

LEGISLATIVE DIGEST

[Hunters Point Shipyard – Health Code]

Ordinance amending Article 31 of the Health Code to extend to the entire Hunters Point Shipyard area the special permit processing requirements that now apply to Hunters Point Shipyard Parcel A to address potential residual contamination, imposing fees to administer this Article, amending Sections 804 and 1227 of the Health Code to make conforming amendments, and making environmental findings.

Existing Law

Article 31 of the Health Code was enacted by Ordinance 303-04 and became effective on December 24, 2004. It was triggered by the transfer of Parcel A of the Hunters Point Shipyard (HPS) from the U.S. Navy to the San Francisco Redevelopment Agency (SFRA), which subjected Parcel A to the jurisdiction of the City. Its goal was to impose specific requirements on activities at HPS, in order to provide additional protection to human health and safety and the environment above and beyond what was required by federal and state law.

Article 31 provides that any person seeking permits for subsurface activities on portions of the HPS that involve the disturbance of at least 50 cubic yards and any person seeking a well construction or destruction permit (Applicant), be referred to the Department of Public Health (DPH). It authorizes DPH's Director (Director) to require the Applicant to conduct additional sampling, if DPH determines that the area was not adequately characterized; to advise the relevant departments of any specific requirements that may apply to the area, pursuant to the conveyance deed; to require compliance with the institutional controls as a condition of the permit or improvement plan; and to coordinate with the relevant departments to monitor and enforce compliance with such institutional controls.

In areas where there are proposed land uses or structures that are on top of old landfill disposal sites or within 1,000 feet of old disposal sites, and where there is evidence that landfill gas migration could pose a threat to public health and safety or the environment due to those land uses or structures, Article 31 authorizes the Director to impose protective measures, such as venting pipes, as a condition of a permit or improvement plan.

The Director and the Health Commission are authorized to charge established rates to ensure that DPH's costs of oversight are fully recovered; add and implement certain requirements by regulation; and subject additional geographic areas of HPS to Article 31.

Under Article 31 the Director must maintain, for public access, all data collected by the Navy and any subsequently gathered data, as well as maps necessary to enable compliance with the Article; and submit an annual summary of compliance to the Board.

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Finally, under Article 31 DPH may seek administrative and civil penalties for violations of the Article.

Amendments to Current Law

At the time Article 31 was adopted, it was anticipated that it would be amended to include the other HPS parcels, as they are transferred out of Navy ownership. Now, in anticipation of the transfer of the remainder of the HPS to the SFRA, the current ordinance amends Article 31 to extend to the entire HPS the special permit processing requirements that now apply at HPS Parcel A, to address potential contamination. The ordinance preserves all review and permitting requirements that are currently in existence under Article 31, but makes some important changes.

The ordinance reiterates that all Applicants must comply with institutional controls included in the any deed conveying ownership from the Navy to the SFRA or included in any recorded covenant to restrict use of property containing environmental restrictions, and that the Director will oversee and enforce compliance with such institutional controls. Beyond these general requirements, the ordinance divides the HPS parcels in two main groups. The first group is composed of unrestricted residential properties, defined as parcels that the applicable ROD determined to be suitable for unrestricted residential use, and that are transferred without a requirement for a durable cover or engineered cap (such as Parcel A, Parcel D-2, and any other parcels that may transfer to the SFRA in the future in such condition.) The second group is that of properties transferred with a durable cover requirement, defined as properties which are subject to a deed restriction or covenant to restrict their use containing an environmental restriction requiring a durable cover or engineered cap.

The distinction between unrestricted residential properties and properties transferred with a durable cover requirement is important for two main reasons. First, the applicability of the Article is triggered by different kinds of actions, depending on whether the permit sought would affect an unrestricted residential property or a property transferred with a durable cover requirement. If the first, then the Article applies only for permits that involve the disturbance of at least 50 cubic yards (38.23m³) of soil (in addition to any well construction, modification, operation or maintenance permit and any permit that involves demolition of structures with lead-based paint.) If the latter, Article 31 applies for any permit sought, regardless of the amount of soil disturbed.

A second reason why the distinction between these types of properties is relevant is that, depending on the kind of property, different requirements apply to each and, consequently, DPH's role in enforcing the Article varies. Applicants for permits in unrestricted residential properties are subject to the regulatory oversight of DPH, and are required to submit the following plans, to the satisfaction of the Director: (i) a Site Evaluation Report; (ii) a Dust Control Plan; (iii) an Unknown Contaminant Contingency Plan; (iv) a Disposal Plan (if applicable); (v) a Site Specific Health and Safety Plan; (vi) a Soil Importation Plan (if applicable), (vii) a Foundation Support Piles Installation Plan (if applicable), (viii) a determination of whether additional information is necessary to adequately characterize the

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Prescribed Subsurface Activity Area, and (ix) for areas that undergo demolition of structures with lead based paint, a scope of work to collect additional information as described in the regulations. On the other hand, Applicants for permits on property transferred with a durable cover requirement are required to submit substantially the same plans as Applicants for permits in unrestricted residential properties (except for the plans required in subsections (viii) and (ix), which do not apply) and in addition, submit proof that they are complying with all environmental documents and restrictions imposed by federal and state regulatory oversight agencies.

Another change that this ordinance seeks, vis a vis the current Article 31, is that it requires, for both types of properties, the preparation of some plans that have not been explicitly required until now: Unknown Contaminant Contingency Plans and Foundation Support Piles Installation Plan. On the other hand, the ordinance deletes the requirement of Stormwater and Erosion Control Plan, in recognition of the fact that these plans are regularly reviewed by another regulatory agency, the San Francisco Public Utilities Commission.

The ordinance preserves the authority of DPH to adopt regulations to administer the Article, to enforce the Article seeking administrative and civil penalties, and to charge fees to recover the costs of administering the Article, including document processing and review and site visits.

Finally, the ordinance makes conforming amendments to Sections 804 and 1227 of the Health Code, to reflect the fact that Article 31 now applies to the whole HPS area, not just to Parcel A.

Background Information

Pursuant to CERCLA, and with oversight by the United States Environmental Protection Agency (EPA) and state regulatory agencies, the Navy is investigating and remediating the HPS. In 1989, the EPA placed the HPS on the Superfund List. For purposes of remediation, the HPS is divided into Parcels A through F. In addition to Parcel A, which the Navy already transferred to the SFRA, it is anticipated that the Navy will offer the remaining parcels for transfer to the Agency in accordance with a Conveyance Agreement between the Agency and the Navy. Prior to transfer of any parcel, the Navy will issue a draft final Finding of Suitability to Transfer (FOST) or a draft final Finding of Suitability for Early Transfer (FOSET) for the parcel, as required by law.

The Board of Supervisors by Resolution _____, adopted CEQA findings, including a mitigation monitoring and reporting program (MMRP) for the Candlestick Point-Hunters Point Shipyard Phase II Development Plan Project (Project), for which the SFRA and Planning Commissions certified a Final Environmental Impact Report (FEIR) in _____ 2010. The Project contains all of the property in the HPS, except the property designated as Parcel A by the Navy. The MMRP contains mitigation measures that address potential hazardous materials impacts associated with the Project. It is the intent of this Board by adopting this ordinance to create a process for DPH to enforce, through this

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Article 31, certain hazardous materials mitigation measures identified in the FEIR in the HPS portion of the Project.