



SAN FRANCISCO PLANNING DEPARTMENT

May 17, 2013

Honorable Mayor Edwin M. Lee
City and County of San Francisco
City Hall, Room 200
Ms. Angela Calvillo, Clerk
Board of Supervisors
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

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CA 94103-2479

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**Re: Transmittal of Planning Department Case Number 2013.0525U
Soil and Groundwater Testing- "Maher Ordinance"
Board File No. 13-0369
Planning Commission Recommendation: Approval**

Dear Mayor Lee and Ms. Calvillo,

On May 16, 2013, the Planning Commission conducted a duly noticed public hearing at regularly scheduled meeting to consider the proposed Ordinance, introduced by Mayor Lee that would amend the Maher Ordinance. At the hearing, the Planning Commission recommended approval.

The proposed amendment to the Planning Code was found to be categorically exempt from environmental review under the California Environmental Quality Act Section 15308.

Please find attached documents relating to the actions of the Commission. If you have any questions or require further information please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "AM-Rodgers", with a horizontal line extending to the right.

AnMarie Rodgers
Manager of Legislative Affairs

cc:

Virginia D Elizondo, Deputy City Attorney
Jason Elliot, Director, Mayor's Office of Legislative & Government Affairs
Kelly Pretzer, Deputy Director, Mayor's Office of Legislative and Government Affairs
Alisa Miller, Office of the Clerk of the Board

Attachments

Planning Commission Resolution
Planning Department Executive Summary



SAN FRANCISCO PLANNING DEPARTMENT

Planning Commission Resolution No. 18869

HEARING DATE MAY 16, 2013

Project Name: Expand the Requirements for Soil and Groundwater Testing
Case Number: 2013.0525U [Board File No. 130369]
Initiated by: Mayor Edwin Lee/ Introduced April 23, 2013
Environmental Planning Staff: Paul Maltzer, Senior Environmental Planner
Legislative Staff: Aaron Starr, Legislative Affairs
aaron.starr@sfgov.org, 415-558-6362
Reviewed by: AnMarie Rodgers, Manager Legislative Affairs
anmarie.rodgers@sfgov.org, 415-558-6395

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RECOMMENDING THAT THE BOARD OF SUPERVISORS ADOPT A PROPOSED ORDINANCE THAT WOULD AMEND THE BUILDING CODE, SECTION 106A.3.2.4, AND HEALTH CODE, SECTIONS 1220 THROUGH 1237, AND ADD SECTION 1219, TO EXPAND THE BOUNDARIES AND TYPES OF PROJECTS FOR WHICH SOIL TESTING IS REQUIRED AND TO REQUIRE TESTING OF GROUNDWATER UNDER SPECIFIED CIRCUMSTANCES; AMENDING PUBLIC WORKS CODE, ARTICLE 20, TO ELIMINATE SOIL TESTING PROVISIONS; RENUMBERING CODE SECTIONS IN HEALTH CODE, ARTICLE 22A; AND MAKING ENVIRONMENTAL FINDINGS.

WHEREAS, on April 23, 2013, Mayor Edwin Lee introduced a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 13-0369, which would amend the Building Code, Section 106A.3.2.4, and Health Code, Sections 1220 through 1237, and add Section 1219, to expand the boundaries and types of projects for which soil testing is required and to require testing of groundwater under specified circumstances; amending Public Works Code, Article 20, to eliminate soil testing provisions; renumbering code sections in Health Code, Article 22A; and making environmental findings; and

WHEREAS, The Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on May 16, 2013; and

WHEREAS, the proposed Ordinance has been determined to be categorically exempt from environmental review under the California Environmental Quality Act Section 15308; and

WHEREAS, the Planning Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of Department staff and other interested parties; and

WHEREAS, all pertinent documents may be found in the files of the Department, as the custodian of records, at 1650 Mission Street, Suite 400, San Francisco; and

WHEREAS, the Planning Commission has reviewed the proposed Ordinance; and

MOVED, that the Planning Commission hereby recommends that the Board of Supervisors **approve** the proposed ordinance.

FINDINGS

Having reviewed the materials identified in the preamble above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

1. The Proposed Ordinance will help ensure and document that City departments are in compliance with State and Federal laws regarding contaminated soils and groundwater handling for work throughout the City.
2. Maher Ordinance would continue to protect the public health and safety by requiring appropriate handling, treatment, disposal and when necessary, mitigation of contaminated soils that are encountered in the building construction process.
3. Codification of these requirements for sites of potential concern will increase understanding and compliance for private development projects throughout the City.
4. The proposed ordinance recognizes the scientific and health risk exposure levels that have been developed since 1986 when reviewing analytical reports and making decisions regarding mitigation requirements for the intended use of the property.

NOW THEREFORE BE IT RESOLVED that the Commission hereby recommends that the Board ADOPT the proposed Ordinance as described in this Resolution and in the proposed Ordinance.

I hereby certify that the foregoing Resolution was adopted by the Commission at its meeting on May 16, 2013.

Jonas P. Ionin
Commission Secretary

AYES: Commissioners Antonini, Borden, Fong, Hillis, Moore, and Sugaya

NOES: none

ABSENT: Commissioner Wu

ADOPTED: May 16, 2013



SAN FRANCISCO PLANNING DEPARTMENT

Executive Summary Building, Health, and Public Works Code Text Change

HEARING DATE: MAY 16, 2013

Project Name: Expand the Requirements for Soil and Groundwater Testing
Case Number: 2013.0525U [Board File No. 130369]
Initiated by: Mayor Edwin Lee/ Introduced April 23, 2013
Environmental Planning Staff: Paul Maltzer, Senior Environmental Planner
Legislative Staff: Aaron Starr, Legislative Affairs
aaron.starr@sfgov.org, 415-558-6362
Reviewed by: AnMarie Rodgers, Manager Legislative Affairs
anmarie.rodgers@sfgov.org, 415-558-6395
Recommendation: **Recommend Approval**

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BUILDING, HEALTH, AND PUBLIC WORKS CODE AMENDMENT

The proposed Ordinance would amend the Building Code, Section 106A.3.2.4, and Health Code, Sections 1220 through 1237, and add Section 1219, to expand the boundaries and types of projects for which soil testing is required and to require testing of groundwater under specified circumstances; amending Public Works Code, Article 20, to eliminate soil testing provisions; renumbering code sections in Health Code, Article 22A; and making environmental findings.

The Way It Is Now:

- Projects that are located near the City's eastern shoreline (See Exhibit C) that disturb 50 cubic yards or more of soil are subject to the Analyzing the Soil for Hazardous Wastes Ordinance [BF No. 128-85-5/Ord. No 253-86] (hereinafter "Maher Ordinance") (adopted 1986). The Maher Ordinance requires project sponsors to conduct a site history, and potentially test soils for hazardous materials. If contamination is found on the site, Maher requires appropriate handling, clean-up or capping of contaminated sites. The over-arching goal of the Maher Ordinance is to protect the public health and safety by requiring appropriate handling, treatment, disposal and when necessary, mitigation of contaminated soils that are encountered in the building construction process.
- Ground water contamination is not covered by the existing Maher Ordinance.
- The Maher Ordinance is administered largely by the Department of Building Inspection (hereinafter DBI) and the Department of Public Health (hereinafter DPH). DBI is in charge of permit review and site inspection, and DPH oversees site histories, work plans and mitigation plans.
- For some sites outside of existing Maher Ordinance geographic boundary, site history, testing for and remediation of contaminated soils and groundwater is still required for development

projects; however, that requirement is only enforceable on a case-by-case basis through CEQA mitigation measures and conditions of project approval.

- City agencies such as the Department of Public Works (hereinafter DPW), the Public Utilities Commission (hereinafter PUC) and the Recreation and Parks Department are also subject to the Maher Ordinance, and projects outside of the Maher zone sponsored by City agencies are also subject to CEQA review and remediation.

The Way It Would Be:

- The proposed Ordinance would expand the geographic boundary of the Maher Ordinance (See Exhibit C) to include properties throughout the City where there is potential to encounter hazardous materials, primarily industrial zoning districts, sites with industrial uses or underground storage tanks, sites with historic bay fill, sites in close proximity to freeways or underground storage tanks.
- The over-arching goal of the Maher Ordinance would still be to protect the public health and safety by requiring appropriate handling, treatment, disposal and when necessary, mitigation of contaminated soils that are encountered in the building construction process.
- City Agencies would also be covered under the expanded Maher Ordinance.
- The revised Maher Ordinance would include testing of groundwater when hazardous materials and groundwater are on site.

ISSUES AND CONSIDERATIONS

Shortcomings/Problems with Existing Maher Ordinance

The Maher Ordinance applies to the eastern shoreline of the city where past industrial uses and fill associated with the 1906 earthquake and bay reclamation often left hazardous waste residue in soils. However, there are potential hazardous substance contaminated sites occurring throughout a much larger area of City than the existing Maher boundary. Areas of potential concern include old gas stations, land next to freeways, old industrial sites and San Francisco Bay fill sites.

For sites outside of existing Maher Ordinance geographic boundary, site history, testing for, and mitigation of contaminated soils and groundwater is still required for development projects; however, mitigation is only enforceable on a case-by-case basis through CEQA mitigation measures and conditions of project approval. This requires a more cumbersome and time-consuming, and less certain process for projects outside of Maher boundary area. Whereas, where City law has codified the mitigation requirements, for projects within Maher area, there is more consistent compliance. For those outside of the existing Maher Ordinance, permit applicants often do not find out about this issue until permit has been under review for some time.

Objectives of Proposed Revisions

The goal of this proposed Ordinance is to expand the geographic scope of the Maher Ordinance to cover all projects throughout City where there is heightened potential to encounter hazardous materials in the soils; including primarily industrial zoning districts, sites with industrial uses or underground storage tanks, sites with historic bay fill, sites in close proximity to freeways or underground storage tanks. The Maher Ordinance would also be amended to require testing of groundwater when hazardous materials and groundwater are found on site.

City Agencies and the Maher Ordinance

City agencies responsible for infrastructure projects in the City streets already ensure that contaminated soils and/or groundwater are handled, cleaned up or appropriately capped throughout the City to protect public health and worker safety; however, for projects outside the existing Maher zone these agencies currently are not required to report their procedures and findings to the Department of Public Health, which is the City agency charged with ensuring that toxic soil and contaminated ground water are dealt with appropriately. The proposed Ordinance codifies an interdepartmental system that allows City agencies to establish a protocol for City infrastructure projects in the City streets throughout the expanded Maher zones. Allowing City agencies to work pursuant to such agreed upon protocols will better facilitate routine maintenance and repairs of the City infrastructure and keep the Department of Public Health informed of such projects. Extra reporting will be required if soil is removed from the site, but for the most part the only additional process will be establishing mutually agreed upon protocols for the handling, treatment and disposal of soils, and providing a list of projects on a yearly basis to the Department of Public Health.

POTENTIAL COMMISSION ACTIONS

As the proposed ordinance does not amend the Planning Code, no Planning Commission action is required. As this proposal affects Department review of projects, the proposed Ordinance is before the Commission so that it may recommend adoption, rejection, or adoption with modifications to the Board of Supervisors.

RECOMMENDATION

The Department recommends that the Commission recommend *approval* of the proposed Ordinance and adopt the attached Draft Resolution to that effect.

BASIS FOR RECOMMENDATION

1. The Proposed Ordinance will help ensure and document that City departments are in compliance with State and Federal laws regarding contaminated soils and groundwater handling for work throughout the City.
2. Maher Ordinance would continue to protect the public health and safety by requiring appropriate handling, treatment, disposal and when necessary, mitigation of contaminated soils that are encountered in the building construction process.
3. Codification of these requirements for sites of potential concern will increase understanding and compliance for private development projects throughout the City.
4. The proposed ordinance recognizes the scientific and health risk exposure levels that have been developed since 1986 when reviewing analytical reports and making decisions regarding mitigation requirements for the intended use of the property.

ENVIRONMENTAL REVIEW

The proposal ordinance would result in no physical impact on the environment. The proposed Ordinance has been determined to be categorically exempt from environmental review under the California Environmental Quality Act Section 15308.

PUBLIC COMMENT

As of the date of this report, the Planning Department not received any comments from the public on the proposed Ordinance. On May 7, 2013, the Health Commission unanimously passed a resolution recommending approval by the Board of Supervisors of the proposed Ordinance, and on May 8, 2013, the Department of Building Inspection Code Advisory Committee unanimously endorsed the proposed revisions to the Building Code and passed the item on to the Building Inspection Commission.

RECOMMENDATION: Recommendation of Approval
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Attachments:

- Exhibit A: Draft Planning Commission Resolution
- Exhibit B: Board of Supervisors File No. 130180
- Exhibit C: Map of existing and proposed Maher Boundaries