

**LEGISLATIVE DIGEST**

(5/14/2013, Substituted)

[Building, Health, Public Works Codes - Soil and/or Groundwater Testing Requirements]

**Ordinance amending the Building and Health Codes to expand the boundaries and types of projects for which soil testing is required and to require testing of groundwater under specified circumstances; amending the Public Works Code to eliminate soil testing provisions; renumbering code sections in the Health Code; and making environmental findings.**

Existing Law

Article 22A of the Health Code, Article 20 of the Public Works Code, and Section 106A.3.2.4 of the Building Code (collectively referred to as the "Maher Ordinance," adopted 1986) require applicants for building permits to develop site histories and, if necessary, to test soils for hazardous substances and perform appropriate handling, clean-up or capping of contaminated sites, for development projects that:

- Would disturb 50 + cubic yards soil; and
- Are located near the City's eastern shoreline

These ordinances are administered by the Department of Public Health (DPH - oversight of site history, work plan and mitigation plan) and the Department of Building Inspection (DBI - permit review and site inspection).

For projects located within designated area that would disturb 50 or more cubic yards of soil, permit applicants are required to submit site histories (permit history, record of past known uses, etc.) to DPH. If DPH determines, based upon site history, that there is no information to indicate the site may contain hazardous substances that pose risk to public health, then no further action required. If DPH determines that site may contain hazardous substances that pose risk to public health, then the permit applicant must submit work plans to DPH for taking and analyzing soils samples on site. If analysis shows the site is clean, then no further action required. If soils analysis indicates hazardous substances present on site, then the permit applicant must prepare a site mitigation plan for soils handling, disposal of contaminated soils and/or capping of site, under supervision of DPH. These actions, under supervision of DPH, must occur before DBI may issue a permit to commence building the project.

Amendments to Current Law

The proposed ordinance amendments will:

- Expand the geographic scope of Article 22A of the Health Code to cover all known areas throughout City with the potential to encounter hazardous substances, primarily areas currently or formerly zoned for industrial uses, sites with industrial uses or underground storage tanks, sites with historic bay fill, sites in close proximity to freeways or underground storage tanks.
- Expand Article 22A of the Health Code to include testing of groundwater when hazardous substances and groundwater are found on building sites.
- Codify a process for building site reporting, analysis processes that will result in improved consistency, certainty, and equity.
- Ensure consistency between Article 22A and applicable Building Code requirements.

The proposed ordinance amendments also repeal obsolete portions of the Public Works Code.

Substitution, please note: certain words or phrases were modified in the following sections to make the language more clear: Sections 106A.3.2.4.1(e) and (g); Section 22A.6(a); Section 22A.7(a); Section 22A.8(a); and Section 22A.10(a)(1). Additionally, Section 22A.19(a) was updated to show the current fees for Fiscal Year 2013-14 as calculated by the Controller to accurately reflect cost recovery as authorized by subsection 22A.19(b).

### Background Information

In 1986, the San Francisco Board of Supervisors adopted an ordinance to address public concerns about hazardous materials exposure. The ordinance required that the Department of Health determine whether applicants for certain building permits observe and complete the requirements for analyzing the soil for the presence of hazardous waste. At that time, City engineers delineated areas of concern on a map which identified areas bayward of the historic 1851 shoreline.

The ordinance required specific soils analysis for inorganic and organic chemicals at construction sites where at least 50 cubic yards of soil are to be disturbed, the site is bayward of the historic high tide line, and a building permit is needed.

Since this time, the Planning Department and DPH have recognized that other areas of the City have hazardous substances in the soil and groundwater that could affect public health and safety. According to the departments, the geographic extent of the current ordinance is too limited – potential hazardous substance contamination of building sites occurs throughout a much larger area of City than the current boundaries of the area covered by the ordinance.

In addition, the ordinance does not cover groundwater contamination - if a building site has contaminated soils, the groundwater also present at the site is likely to be contaminated as well.

For building sites outside of area delineated by the current ordinance, site histories, testing for and remediation of contaminated soils and groundwater are still required for development projects, but only on a case-by-case basis through CEQA mitigation measures and conditions of project approval. This process is cumbersome and time-consuming, and provides for less certainty and consistency for projects located outside the area delineated by the current ordinance.

The Planning Department and the DPH have proposed amendments to Article 22A to address other areas of San Francisco that have been filled with soils that may contain hazardous substances, industrial zoned areas, areas within 150 feet of elevated freeways and properties within 100 feet of underground storage tanks, and the groundwater associated with such areas. DPH also recognizes that improved and more effective scientific and health risk exposure levels have been developed since 1986, and proposes to use these considerations for reviewing analytical reports and the proposed uses of developed properties.

The purposes of the proposed amendments are to:

- Ensure that contaminated soils and/or groundwater are managed, cleaned up or appropriately capped throughout the City, in order to protect public health and worker safety and in a consistent and equitable manner, as building sites are developed.
- Codify consistent responsibilities and processes, for all projects with similar circumstances and concerns.
- Allow DPH flexibility to adopt practical and effective protocols for City infrastructure projects.
- Provide more certainty and fewer surprises for project applicants.