

BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
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MEMORANDUM

TO: Mohammed Nuru, Director, Public Works
Deborah Raphael, Director, Department of the Environment
Jeffrey Tumlin, Director, Municipal Transportation Agency
William Scott, Police Chief
Suzy Loftus, Interim District Attorney
Manohar Raju, Public Defender

FROM: John Carroll, Assistant Clerk,
Public Safety and Neighborhood Services Committee

DATE: December 20, 2019

SUBJECT: ORDINANCE MATTER INTRODUCED

The Board of Supervisors' Public Safety and Neighborhood Services Committee has received the following resolution, introduced by Supervisor Walton on December 17, 2019:

File No. 191283

Ordinance amending the Public Works Code to authorize the Public Works Director to impose administrative penalties and fines for illegal dumping and to provide for additional enforcement remedies for illegal dumping; amending the Public Works Code to expand the definition of illegal dumping to capture electronic waste and to clarify that each act of illegal dumping constitutes a separate violation subject to abatement or enforcement actions; amending the Police Code to provide procedures for assessment and collection of administrative penalties for illegal dumping; and affirming the Planning Department's determination under the California Environmental Quality Act.

If you have any comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

c: David Steinberg, Public Works
Jeremy Spitz, Public Works
Jennifer Blot, Public Works
Peter Gallotta, Department of the Environment
Charles Sheehan, Department of the Environment
Kate Breen, Municipal Transportation Agency
Janet Martinsen, Municipal Transportation Agency
Joel Ramos, Municipal Transportation Agency
Rowena Carr, Police Department
Asja Steeves, Police Department
Deirdre Hussey, Police Department
Christine Soto DeBerry, Office of the District Attorney
Maxwell Szabo, Office of the District Attorney

[Police and Public Works Codes - Administrative Penalties and Fines for Illegal Dumping]

Ordinance amending the Public Works Code to authorize the Public Works Director to impose administrative penalties and fines for illegal dumping and to provide for additional enforcement remedies for illegal dumping; amending the Public Works Code to expand the definition of illegal dumping to capture electronic waste and to clarify that each act of illegal dumping constitutes a separate violation subject to abatement or enforcement actions; amending the Police Code to provide procedures for assessment and collection of administrative penalties for illegal dumping; and affirming the Planning Department's determination under the California Environmental Quality Act.

NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
Additions to Codes are in *single-underline italics Times New Roman font*.
Deletions to Codes are in ~~*strikethrough italics Times New Roman font*~~.
Board amendment additions are in double-underlined Arial font.
Board amendment deletions are in ~~Arial font~~.
Asterisks (* * * *) indicate the omission of unchanged Code subsections or parts of tables.

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

Section 1. Environmental Findings.

The Planning Department has determined that the actions contemplated in this ordinance comply with the California Environmental Quality Act (California Public Resources Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of Supervisors in File No. _____ and is incorporated herein by reference. The Board affirms this determination.

1 Section 2. Article 26 of the Public Works Code is hereby amended by revising
2 Sections 1601, 1602, 1603, 1604, and 1605, and adding Section 1606, to read as follows:

3 **SEC. 1601. PURPOSE AND INTENT.**

4 The Board of Supervisors finds and declares that:

5 (a) Dumping on streets, sidewalks, public rights-of-way, and other public properties
6 within ~~the City and County of~~ San Francisco is detrimental to the health, safety, and welfare of
7 the community and is hereby declared to be a public nuisance. Dumping in public spaces
8 creates urban blight and not only impedes the paths of travel for pedestrian and vehicular
9 traffic and is detrimental to businesses and personal pursuits, but pollutes public spaces with
10 potentially harmful and toxic substances, degrades neighborhoods, and encourages others to
11 unlawfully dispose of other waste and debris, all fostering a disrespect of public property and
12 of the community.

13 (b) Cleaning up and abating unlawfully dumped material on public properties costs the
14 City ~~and County of San Francisco~~ tens of thousands of dollars a year. The City is rarely able to
15 recoup those costs from the individuals and entities who commit the illegal dumps.

16 (c) Because dumping on public properties and rights-of-way is hereby deemed a
17 nuisance, immediate and effective abatement against the parties responsible for the unlawful
18 dumping is essential to deter these illegal acts and may be accomplished through the
19 administrative enforcement and judicial procedures outlined herein.

20 (d) The City is enacting this legislation pursuant to and in accordance with California
21 Government Code Sections 38771 and 53069.4, and California Civil Code Sections 3479 and
22 3480.

23 (e) Nothing in this Article 26 shall be construed to in any way limit the City's right to
24 enforce any other provision of the Municipal Code or state law, or to create a duty or
25 obligation on the part of the City to enforce this Article.

1 **SEC. 1602. DEFINITIONS.**

2 Unless the context requires otherwise, the following definitions shall govern the
3 construction of this Article 26:

4 ~~(a)~~ "City" means the City and County of San Francisco.

5 "Commercial Waste" means an amount of waste matter generated in the course of a trade,
6 business, profession, or occupation, including but not limited to food scraps and waste materials or
7 byproducts of production, manufacturing, and repair activities. Commercial Waste may include but is
8 not limited to Debris and Waste Construction Material.

9 "Costs" includes, but is not limited to, litigation costs, court costs, attorneys' fees, costs of
10 abatement, removal, and disposal of illegally dumped waste matter (including the equivalent cost of
11 disposal if the City is not charged), costs of investigating the incident, and enforcement costs,
12 including, but not limited to time and expenses of the Department, the City Attorney's Office, the Police
13 Department, and/or other City departments, incurred by the City in identifying and apprehending a
14 Responsible Person.

15 ~~(b)~~ "Debris and Waste Construction Material" includes any wood, brick, plaster, glass,
16 cement, roofing material, composite, sheet rock, sheet metal, wire, pipe, and other materials
17 related to the remodeling, construction or repair of, or the partial or total demolition of, houses,
18 buildings, or other structures.

19 "Department" means the Department of Public Works.

20 ~~(c)~~ "Director" means the Director of the Department of Public Works or ~~his or her~~ the
21 Director's designee.

22 "Electronic Waste" means computers, computer monitors, flat screen mobile devices,
23 televisions, audio equipment, mobile telephones, electronic gaming devices, and any other electronic
24 equipment that contains components that are required to be specially disposed of pursuant to federal,
25 state, or City law, including, but not limit to a Covered Electronic Device as defined in Section 42463

1 of the California Public Resources Code.

2 "Illegal Dumping" means the activity, act, or actions performed by any Person to deposit,
3 leave, place, keep, maintain, or abandon Prohibited Materials on any Public Property, either in
4 violation of any City law or without the lawful and express written permission of the City.

5 ~~(d)~~ "Person" means and includes companies, corporations, limited liability companies,
6 estates, associations, partnerships, trusts, unincorporated associations and, one or more
7 ~~individual human beings~~ natural persons.

8 ~~(e)~~ "Prevailing Party" has the same meaning as set forth in California Code of Civil
9 Procedure Sec-tion 1032, or any successor provision. "Prevailing Party" includes the City in
10 actions where the City obtains an injunction and/or civil penalties or other monies under this
11 Article 26 or State law.

12 "Prohibited Materials" means Commercial Waste, Debris and Waste Construction Materials,
13 Electronic Waste, industrial materials, Powered Scooters (as defined in the Transportation Code) that
14 are part of a Powered Scooter Share Program, or bicycles that are part of a Stationless Bicycle Share
15 Program (as defined in the Transportation Code), or more than five pounds or more than one cubic
16 foot of any other waste, refuse, or debris.

17 ~~(f)~~ "Public Property" includes any portion of a street, road, right-of-way, sidewalk, park,
18 lot, or public or other land owned, operated, leased, or maintained by the City ~~and County of~~
19 ~~San Francisco.~~

20 ~~(g)~~ "Responsible Party" includes any Person who causes or allows or contributes to or
21 participates in actions which constitute a nuisance under this Article 26. By way of example but
22 not limitation, a Responsible Party may personally perform, or hire a Person to perform, an act of
23 Illegal Dumping.

24 ///

25 ///

1 **SEC. 1603. PROHIBITED DUMPING ACTIVITY.**

2 (a) Public Nuisance. ~~#Illegal Dumping~~ shall be strictly prohibited. ~~for any Person commit to~~
3 ~~deposit, leave, place, keep, maintain, or abandon, Debris and Waste Construction Materials, industrial~~
4 ~~materials, or more than 100 pounds total of any other waste, refuse, or debris, Powered Scooters, as~~
5 ~~defined in the Transportation Code, that are part of a Powered Scooter Share Program, or bicycles~~
6 ~~that are part of a Stationless Bicycle Share Program, on any Public Property without the lawful and~~
7 ~~express written permission of the City and County of San Francisco.~~ (b) Any activity or action that
8 violates this Article 26 shall be, and is hereby declared, a public nuisance.

9 (b) Separate and Distinct Violations. Each act of Illegal Dumping, notwithstanding the
10 performance of such an act at the same location of another act of Illegal Dumping that takes place at
11 approximately the same time, shall constitute a separate violation that is subject to an abatement or
12 enforcement action under this Article 26. In exercising the Director's discretion to enforce this Article,
13 the Director may issue one notice of violation for each act of Illegal Dumping or a consolidated notice
14 of violations for more than one act of Illegal Dumping, and the Director may rely upon the methods
15 and presumptions below.

16 (1) Each individual piece of furniture or component of furniture that has been
17 separately placed on Public Property shall be presumed to have been placed on Public Property by an
18 individual act of Illegal Dumping and shall be considered a separate act of Illegal Dumping.

19 (2) An amount of Prohibited Materials of any or all types that exceeds three cubic
20 yards, or requires more than one pick-up truckload of greater than or equal to a half-ton payload
21 capacity to remove, may be cited for each increment of three cubic yards or each number of truckloads
22 required to remove the Prohibited Materials.

23 (c) Nothing in this Article 26 shall be construed to authorize or allow any Person to
24 deposit, leave, place, keep, maintain, or abandon, any other property or materials, in any
25 amount, on any Public Property without the lawful and express written permission of the City

1 ~~and County of San Francisco~~, other than to deposit trash in an appropriate designated
2 receptacle.

3 **SEC. 1604. ABATEMENT.**

4 (a) The Director may require or take any necessary abatement or enforcement
5 action to clean up, remove, or contain any Prohibited ~~m~~Materials or prohibited items dumped
6 on Public Property, including ordering the Responsible Party to remove and appropriately
7 dispose of the material or prohibited items. The Director may ask any other City department or
8 necessary state agency for assistance in abating any nuisance pursuant to this Article 26.

9 (b) Each Responsible Party shall be responsible for ~~A~~any ~~e~~Costs or monies expended by
10 the Department ~~of Public Works~~ or any other department of the City ~~and County of San Francisco~~
11 to abate a nuisance under this Article 26. Such Costs or monies may be recovered in a civil
12 action as described in Section 1605 or by other lawful means.

13 **SEC. 1605. ENFORCEMENT – INJUNCTIVE RELIEF, CIVIL PENALTIES, COSTS,**
14 **AND ATTORNEYS' FEES.**

15 (a) The City Attorney may enforce the provisions of this Article 26 through a civil
16 action in any court of competent jurisdiction.

17 (b) The City Attorney may apply to any court of competent jurisdiction for an order
18 seeking injunctive relief to abate or remove any nuisance described in this Article 26, to
19 restrain any Responsible Party from taking any action contrary to the provisions of this Article
20 or to require any Responsible Party to take action to comply with the provisions of this Article
21 or an order by the Director to remove and appropriately dispose of material illegally dumped
22 on Public Property.

23 (c) In any civil court action brought by the City Attorney to enforce this Article 26 in
24 which the City succeeds in obtaining any order from the ~~C~~court, the City shall be entitled to
25 recover from any and all Responsible Parties all of its ~~e~~Costs of investigation, enforcement,

1 abatement, and litigation.

2 (1) The City shall be entitled to recover civil penalties from each and every
3 Responsible Party in an amount that is not less than twice the amount ~~of it cost~~ the City's to
4 abatement ~~Costs the nuisance. The City's abatement~~ Costs ~~to the City to abate the nuisance~~ shall
5 include any personnel, equipment, and other charges incurred by the City related to the
6 investigation, abatement, clean-up, removal, and/or containment of Prohibited Materials Debris
7 ~~and Waste Construction Materials, industrial materials, or more than 100 pounds of any other waste,~~
8 ~~refuse, or debris, Powered Scooters, as defined in the Transportation Code, that are part of a Powered~~
9 ~~Scooter Share Program, or bicycles that are part of a Stationless Bicycle Share Program,~~ dumped on
10 Public Property. This civil penalties provision is designed to compensate the City for any costs
11 it incurred to investigate and abate the unlawful acts of any Responsible Party and for the
12 ancillary health hazards and inconveniences caused to the City and its residents, rights-of-
13 way blocked, traffic delays or detours, and any personal or business difficulties suffered from
14 the maintenance of illegally dumped materials on Public Property.

15 (2) The Prevailing Party in any court action to abate a nuisance pursuant to this
16 Article 26 shall be entitled to reasonable attorneys' fees.

17 ~~(2) The Prevailing Party in any court action to abate a nuisance pursuant to this Article~~
18 ~~shall be entitled to reasonable attorneys' fees.~~

19 (d) Nothing in this Article 26 shall be interpreted as restricting or otherwise limiting the
20 enforcement authority conferred upon other City employees, City agencies, or state agencies
21 by other provisions of the Municipal Code or state law.

22 (e) Nothing in this Article 26 shall be interpreted as restricting, precluding, or otherwise
23 limiting a separate or concurrent criminal prosecution under the Municipal Code or state law.
24 Jeopardy shall not attach as a result of any court action to abate a nuisance pursuant to this
25 Article.

1 **SEC. 1606. ENFORCEMENT – ADMINISTRATIVE FINES AND PENALTIES.**

2 Administrative Code Chapter 100 is incorporated by reference herein. In addition to the civil
3 penalties authorized by this Article 26, Department employees designated in Section 38 of the Police
4 Code may issue administrative citations imposing penalties or fines for each violation of this Article 26.
5 The administrative penalty or fines shall not exceed \$1,000 per day for each violation. Administrative
6 penalties shall be assessed, enforced, and collected in accordance with Section 39-1 of the Police Code
7 and administrative fines shall be assessed, enforced, and collected in accordance with Administrative
8 Code Chapter 100.

9
10 Section 3. Article 1 of the Police Code is hereby amended by revising Sections 39-1,
11 to read as follows:

12 **SEC. 39-1. PROCEDURE FOR ASSESSMENT AND COLLECTION OF**
13 **ADMINISTRATIVE PENALTIES FOR SPECIFIED LITTERING AND NUISANCE**
14 **VIOLATIONS.**

15 (a) This Section 39-1 shall govern the imposition, assessment and collection of
16 administrative penalties imposed pursuant to Sections 37, 38 and 63 of the Police Code,
17 Sections 41.13, 283.1, 287, 288.1 and 600 of the Health Code, and Sections 170, 173, 174,
18 174.2, 724.5, 794, and ~~794~~ 1606 of the Public Works Code.

19 * * * *

20
21 Section 4. Article 26 of the Public Works Code was originally designated Article 25,
22 Sections 1500 through 1505, when enacted by Ordinance No. 73-11. The article and its
23 constituent sections were renumbered by the publisher in order to avoid conflicting with
24 previously existing material. The Board of Supervisors hereby formally amends the
25

1 designations in Ordinance No. 73-11 to conform to the publisher's renumbering, that is, to be
2 Article 26 and Sections 1600-1605 respectively.

3
4 Section 5. Effective Date. This ordinance shall become effective 30 days after
5 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
6 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
7 of Supervisors overrides the Mayor's veto of the ordinance.

8
9 Section 6. Scope of Ordinance. Except as stated in Section 4, in enacting this
10 ordinance, the Board of Supervisors intends to amend only those words, phrases,
11 paragraphs, subsections, sections, articles, numbers, punctuation marks, charts, diagrams, or
12 any other constituent parts of the Municipal Code that are explicitly shown in this ordinance as
13 additions, deletions, Board amendment additions, and Board amendment deletions in
14 accordance with the "Note" that appears under the official title of the ordinance.

15
16 Section 7. Undertaking for the General Welfare. In enacting and implementing this
17 ordinance, the City is assuming an undertaking only to promote the general welfare. It is not
18 assuming, nor is it imposing on its officers and employees, an obligation for breach of which it
19 is liable in money damages to any person who claims that such breach proximately caused
20 injury.

21 APPROVED AS TO FORM:
22 DENNIS J. HERRERA, City Attorney

23 By: 
24 CHRISTOPHER T. TOM
25 Deputy City Attorney

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LEGISLATIVE DIGEST

[Police and Public Works Codes - Administrative Penalties and Fines for Illegal Dumping]

Ordinance amending the Public Works Code to authorize the Public Works Director to impose administrative penalties and fines for illegal dumping and to provide for additional enforcement remedies for illegal dumping; amending the Public Works Code to expand the definition of illegal dumping to capture electronic waste and to clarify that each act of illegal dumping constitutes a separate violation subject to abatement or enforcement actions; amending the Police Code to provide procedures for assessment and collection of administrative penalties for illegal dumping; and affirming the Planning Department's determination under the California Environmental Quality Act.

Existing Law

Currently, under Article 26 of the Public Works Code (the "Illegal Dumping Ordinance"), illegal dumping on public properties and rights-of-way is a public nuisance that is subject to abatement actions that are enforced through civil lawsuits filed by the City against persons responsible for illegal dumping.

Amendments to Current Law

As amended by this ordinance, the Illegal Dumping Ordinance would authorize the City to take administrative enforcement actions against persons responsible for illegal dumping in addition to having the option of filing civil lawsuits against such persons. In addition, the ordinance would expand the definition of materials that constitute Illegal Dumping to include "Electronic Waste" and other waste, refuse, or debris equal to or greater than five pounds or one cubic foot. Moreover, the ordinance would provide that each act of Illegal Dumping could constitute a separate and distinct violation of the Illegal Dumping Ordinance that would subject the person responsible for each violation to an administrative fine or penalty of no more than \$1,000 per violation, per day.

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Introduction Form

By a Member of the Board of Supervisors or Mayor

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I hereby submit the following item for introduction (select only one):

- ☒ 1. For reference to Committee. (An Ordinance, Resolution, Motion or Charter Amendment).
- ☐ 2. Request for next printed agenda Without Reference to Committee.
- ☐ 3. Request for hearing on a subject matter at Committee.
- ☐ 4. Request for letter beginning : "Supervisor inquiries"
- ☐ 5. City Attorney Request.
- ☐ 6. Call File No. from Committee.
- ☐ 7. Budget Analyst request (attached written motion).
- ☐ 8. Substitute Legislation File No.
- ☐ 9. Reactivate File No.
- ☐ 10. Topic submitted for Mayoral Appearance before the BOS on

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- ☐ Small Business Commission ☐ Youth Commission ☐ Ethics Commission
- ☐ Planning Commission ☐ Building Inspection Commission

Note: For the Imperative Agenda (a resolution not on the printed agenda), use the Imperative Form.

Sponsor(s):

Walton, Fewer, Haney, *SAFAI*

Subject:

Administrative and Public Works Codes - Administrative Penalties and Fines for Illegal Dumping

The text is listed:

Ordinance amending the Administrative and Public Works Codes to authorize Public Works Director to impose administrative penalties and fines for illegal dumping and to provide for additional enforcement remedies for illegal dumping; affirming the Planning Department's determination under the California Environmental Quality Act.

Signature of Sponsoring Supervisor: 

For Clerk's Use Only