *strikethrough italics Times New Roman*.
 15 Board amendment additions are double underlined.
 Board amendment deletions are ~~strikethrough normal~~.

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

17 Section 1. Findings. The Board of Supervisors of the City and County of San Francisco
18 hereby finds and determines that:

19 (a) Environmental Findings. The Planning Department has determined that the
 20 actions contemplated in this Ordinance are in compliance with the California Environmental
 21 Quality Act (California Public Resources Code Sections 21000 et seq.). Said determination is
 22 on file with the Clerk of the Board of Supervisors in File No. _____ and is
 23 incorporated herein by reference.

24 (b) General Findings.

25

1 (1) Despite Federal Standards for air pollutants and implementation of State and
2 Regional air quality control plans, air pollutants continue to have impacts on human health
3 throughout the country. California has found that particulate matter exposure can cause
4 health effects at lower levels than national standards. The current health burden of particulate
5 matter demands that, where possible, public agencies take feasible available actions to
6 reduce sources of particulate matter exposure.

7 (2) According to the California Air Resources Board, reducing ambient particulate
8 matter from 1998-2000 levels to natural background concentrations in San Francisco would
9 prevent over 200 premature deaths.

10 (3) Dust can be an irritant causing watering eyes or irritation to the lungs, nose and
11 throat.

12 (4) Demolition, excavation, grading, and other construction activities can cause
13 wind-blown dust to add to particulate matter in the local atmosphere while open soil at the
14 construction site is exposed. Depending on exposure, adverse health effects can occur due
15 to this particulate matter in general and also due to specific contaminants such as lead or
16 asbestos that may be constituents of dust.

17 (5) The intent of this ordinance is to reduce the quantity of dust generated during
18 site preparation, construction and demolition in order to protect the health of the general
19 public, protect the health of on-site workers, minimize public nuisance complaints, and avoid
20 orders to stop work by the Department of Building Inspection.

21 Section 2. The San Francisco Building Code is hereby amended by adding Section
22 106.3.2.6, to read as follows:

23 SEC. 106.3.2.6. Construction dust control.

24

25

1 106.3.2.6.1. Dust control required. All applicants for a building, demolition, excavation,
2 grading, foundation, or other permit required by this Code to construct a new building, to demolish a
3 building, to substantially alter or to add to an existing building shall comply with the requirements for
4 dust control and, in addition, for projects over a quarter acre the applicant will be required to submit a
5 Dust Control Plan for approval by the San Francisco Health Department as set forth in Article 22B of
6 the San Francisco Health Code.

7 106.3.2.6.2. Permit approval. No building or other permit application subject to the
8 requirements of this section shall be approved until the applicant submits a signed statement that they
9 will comply with the General Dust Control Requirements in Section 106.3.2.6.3 and, for projects of
10 over one quarter acre in size, the Department of Building Inspection receives written notification from
11 the Director of Public Health that the applicant either has a site-specific dust control plan for the
12 project approved by the Director of Public Health or the Director of Public Health has waived the
13 requirement.

14 EXCEPTION: The Director may issue a site permit pursuant to Section 106.3.4.2 prior to the
15 time an applicant complies with this section.

16 106.3.2.6.3. GENERAL DUST CONTROL REQUIREMENTS.

17 (a) All site preparation work, demolition or construction activities within the City and
18 County of San Francisco that have the potential to create dust or will expose or disturb soil shall
19 comply with the requirements of this Section whether or not the activity requires a permit from the
20 Department of Building Inspection.

21 (b) The applicant shall designate a person or persons who would be responsible for
22 monitoring compliance with dust control requirements. The designated person or persons shall be on
23 the site during all times that site preparation, demolition or construction activities may be in progress,
24

1 including holidays and weekends. The name and telephone number where such person or persons may
2 be reached at all times shall be provided to the Director and to the Director of Public Health prior to
3 commencement of work on the project.

4 (c) The contractor responsible for construction activities and other person or persons
5 responsible for compliance with dust control requirements at the project site shall use the following
6 best management practices to control construction dust on the site. Owners are responsible for
7 ensuring that the contractor and other responsible persons on the job site comply with these
8 requirements.

9
10 (1) Water all active construction areas at least three times per shift per day. Watering
11 should be sufficient to prevent airborne dust from leaving the site. Increased watering frequency may
12 be necessary whenever wind speeds exceed 15 miles per hour. Reclaimed water must be used if
13 required by Article 21, Section 1100 et seq. of the San Francisco Public Works Code. If not required,
14 reclaimed water should be used whenever possible.

15
16 (2) Provide continuous water misting using as fine a spray or mist as possible in any area of
17 land clearing, earth movement, excavation, drillings, and other dust-generating activity.

18 (3) Wet down areas around soil improvement operations, visibly dry disturbed soil surface
19 areas, and visibly dry disturbed unpaved driveways at least three times per shift per day.

20 (4) During excavation and dirt-moving activities, wet sweep/vacuum the streets, sidewalks,
21 paths, and intersections where work is in progress at least three times per shift per day. Wet
22 sweep/vacuum once at the end of the shift, if necessary.

1 (5) Limit the area subject to excavation, grading, and other demolition or construction
2 activities at any one time.

3 (6) Minimize the amount of excavated material or waste materials stored at the site.

4
5 (7) Cover any stockpile of excavated materials, backfill material, import material, gravel,
6 sand, road base, and soil with a 10 mil (0.01 inch) polyethylene plastic or equivalent tarp and brace it
7 down or use other equivalent soil stabilization techniques such as non-toxic chemical stabilizers.

8 (8) Use dust enclosures, curtains, and dust collectors as necessary to control dust in the
9 excavation area.

10
11 (9) Install dust curtains, plastic tarps or windbreaks, or plant tree windbreaks on the
12 property line on windward and down windward sides of construction areas, as necessary.

13 (10) Pave, apply water three times daily, or apply non-toxic soil stabilizers on all unpaved
14 access roads, parking areas and staging areas at the construction site. Reclaimed water must be used
15 if required by Article 21, Section 1100 et seq. of the San Francisco Public Works Code, Article 22. If
16 not required, reclaimed water should be used whenever possible.

17
18 (11) Load haul trucks carrying excavated material and other non-excavated material so that
19 the material does not extend above the walls or back of the truck bed. Tightly cover with tarpaulins or
20 other effective covers all trucks hauling soil, sand, and other loose materials before the trucks leave the
21 loading area. Wet prior to covering if needed.

22 (12) Vehicles entering or exiting construction areas shall travel at a speed that minimizes
23 dust emissions. This speed shall be no more than 15 miles per hour.
24

1 (13) Sweep streets with water sweepers at the end of each day if visible soil material is
2 carried onto adjacent paved roads. Reclaimed water must be used if required by Article 21, Section
3 1100 et seq. of the San Francisco Public Works Code. If not required, reclaimed water should be used
4 whenever possible.

5 (14) Install wheel washers to clean all trucks and equipment leaving the construction site. If
6 wheel washers cannot be installed, tires or tracks and spoil trucks shall be washed off before they re-
7 enter City streets to minimize deposition of dust-causing materials.

8 (15) Terminate excavation, grading, and other construction activities when winds speeds
9 exceed 25 miles per hour.

10 (16) Inactive construction areas, including previously graded areas inactive for at least 10
11 calendar days, shall be hydroseeded or applied with non-toxic soil stabilizers.

12 (17) Maintain and operate construction equipment so as to minimize exhaust emissions of
13 particulates and other pollutants by such means as a prohibition on idling motors when equipment is
14 not in use or when trucks are waiting in queues.

15 (18) Implement a specific construction equipment maintenance program to reduce emissions
16 from equipment that is in frequent use at the construction site for much of the construction period.

17 (19) Sweep surrounding streets during demolition, excavation and construction at least once
18 per day to reduce particulate emissions.

19 106.3.2.6.4. Large projects. If the project is over one quarter acre in size and the Department
20 of Public Health has not issued a waiver for a site-specific dust control plan for the project;
21 construction, demolition, excavation, grading, foundation work, or other permitted activities may not
22 be performed without a dust control plan.

1 commence until the owner or the owner's agent has submitted to the Department a copy of the dust
2 control plan approved by the Director of Public Health. All site preparation and construction activities
3 on the job site shall comply with the general requirements for dust control and the site-specific dust
4 control plan approved by the Director of Public Health. The failure to comply with all provisions of
5 the approved site-specific dust control plan shall be considered a violation of this Code.

6 106.3.2.6.5. Waiver of requirements for compliance for small sites; rescission of waiver.

7 For sites less than a quarter acre in size:

8
9 (a) The Director may waive these requirements if the applicant demonstrates to the
10 Director's satisfaction that the proposed site preparation, demolition or construction activities are
11 unlikely to result in any visible windblown dust.

12 (b) If at any time, contrary to the applicant's assertions, the construction activities produce
13 visible windblown dust, the Director may issue a written order rescinding the waiver. A copy of the
14 rescission order shall be personally served on the owner of the property at the address on file with the
15 Department of Building Inspection and posted on the job site.

16
17 (c) If the Director orders rescission of the waiver, the owner of the property and the
18 contractor or other persons responsible for construction activities at the site shall comply immediately
19 with the above dust control requirements.

20 106.3.2.6.6. Permit notification. All building, demolition, excavation, grading, foundation, or
21 other permit subject to this section issued by the Central Permit Bureau shall bear notice of the above
22 requirements and of the owner's responsibility to control construction dust on the site.

23
24 106.3.2.6.7. Violations

1 In addition to any other provisions of this Section 106.3.2.6, fraud, willful misrepresentation, or
2 any willfully inaccurate or false statement in any report required by this Section shall constitute a
3 violation of this Section.

4 106.3.2.6.8. Enforcement Actions. The Director is authorized to administer and enforce all
5 provisions of this Section and may enforce the provisions of this Section by any lawful means available
6 for such purpose, including taking actions authorized pursuant to Section 103 of this Code.

7 Section 3. The San Francisco Health Code is hereby amended by adding Article 22B,
8 to read as follows:
9

10 ARTICLE 22B

11 CONSTRUCTION DUST CONTROL REQUIREMENTS

12 SEC. 1240. DEFINITIONS.

13 In addition to the general definitions applicable to this Code, whenever used in this Article, the
14 following terms shall have the meanings set forth below:

15 (a) "Applicant" means a person applying for any permit specified in Section 106.3.2.6 of the
16 San Francisco Building Code or, if a permit for the work is not required from the Department of
17 Building Inspection, the owner of the property where the activities will take place.

18 (b) "Director" means the Director of the San Francisco Department of Public Health or the
19 Director's designee.

20 (c) "Director of Building Inspection" means the Director of the Department of Building
21 Inspection of the City and County of San Francisco.

1 (d) "Owner" means the owner or owners of the property that is the site of the construction
2 activities.

3 SEC. 1241. APPLICABILITY OF ARTICLE.

4 This Article shall apply to any site preparation or construction activities taking place within the
5 City and County of San Francisco that has the potential to create dust or that will expose or disturb
6 soil.

7 SECTION 1242. SITE-SPECIFIC DUST CONTROL PLAN.

8 (a) Applicants for projects over a quarter acre in size shall submit a map showing the
9 location of the project and clearly identifying all surrounding features including residences, schools,
10 hospitals, parks, businesses, commercial districts etc. The Director of Health shall review this map and
11 any other information available to the Director to determine whether any sensitive uses are within 1000
12 feet of the project. If no such uses are determined to be within 1000 feet of the project, then the
13 Director of Health may issue a waiver to the Applicant that specifies that the project is not required to
14 have a site-specific dust control plan.

15 (b) For projects determined by the Director to be within 1000 feet of sensitive uses, the
16 Applicant will submit a site-specific dust control plan to the Director for approval.

17 (c) The site-specific dust control plan shall contain all provisions of Section 106.3.2.6.3 of
18 the Building Code and enhanced site-specific dust monitoring and control measures that will apply to
19 the project. These site-specific measures may include the following or equivalent measures, which
20 accomplish the goal of minimizing visible dust:

21 (1) analysis of the wind direction,

1 (2) placement of upwind and downwind particulate dust monitors,

2 (3) recordkeeping for particulate monitoring results,

3 (4) hiring an independent third party to conduct inspections for visible dust and keep records of
4 those inspections,

5 (5) requirements for when dust generating operations have to be shut down due to dust crossing
6 the property boundary or if dust is contained within the property boundary but not controlled after a
7 specified number of minutes,

8 (6) establishment of a hotline for surrounding community members to call and report visible
9 dust problems so that the Applicant can promptly fix those problems. Posting signs around the site
10 with the hotline number and making sure the number is given to adjacent residents, schools and
11 businesses.

12 SEC. 1243. WAIVER OF REQUIREMENTS FOR COMPLIANCE; RESCISSION OF WAIVER.

13 (a) The Director may waive the requirements for a site-specific dust control plan as
14 described in Section 1242 (a) or if the applicant demonstrates to the Director's satisfaction that a site-
15 specific dust control plan should not be required.

16 (b) The Director may rescind this waiver,

17 (1) if sensitive uses are placed within 1000 feet of the project;

18 (2) if requested by the Director of Building Inspection; or

19 (3) the Director is presented with information that contradicts the Applicants'
20 demonstration that a site-specific dust control plan should not be required.

1 The Director shall provide the Director of Building Inspection with a copy of the rescission
2 order.

3 (c) If the Director orders rescission of the waiver, the owner of the property and the
4 contractor or other persons responsible for construction activities at the site shall comply immediately
5 with Section 1242 by submitting a site-specific dust control plan for the Director's approval.

6 SEC. 1244. DIRECTOR'S APPROVAL OF DUST CONTROL PLAN AND NOTIFICATION TO
7 THE DIRECTOR OF BUILDING INSPECTION.

8 After the Director has approved the applicant's dust control plan, the Director shall provide the
9 applicant and the Director of Building Inspection with written notification that the applicant has
10 complied with the requirements of this Article.

11 SEC. 1245. RULES AND REGULATIONS.

12 The Director may adopt, and may thereafter amend, rules, regulations and guidelines that the
13 Director deems necessary to implement the provisions of this Article. A public hearing before the
14 Health Commission shall be held prior to the adoption or any amendment of the rules, regulations and
15 guidelines recommended for implementation. In addition to any notices required by law, the Director
16 shall send written notice, at least 15 days prior to the hearing, to any interested party who sends a
17 written request to the Director for notice of hearings related to the adoption of rules, regulations and
18 guidelines under this section.

19 SEC. 1246. CONSTRUCTION ON CITY PROPERTY.

20 All departments, boards, commissions, and agencies of the City and County of San Francisco
21 that authorize construction or improvements on land under their jurisdiction under circumstances
22 that authorize construction or improvements on land under their jurisdiction under circumstances
23 that authorize construction or improvements on land under their jurisdiction under circumstances
24 that authorize construction or improvements on land under their jurisdiction under circumstances
25 that authorize construction or improvements on land under their jurisdiction under circumstances

1 where no building, excavation, grading, foundation, or other permit needs to be obtained under the San
2 Francisco Building Code shall adopt rules and regulations to insure that the same dust control
3 requirements that are set forth in this Article are followed. The Directors of Public Health and
4 Building Inspection shall assist the departments, boards, commission and agencies to insure that these
5 requirements are met.

6 SEC. 1247. NO ASSUMPTION OF LIABILITY.

7 In undertaking the enforcement of this ordinance, the City is assuming an undertaking only to
8 promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an
9 obligation for breach of which it is liable in money damages to any person who claims that such breach
10 proximately caused injury.

11 SEC. 1248. FEES.

12 The Director is authorized to charge the following fees to defray the costs of document
13 processing and review, consultation with applicants, and administration of this Article: for fiscal year
14 2007-2008 (1) an initial fee of \$459, payable to the Department upon the filing of a Dust Control Plan
15 with the Department; and (2) an additional fee of \$153 per hour for time spent in document processing
16 and review and applicant consultation exceeding three hours or portion thereof, payable to the
17 Department. Beginning with fiscal year 2008-2009, no later than April 15 each year, the Controller
18 shall adjust the fees provided in this Article to reflect changes in the relevant Consumer Price Index,
19 without further action by the Board of Supervisors. In adjusting the fees, the Controller may round
20 these fees up or down to the nearest dollar. The Director shall perform an annual review of the fees
21 scheduled to be assessed for the following fiscal year and shall file a report with the Controller no later
22 than 30 days after the end of the fiscal year.

1 than May 1st of each year, proposing, if necessary, an adjustment to the fees to ensure that costs are
2 fully recovered and that fees do not produce significantly more revenue than required to cover the costs
3 of operating the program. The Controller shall adjust fees when necessary in either case.

4
5 APPROVED AS TO FORM:
6 DENNIS J. HERRERA, City Attorney

7 By: _____
8 JUDITH A. BOYAJIAN
9 Deputy City Attorney