

1 [Revising graffiti clean-up requirements for property owners and revising enforcement and
2 abatement procedures where property owners fail to remove graffiti.]

3 **Ordinance amending Article 23 of the San Francisco Public Works Code by amending**
4 **Sections 1302 through 1306, and adding a new Section 1307 to declare graffiti a public**
5 **nuisance, eliminate the duty of the Director of Public Works to remove graffiti at no**
6 **cost to property owners upon consent from the property owner, streamline review**
7 **hearing procedures, and making technical corrections to, and renumbering renumber**
8 **existing Sections 1307 through 1309 as Sections 1308 through 1310.**

9 Note: Additions are single-underline italics Times New Roman;
10 deletions are ~~strikethrough italics Times New Roman~~.
11 Board amendment additions are double underlined.
Board amendment deletions are ~~strikethrough normal~~.

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

13 Section 1. Article 23 of the San Francisco Public Works Code is hereby amended by
14 amending Sections 1302 through 1306 and adding a new Section 1307 and making technical
15 corrections to, and renumbering existing Sections 1307 through 1309 as Sections 1308
16 through 1310, to read as follows:

17 **SEC. 1302. DEFINITIONS.**

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

20 (b) Director. "Director" means the Director of the Department of Public Works
21 or his ~~or her designate~~ designee.

22 (c) Graffiti. "Graffiti" means any inscription, word, figure, marking or design
23 that is marked, etched, scratched, drawn or painted on any building, structure, fixture or other
24 improvement, whether permanent or temporary, including by way of example only and without
25 limitation, *billboards and* fencing surrounding construction sites, whether public or private,

1 without the consent of the owner of the property or the owner's authorized agent, and which is
2 visible from the public right-of-way. "Graffiti" shall not include any mural or other painting or
3 marking on the property that is protected as a work of fine art under the California Art Preservation
4 Act (California Civil Code Sections 987 et seq.) or as a work of visual art under the Federal Visual
5 Artists Rights Act of 1990 (17 U.S.C. §§101 et seq.).

6 (d) Owner. "Owner" shall mean the owner of record of the property as set
7 forth in the records of the Tax Assessor, or the owner's authorized agent.

8 **SEC. 1303. PROHIBITION.**

9 It shall be unlawful for the owner of any real property within the City ~~and County~~ bearing
10 graffiti to allow the graffiti to remain on the property.

11 **SEC. 1304. ~~GRAFFITI ABATEMENT PROCEDURES~~ NOTICE OF VIOLATION.**

12 (a) ~~Once every 12 months, the Director may remove any graffiti he or she determines to be~~
13 ~~in violation of Section 1303 of this Article upon receiving written consent and a waiver of liability from~~
14 ~~the owner of the property in accordance with paragraph (c) of this Section. The Director may prepare~~
15 ~~and distribute forms for this purpose.~~ **Notice of Violation.** Where the Director determines that any
16 property contains graffiti in violation of Section 1303, the Director may issue a notice of violation to
17 the property owner. The notice shall give the owner seven City business days from the date of the
18 notice to either remove the graffiti or request a hearing before the Director. The notice shall inform
19 the owner that that where the owner fails to either remove the graffiti or request a hearing within seven
20 City business days from the date of the notice, the Director may initiate proceedings in accordance with
21 this Article to enter upon the owner's property and abate the graffiti at the owner's expense. The
22 notice shall further inform the owner that the minimum charge for removing graffiti is \$500.00 plus
23 costs, including attorneys fees, incurred by the City. The notice shall also state that in accordance with
24 Section 1306 of this Article, the property owner may request a hearing in order to contest the notice of
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1 violation, and shall set forth the procedure for requesting the hearing. The Director shall serve the
2 notice of violation as follows:

3 1. One copy of the Notice shall be posted in a conspicuous place upon the building or
4 property.

5 2. One copy of the Notice shall be served upon each of the following:

6 A. The person, if any, in real or apparent charge and control of the premises or property
7 involved;

8 B. The owner of record.

9 3. The Director may also serve one copy of the notice upon any other parties with a
10 recorded interest.

11 Service required by paragraphs 2 and 3 may be made by personal service or by certified mail

12 (b) — If the Director is otherwise unable to obtain consent from the property owner, the
13 Director shall provide notice to the property owner of the Director's determination that the property
14 contains graffiti in violation of Section 1303. The notice shall also state that the owner may authorize
15 the Director to remove the graffiti by giving written consent and a waiver of liability in accordance
16 with paragraph (c) of this Section. The notice shall be provided through the means specified in Section
17 ~~1305(a).~~ Extension of Time. A property owner may receive an extension of an additional seven
18 business days in which to remove the graffiti. The Director shall grant an extension if the Director
19 receives such a request by telephone, in writing or by facsimile within the original response period of
20 seven business days set forth in subsection (a). The notice of violation issued under subsection (a) shall
21 specify the address, telephone and facsimile numbers for requesting such an extension. The Director
22 shall have the discretion to grant an extension for a longer period of time where justified by factors
23 such as the extent of the graffiti, difficulty in obtaining access to the graffiti, or where removing the
24 graffiti would impose a significant financial burden on the owner.

1 (c) — ~~As a condition for allowing the Director to cause removal of the graffiti, the owner shall~~
2 ~~also sign a release on a form provided by the Director releasing the City and County from liability for~~
3 ~~damage to public or private property in connection with the removal of graffiti. If the Director makes~~
4 ~~the hardship determination described in paragraph (g), the owner may, if he or she desires, give~~
5 ~~advance consent to the Director to remove graffiti from the property in the future without the need for~~
6 ~~the Director to obtain the owner's consent prior to each removal. Such prior authorization shall be in~~
7 ~~writing to the Director and shall be signed by the owner. The prior authorization may be revoked by~~
8 ~~the owner at any time by notifying the Director in writing.~~

9 (d) — ~~Whenever the Director is authorized by this ordinance to remove graffiti and uses public~~
10 ~~funds for the removal and for the repainting and repair of the property from which the graffiti is~~
11 ~~removed, the Director shall not authorize or undertake to provide for the painting or repair of any~~
12 ~~more extensive area than that where the graffiti is located, except in the following circumstances:~~

13 (1) — ~~The Director determines in a written notice to the owner that a more extensive area is~~
14 ~~required to be repainted or repaired in order to avoid an aesthetic disfigurement to the neighborhood~~
15 ~~or community; or~~

16 (2) — ~~The owner agrees to pay for the costs of repainting or repairing the more extensive~~
17 ~~area.~~

18 (e) — ~~If the Director has not received consent from the owner within 10 days from the date of~~
19 ~~the notice described in paragraph (b), the Director may initiate a Graffiti Abatement Action in~~
20 ~~accordance with Section 1305.~~

21 (f)(c) **Public Property.** Where property defaced by graffiti is owned by a public entity
22 other than the City ~~and County~~, the Director shall cause removal of the graffiti only after
23 securing the consent of an authorized representative of the public entity that has jurisdiction
24 over the ~~structure~~ property. The Director shall use all reasonable efforts to minimize graffiti on City-
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1 owned property, but City-owned property shall not otherwise be subject to the requirements of this
2 Article.

3 ~~(g) It is the policy of the CCSF that the city will provide not more than one graffiti removal, at~~
4 ~~the public expense, from a specific property during a 12-month period. After the initial removal of~~
5 ~~graffiti by the Director, the owner shall remove all graffiti, in violation of Section 1303, placed on the~~
6 ~~same property within a 12-month period from the date of the removal. If the owner has failed to~~
7 ~~remove the graffiti within 10 days after Director notification specified in Section 1305(a), the Director~~
8 ~~may initiate a Graffiti Abatement Action in accordance with Sections 1305 and 1306. The Director of~~
9 ~~Public Works may provide paint to a property owner for graffiti removal without charge. Where the~~
10 ~~Director determines that a property is burdened with a disproportionate share of graffiti vandalism and~~
11 ~~requiring the owner to remove the graffiti would result in an unfair hardship, the Director is~~
12 ~~authorized, at the City's expense, to remove graffiti placed on the same property more than once during~~
13 ~~that 12-month period.~~

14 **SEC. 1305. DECLARATION OF PUBLIC NUISANCE; NOTICE OF GRAFFITI**
15 **ABATEMENT ACTION.**

16 ~~(a) Graffiti that remains on property following seven City business days (plus any~~
17 ~~applicable extension) from the date of the notice of violation is hereby declared to be a public nuisance.~~
18 ~~Whenever a property owner has neither removed the graffiti nor requested a hearing before the~~
19 ~~Director pursuant to Section 1304 within seven City business days (plus any applicable extension) from~~
20 ~~the date of the notice of violation, determines that graffiti exists in violation of Section 1303, and the~~
21 ~~Director has been unable to obtain the owner's consent to remove the graffiti in accordance with~~
22 ~~Section 1304, the Director may initiate a Graffiti Abatement Action abate the graffiti in accordance~~
23 ~~with Section 1307. by causing a written Graffiti Abatement Notice to be served as follows:~~

24 ~~1. — One copy of the Notice shall be posted in a conspicuous place upon the building or~~
25 ~~property.~~

1 2. — ~~One copy of the Notice shall be served upon each of the following:~~

2 A. — ~~The person, if any, in real or apparent charge and control of the premises or property~~
3 ~~involved;~~

4 B. — ~~The owner of record.~~

5 3. — ~~The Director may also serve one copy of the notice upon any other parties with a~~
6 ~~recorded interest.~~

7 (b) — ~~The Graffiti Abatement Notice shall provide the property owner seven calendar days~~
8 ~~from the date of the Notice in which to remove the graffiti, consent to removal of the graffiti by the~~
9 ~~Director, notify the Director in writing that he or she has consented or consents to the graffiti, or~~
10 ~~request a hearing before the Director. If the property owner fails to take one of these actions within the~~
11 ~~above time, the property shall thereafter be subject to abatement of the graffiti by the Director in~~
12 ~~accordance with Section 1306. The City will provide the owner, not more than once during a 12-~~
13 ~~month period, the option to consent to the Director's removal of graffiti from a specific property. If the~~
14 ~~Director makes the hardship determination described in 1304(g), the Director is authorized to provide~~
15 ~~the owner with the option to consent to the Director's removal of graffiti more than once during the 12-~~
16 ~~month period.~~

17 **SEC. 1306. ~~GRAFFITI ABATEMENT ACTION;~~ REQUEST FOR HEARING; HEARING.**

18 (a) **Director's Hearing.** At a hearing requested by the A property owner may request a
19 hearing in order to contest the notice of violation issued in accordance with Section 1304.
20 Administrative review shall be initiated by filing with the Director within seven City business days from
21 the date of the notice of violation, a request for hearing that specifies in detail the basis for contesting
22 the notice of violation. The ~~the~~ owner shall be entitled to present evidence and ~~argue~~
23 demonstrate that his or her property does not contain graffiti. The burden of proof to establish that
24 the property contains graffiti shall be on the City. The property owner shall also be entitled to present
25 evidence and demonstrate that his or her property is burdened with a disproportionate share of graffiti

1 vandalism and requiring the owner to remove the graffiti would result in an unfair hardship. If the
2 Director determines that a hardship exists, the Director is authorized to remove the graffiti at no cost
3 to the property owner, provided that the owner releases the City from liability by providing the
4 Director with a signed waiver of liability. The Director may develop forms for this purpose. The
5 determination of the Director after the hearing shall be final and not appealable. After the
6 hearing, if If the Director determines after the hearing that the property contains graffiti, the
7 Director may order that the graffiti be abated in accordance with Section 1307. If a hearing is not
8 requested, the Director may immediately order that the graffiti be abated. Before ordering such
9 abatement, the Director shall give written notice (Abatement Order) served in accordance with Section
10 1305(a) that, unless the graffiti is removed within five calendar days from the date of the notice, the
11 Department of Public Works shall enter upon the property and cause the removal, painting over or
12 such other eradication of the graffiti as the Director determines appropriate.

13 (b) Notice for and Scheduling of Hearing. Whenever a hearing is requested pursuant to
14 this Section, the Director shall, within five calendar days of receipt of the request, notify the property
15 owner of the date, time, and place of the administrative review hearing by certified mail. Such hearing
16 shall be held no later than thirty (30) calendar days after the Director receives the request, unless time
17 is extended by mutual agreement of the affected parties. The Director may appoint a hearing officer to
18 conduct the hearing.

19 (c) Submittals for the Administrative Review Hearing. At least three (3) City business
20 days prior to the hearing, the property owner and the City shall submit to the hearing officer and
21 exchange with one another, written information including, but not limited to, the following: a statement
22 of the issues to be determined by the hearing officer, a statement of the evidence to be offered at the
23 hearing and the identity of any witnesses to appear at the hearing.

24 (d) Decision. The hearing officer shall issue a decision including a summary of the issues
25 and the evidence presented, and findings and conclusions, within ten (10) calendar days of the

1 conclusion of the hearing. A copy of the decision shall be served upon the property owner by certified
2 mail. The decision shall be a final administrative determination following five (5) City business days
3 notice to the property owner. An aggrieved party may seek judicial review of the decision pursuant to
4 California Code of Civil Procedure Section 1094.5.

5 **SEC. 1307. ABATEMENT BY DIRECTOR**

6 (a) Following the hearing if the property owner does not prevail, or if the property owner does
7 not request a hearing, at the close of the period for requesting a hearing set forth in Section 1306, the
8 Director may immediately order that the graffiti be abated. Before such abatement may take place, the
9 Director shall obtain a court order authorizing the Department of Public Works to enter upon the
10 property and remove the graffiti and give written notice of the abatement (Abatement Order) served in
11 accordance with Section 1304(a). The Director may not order a graffiti abatement action that may
12 violate the California Art Preservation Act (California Civil Code Sections 987 et seq.) or the Federal
13 Visual Artists Rights Act of 1990 (17 U.S.C. §§101 et seq.) without first consulting with the City
14 Attorney.

15 (b) Alternatively, the Director may provide paint for graffiti removal to a property owner at
16 no charge. In return, the property owner shall agree in writing to paint over the graffiti giving rise to
17 the violation within 10 City business days from receiving the paint. A property owner's failure to paint
18 over the graffiti within that time shall be ground for the Director to issue a new notice of violation
19 under Section 1304.

20 (c) The following procedures shall apply to actions by the Director to abate and
21 recover costs for abatement of graffiti on private property:

22 (1) Abatement Action. ~~Not sooner than the time specified in the Abatement~~ After
23 obtaining a court ~~Order~~ order, the Director shall implement the Abatement Order. The Director
24 may enter upon the property and cause the removal, painting over or other eradication of the graffiti as
25 the Director deems appropriate. The Director shall not authorize or undertake to provide for the

1 painting or repair of any more extensive area than that where the graffiti is located, except where the
2 Director determines in a written notice to the owner that a more extensive area is required to be
3 repainted or repaired in order to avoid an aesthetic disfigurement to the neighborhood or community.
4 Where the Director removes graffiti in accordance with the requirements of this Article, the owner
5 shall pay the greater of either \$500 or the actual cost (including overhead, administrative costs and
6 attorneys fees) of removing the graffiti. The Director shall provide an accounting to the owner of
7 the costs of the abatement action (Abatement Accounting) on a full cost recovery basis not
8 later than 10 days from the date the abatement action is completed. The Abatement
9 Accounting shall include all administrative costs incurred by the ~~Department of Public Works~~
10 City in abating graffiti on the property. The total amount set forth in the Abatement Accounting
11 shall be due and payable by the owner within 30 days from the date of *mailing* of the
12 Abatement Accounting.

13 (2) Lien. If all or any portion of the amount set forth in the Abatement Accounting
14 remains unpaid after 30 days of the mailing of the Abatement Accounting, such portion shall
15 constitute a *proposed* lien on the property which was the subject matter of the Abatement
16 Action. Such liens shall be imposed in accordance with Chapter 10, Article ~~20~~ XX of the
17 Administrative Code. Property owners seeking to challenge the amount of the Abatement
18 Accounting may do so at the hearing authorized under Chapter 10, Article ~~20~~ XX of the
19 Administrative Code.

20 **SEC. ~~1307-1308~~. STAY OF PROCEEDING DURING CRIMINAL**
21 **PROSECUTION.**

22 In any case in which a criminal prosecution is pending or is about to be instituted for
23 violation of Penal Code Sections 594 and 640.6, or of any other law that authorizes a court to
24 sentence a criminal defendant to remove graffiti placed ~~at~~ on property by that defendant, the
25 Director may suspend abatement actions under this Article. In such a case, the abatement

1 action shall be suspended only in connection with any property upon which the defendant is
2 charged with placing graffiti, and only until such time as the defendant is sentenced or the case
3 is otherwise closed. This provision shall not prohibit a property owner from removing graffiti
4 from his or her own property during such time as the criminal proceeding is pending.

5 **SEC. ~~1308~~ 1309. LIMITATION OF LIABILITY.**

6 By adopting this Graffiti Abatement and Removal Ordinance, the City ~~and County of San~~
7 ~~Francisco~~ is assuming an undertaking only to promote the general welfare. It is not assuming,
8 nor is it imposing on its officers and employees, an obligation for breach of which it is liable in
9 money damages to any person who claims that such breach proximately caused injury.

10 **SEC. ~~1309~~ 1310. SEVERABILITY.**

11 If any provision, subdivision, section, paragraph, phrase or clause of this Article or the
12 application thereof is for any reason held to be invalid or unconstitutional by a court of
13 competent jurisdiction, such decision shall not affect the validity of the remainder of this
14 Article. The remainder of this Article shall remain effective and enforceable to the fullest
15 extent allowed by law. All clauses and provisions of this Article are hereby declared to be
16 severable.

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18 APPROVED AS TO FORM:
19 DENNIS J. HERRERA, City Attorney

20
21 By: _____
22 DAVID A. GREENBURG
23 Deputy City Attorney