

1 [Public Works Code - Enforcement and Emergency Powers]
 2 AMENDING PART II, CHAPTER X OF THE SAN FRANCISCO MUNICIPAL CODE (PUBLIC
 3 WORKS CODE) BY AMENDING SECTION 400 TO AUTHORIZE THE DIRECTOR OF THE
 4 DEPARTMENT OF PUBLIC WORKS TO REQUIRE AND PERFORM REMEDIATION ON
 5 UNACCEPTED PUBLIC RIGHT-OF-WAY AND TO ENFORCE OBLIGATIONS TO PAY FOR
 6 SUCH REMEDIATION; AMENDING SECTIONS 706.3, 706.4, AND 706.8 TO DELETE THE
 7 DIRECTOR'S AUTHORITY TO UNDERTAKE EMERGENCY REMEDIATION OF
 8 DANGEROUS CONDITIONS ON A SIDEWALK WITHOUT NOTICE, TO ALLOW FOR
 9 ADMINISTRATIVE REVIEW OF SPECIFIED DETERMINATIONS OF THE DIRECTOR, AND
 10 TO EXPAND THE SCOPE OF THE FUND AVAILABLE FOR REPAIRS AND REMEDIATION
 11 UNDERTAKEN BY THE DEPARTMENT OF PUBLIC WORKS; AND ADDING SECTION 709
 12 TO AUTHORIZE THE DIRECTOR TO ISSUE AND ENFORCE EMERGENCY ORDERS FOR
 13 THE REMEDIATION OF ACCEPTED OR UNACCEPTED PUBLIC RIGHT-OF-WAY IN
 14 CONJUNCTION WITH OR SEPARATE FROM OTHER CITY DEPARTMENTS.

Note: Additions are underlined; deletions are in ((double parentheses)).

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

Section 1. Part II, Chapter X of the San Francisco Municipal Code (Public Works Code) is hereby amended by amending Section 400 to read as follows:

SEC. 400. NOTICE TO REPAIR ((— FIVE-DAY LIMITATION)).

(a) When, in the judgment of the Director of the Department of Public Works ((of the City and County of San Francisco)), any portion of the ((roadway of any)) improved, but unaccepted public right-of-way that is under the jurisdiction and control of the Department of Public Works, including, but not limited to, a street, avenue, lane, alley, court or place, or any portion of any sidewalk thereof, ((in the said City and County, none of which has been accepted by the

1 Supervisors as by law or as in the Charter of said City and County provided,) shall be so out of
2 repair or in such condition as to endanger persons or property passing thereon, or so as to
3 interfere with the public convenience in the use thereof, the Director ((said Department of Public
4 Works)) is authorized to notify in writing the owner or owners of any lot fronting on said affected
5 public right-of-way ((portion of said street, avenue, lane, alley, court or place, or fronting on such
6 portion of said sidewalk so out of repair or in such condition as aforesaid, by a notice in writing
7 to be delivered to him, or his agent, or to the person owning the fee, or the mortgagee of such
8 fee, or the person who, on the day the notice is given, appears by deed duly recorded in the
9 County Recorder's office of the City and County to have the legal title to the land, or to the
10 person in possession of the lands, lots, portions of lots or buildings under claim, or exercising
11 acts of ownership, over the same for himself, or as executor, administrator or guardian of the
12 owner, shall be regarded, treated and deemed to be the owner for all the purposes of this
13 Section, requiring)) that such owner is required to repair, reconstruct, or improve forthwith the
14 affected public right-of-way, to the centerline thereof, in such manner and time period ((with
15 such material)) as the Director deems expedient and appropriate ((said Department of Public
16 Works may determine and direct, said portion of said street, avenue, lane, alley, court or place,
17 to the center line thereof, or said portion of said sidewalk in front of the lot of which he is the
18 owner)).

19 ((Within five days after such notice shall have been delivered to such owner, he shall
20 cause to be begun such repair, or such reconstruction, or such improvement, as may have
21 been determined by the said Department of Public Works, and directed by said department in
22 its notice aforesaid to be made, and shall diligently and without interruption prosecute the same
23 to completion.))

24 (b) If the responsible property owner(s) notified pursuant to Subsection (a) is
25 inaccessible or fails, neglects, or refuses to diligently prosecute to completion the remedial

1 work in the manner and time period specified by the Director, then the Director may undertake
2 all necessary actions to remedy the condition. All costs expended by the Director shall be an
3 obligation of the responsible property owner(s) owing to the City and County of San Francisco.
4 Such costs shall include, but are not limited to, those costs associated with the administration,
5 construction, consultants, equipment, inspection, notification, remediation, repair, restoration,
6 or any other actual costs incurred by the Director or other agencies, boards, commissions, or
7 departments of the City and County of San Francisco that were made necessary by reason of
8 the Director's remediation.

9 (c) In order to enforce an obligation imposed pursuant to Subsection (b), the Director is
10 authorized to institute the lien procedures that are set forth in this Code, Article 15, Sections
11 706.4-707.1.

12 Section 2. Part II, Chapter X of the San Francisco Municipal Code (Public Works
13 Code) is hereby amended by amending Sections 706.3, 706.4, and 706.8 to read as follows:

14 **SEC. 706.3. DIRECTOR OF PUBLIC WORKS TO REPAIR IF OWNER FAILS TO DO**
15 **SO.** If said repair is not commenced and prosecuted to completion with due diligence, as
16 required by said notice, the Director of Public Works shall repair said sidewalk. ((If any portion
17 of a sidewalk which is not in good repair and condition is unfit for public use because of the
18 dangerous nature of such defect, and the owner of the property adjacent thereto has failed
19 and neglected to repair the same, the Director of Public Works shall have the authority to
20 make such repair immediately upon receiving knowledge of such defect and without giving
21 the foregoing notice.)) The cost of such repair shall be an obligation to the City and County
22 owing by the owner of the adjacent property, and the City and County shall have a lien of the
23 adjacent property in all respects as though notice had been given. Both such obligation and
24 lien shall be subject to the provisions of Sections 706.4, 706.5, 706.6, 706.7 and 706.8 of this
25 Article.

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1 **SEC. 706.4. NOTICE OF COST AND CLAIM OF LIEN.** (a) Upon the completion of
2 such repair, the Director of Public Works shall ascertain the cost thereof, apportioning the same,
3 if the area so repaired is next adjacent to more than one lot of land. The owner of such lot of
4 land shall thereupon be obligated to the City and County of San Francisco in the amount of
5 such cost of repair and the City and County shall thereupon have a lien for such cost of repair
6 upon any such lot of land until payment thereof which lien shall also include the cost of
7 verification and filing thereof. On ascertaining the cost of repair as aforesaid the Director of
8 Public Works shall cause notice thereof to be mailed in the manner herein provided for mailing
9 notice to repair, which notice shall demand payment thereof to the Director of Public Works,
10 shall give notice of claim of such lien and of the recording of the same, in the event such
11 amount is not paid, as hereinafter set forth.

12 (b) Said notice also shall state that the property owner(s) identified as the responsible
13 party(ies) may request an administrative review of the Director's determination as to the
14 responsible property owner(s) and the allocation of cost for remediation. This request must be
15 in writing and filed within ten calendar days of the date of the Director's notice. If no request for
16 administrative review is filed, the Director's determination shall be final.

17 (c) If administrative review is requested, the Director shall appoint a hearing officer and
18 schedule a hearing within ten calendar days of the filing of the request for administrative review.
19 The Director shall notify the party(ies) to the review hearing of the time and date of said hearing.
20 Recording of the lien against the affected owner's property pursuant to Section 706.5 shall be
21 held in abeyance until the Director has acted upon the hearing officer's decision.

22 (d) The administrative review hearing is a public hearing and shall be tape recorded.
23 Any party to the hearing may cause, at his or her own expense, the hearing to be recorded by
24 a certified court reporter. During the hearing, evidence and testimony may be presented to
25 the hearing officer. Parties to the hearing may be represented by counsel and have the right

1 to cross-examine witnesses. All testimony shall be given under oath. Written decisions and
2 findings shall be rendered by the hearing officer within ten calendar days of the hearing.
3 Copies of the findings and decision shall be served upon the parties to the hearing by
4 certified mail. A notice that a copy of the findings and decisions is available for inspection
5 between the hours of 9:00 a.m. and 5:00 p.m. Monday through Friday shall be posted at the
6 offices of the Department of Public Works.

7 (e) The decision of the hearing officer shall be a recommendation to the Director and
8 the Director, within five days of receipt of such decision, shall adopt, modify, or deny such
9 decision. The Director's determination on the hearing officer's decision is final. Such
10 determination shall be served upon the parties to the hearing and posted in the same manner
11 as the hearing officer's decision as set forth in Subsection (d.)

12 **SEC. 706.8. REVOLVING FUND.** A fund shall be provided to cover initially the cost of
13 making sidewalk repairs as provided in Section 706.3 hereof, making repairs in unaccepted
14 public right-of-way as provided in Article 9, Section 400, and of verification and recording of
15 liens therefor, said fund to be a revolving fund and replenished by appropriation and by all
16 moneys paid or collected for sidewalk repairs and repairs in unaccepted public right-of-way
17 and liens therefore as herein provided.

18 Section 3. Part II, Chapter X of the San Francisco Municipal Code (Public Works
19 Code) is hereby amended by adding Section 709 to read as follows:

20 **SEC. 709. EMERGENCY ORDERS; ACCEPTED AND UNACCEPTED PUBLIC**
21 **RIGHT-OF-WAY.** (a) If, in the judgment of the Director, the condition of an accepted or
22 unaccepted public right-of-way within the jurisdiction of the Department of Public Works
23 constitutes a public emergency or other imminent threat to the public health, safety, or welfare
24 that requires immediate action, the Director, by written, telephonic or facsimile
25 communication, may order the responsible property owner(s) to remedy the condition in such

1 a manner as the Director deems expedient and appropriate subject to the limitations set forth
2 in this Article or Article 9.

3 _____ (b) If the responsible property owner(s) notified pursuant to Subsection (a) is
4 inaccessible or fails, neglects, or refuses to diligently prosecute to completion the remedial
5 work in the manner and time period specified by the Director, then the Director may undertake
6 all necessary actions to remedy the condition. All costs expended by the Director shall be an
7 obligation of the responsible property owner(s) owing to the City and County of San Francisco.
8 Such costs shall include, but are not limited to, those costs associated with the administration,
9 construction, consultants, equipment, inspection, notification, remediation, repair, restoration,
10 or any other actual costs incurred by the Director or other agencies, boards, commissions, or
11 departments of the City and County of San Francisco that were made necessary by reason of
12 the Director's remediation.

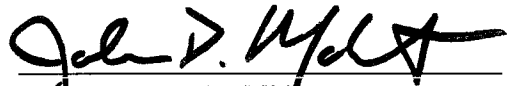
13 (c) In order to enforce an obligation imposed pursuant to Subsection (b), the Director is
14 authorized to institute the lien procedures that are set forth in Sections 706.4-707.1.

15 (d) In the event of an emergency, the Director shall cooperate to the extent practicable
16 with other City and County agencies, boards, commissions, or departments with jurisdiction
17 over affected fixtures, improvements, property, or structures across, adjacent to, along,
18 beneath, in, on, over, under, upon, or within the public right-of-way. The Director may issue
19 an emergency order in conjunction with any other official of the City and County of San
20 Francisco who is authorized to issue emergency orders.

21 (e) When, under emergency circumstances, neither the Department of Public Works
22 nor Department of Building Inspection can ascertain which department has jurisdiction over
23 the affected fixtures, improvements, property, or structures across, adjacent to, along,
24 beneath, in, on, over, under, upon, or within the public right-of-way, the Director, the Director
25 of the Department of Building Inspection, or both may issue emergency orders to remedy any

1 emergency condition. Notice of the emergency order shall be pursuant to Subsection (a) or
2 according to procedures set forth in the San Francisco Building Code. If the City and County
3 of San Francisco abates the emergency condition, once the Departments of Public Works
4 and Building Inspection have determined which department has jurisdiction over the affected
5 fixtures, improvements, property, or structures across, adjacent to, along, beneath, in, on,
6 over, under, upon, or within the public right-of-way, the procedures for collection of charges
7 and enforcement shall be according to the Municipal Code Sections applicable to whichever
8 department assumed the lead role in abating the emergency condition.

9
10 APPROVED AS TO FORM:
11 LOUISE H. RENNE, City Attorney

12
13 By: 
14 JOHN D. MALAMUT
15 Deputy City Attorney

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SUPERVISOR MEDINA
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City and County of San Francisco

Veterans Building
401 Van Ness Avenue, Room 308
San Francisco, CA 94102-4532

Tails

Ordinance

File Number: 981086

Date Passed:

Ordinance amending Public Works Code Sections 400, 706.3, 706.4 and 706.8 and adding Section 709 to authorize the Director of the Department of Public Works to require and perform remediation on unaccepted public right-of-way and to enforce obligations to pay for such remediation; to delete the Director's authority to undertake emergency remediation of dangerous conditions on a sidewalk without notice, to allow for administrative review of specified determinations of the Director, and to expand the scope of the fund available for repairs and remediation undertaken by the Department of Public Works; and to authorize the Director to issue and enforce emergency orders for the remediation of accepted or unaccepted public right-of-way in conjunction with or separate from other City departments.

October 26, 1998 Board of Supervisors — PASSED ON FIRST READING

Ayes: 11 - Ammiano, Bierman, Brown, Katz, Kaufman, Leno, Medina, Newsom, Teng, Yaki, Yee

November 2, 1998 Board of Supervisors — FINALLY PASSED

Ayes: 11 - Ammiano, Bierman, Brown, Katz, Kaufman, Leno, Medina, Newsom, Teng, Yaki, Yee

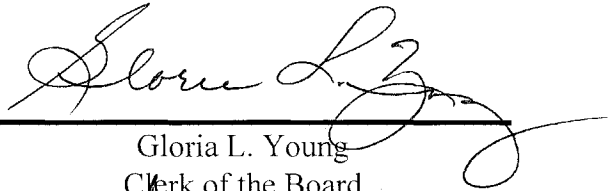
File No. 981086

I hereby certify that the foregoing Ordinance was **FINALLY PASSED** on November 2, 1998 by the Board of Supervisors of the City and County of San Francisco.

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Date Approved



Gloria L. Young
Clerk of the Board



Mayor Willie L. Brown Jr.