

[Public Works Code – Declaring Illegal Dumping on Public Property a Nuisance and Providing a Mechanism for Abating and Enforcing that Nuisance]

Ordinance amending the San Francisco Public Works Code by adding Article 25, Sections 1500 through 1505, to: declare the illegal dumping of debris and waste construction materials or industrial materials, or of more than 100 pounds of any other waste, refuse, or debris, on public property to be a public nuisance; authorize enforcement by the City Attorney in a civil action; and permit the City and County of San Francisco to collect civil penalties, costs of abatement and investigation, and attorneys' fees against the individuals or entities responsible for the dumping; and making environmental findings.

NOTE: Additions are *single-underline italics Times New Roman*; deletions are ~~*strike-through italics Times New Roman*~~. Board amendment additions are double-underlined; Board amendment deletions are ~~strikethrough normal~~.

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

Section 1. The San Francisco Public Works Code is hereby amended by adding Article 25, Sections 1500 through 1505, to read as follows:

ARTICLE 25: ILLEGAL DUMPING

SEC. 1500. TITLE.

This Article shall be known as the "Illegal Dumping Ordinance."

SEC. 1501. PURPOSE AND INTENT.

The Board of Supervisors finds and declares that:

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

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

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

14 (d) The City is enacting this legislation pursuant to and in accordance with California
15 Government Code Section 38771, and California Civil Code Sections 3479 and 3480.

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

19
20 **SEC. 1502. DEFINITIONS.**

21 Unless the context requires otherwise, the following definitions shall govern the construction of
22 this Article:

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

24 (b) "Debris and Waste Construction Material" includes any wood, brick, plaster, glass, cement,
25 roofing material, composite, sheet rock, sheet metal, wire, pipe and other materials related to the

1 remodeling, construction or repair of, or the partial or total demolition of, houses, buildings or other
2 structures.

3 (c) "Director" means the Director of the Department of Public Works or his or her designee.

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

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

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

12 (g) "Responsible Party" includes any Person who causes or allows or contributes to or
13 participates in actions which constitute a nuisance under this Article.

14
15 **SEC. 1503. PROHIBITED DUMPING ACTIVITY.**

16 (a) It shall be prohibited for any Person to deposit, leave, place, keep, maintain, or abandon,
17 Debris and Waste Construction Materials, industrial materials, or more than 100 pounds total of any
18 other waste, refuse, or debris on any Public Property without the lawful and express written permission
19 of the City and County of San Francisco.

20 (b) Any activity or action that violates this Article shall be, and is hereby declared, a public
21 nuisance.

22 (c) Nothing in this Article shall be construed to authorize or allow any Person to deposit, leave,
23 place, keep, maintain, or abandon, any other property or materials, in any amount, on any Public
24 Property without the lawful and express written permission of the City and County of San Francisco,
25 other than to deposit trash in an appropriate designated receptacle.

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3 **SEC. 1504. ABATEMENT.**

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

8 (b) Any costs or monies expended by the Department of Public Works or any other department
9 of the City and County of San Francisco to abate a nuisance under this Article may be recovered in a
10 civil action as described in Section 1505.

11
12 **SEC. 1505. ENFORCEMENT – INJUNCTIVE RELIEF, CIVIL PENALTIES, COSTS, AND**
13 **ATTORNEYS' FEES.**

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

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

21 (c) In any civil court action brought by the City Attorney to enforce this Article in which the
22 City succeeds in obtaining any order from the Court, the City shall be entitled to recover from any and
23 all Responsible Parties all of its costs of investigation, enforcement, abatement, and litigation.

24 (1) The City shall be entitled to recover civil penalties from each and every Responsible
25 Party in an amount that is not less than twice the amount it cost the City to abate the nuisance. Costs

1 to the City to abate the nuisance shall include any personnel, equipment, and other charges incurred by
2 the City related to the investigation, abatement, clean-up, and/or containment of Debris and Waste
3 Construction Materials, industrial materials, or more than 100 pounds of any other waste, refuse, or
4 debris dumped on Public Property. This civil penalties provision is designed to compensate the City
5 for any costs it incurred to investigate and abate the unlawful acts of any Responsible Party and for the
6 ancillary health hazards and inconveniences caused to the City and its residents, rights of way blocked,
7 traffic delays or detours, and any personal or business difficulties suffered from the maintenance of
8 illegally dumped materials on Public Property.

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

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

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

18 **Section 2. Additional Provisions.**

19 (a) **Environmental Findings.** The Planning Department has determined that the
20 actions contemplated in this ordinance are in compliance with the California Environmental
21 Quality Act (Cal. Pub. Res. Code §§ 21000 et seq.). Said determination is on file with the
22 Clerk of the Board of Supervisors in File No. 110222 and is incorporated herein by
23 reference.

24 (b) **Conflict with State or Federal Law or Municipal Code.** This ordinance shall be
25 construed so as not to conflict with applicable federal or State laws, rules or regulations or

1 with other provisions of the Municipal Code. Nothing in this ordinance shall authorize any City
2 agency or department to impose any duties or obligations in conflict with limitations on
3 municipal authority established by State or federal law at the time such agency or department
4 action is taken.

5 (c) **Disclaimer.** In adopting and implementing this ordinance, the City and County of
6 San Francisco is assuming an undertaking only to promote the general welfare. It is not
7 assuming, nor is it imposing on its officers and employees, an obligation for breach of which it
8 is liable in money damages to any person who claims that such breach proximately caused
9 injury.

10 (d) **Severability.** If any of the provisions of this ordinance or the application thereof to
11 any person or circumstance is held invalid, the remainder of those provisions, including the
12 application of such part or provisions to persons or circumstances other than those to which it
13 is held invalid, shall not be affected thereby and shall continue in full force and effect. To this
14 end, the provisions of this Article are severable.

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

19
20 By:



21 YVONNE MERE
22 Deputy City Attorney
23
24
25



City and County of San Francisco

Tails
Ordinance

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

File Number: 110222

Date Passed: May 03, 2011

Ordinance amending the San Francisco Public Works Code by adding Article 25, Sections 1500 through 1505 to: 1) declare the illegal dumping of debris and waste construction materials or industrial materials, or of more than 100 pounds of any other waste, refuse, or debris, on public property to be a public nuisance; 2) authorize enforcement by the City Attorney in a civil action; and 3) permit the City and County of San Francisco to collect civil penalties, costs of abatement, investigation, and attorneys' fees against the individuals or entities responsible for the dumping; and making environmental findings.

April 18, 2011 Land Use and Economic Development Committee - RECOMMENDED

April 26, 2011 Board of Supervisors - AMENDED, AN AMENDMENT OF THE WHOLE BEARING SAME TITLE

Ayes: 11 - Avalos, Campos, Chiu, Chu, Cohen, Elsbernd, Farrell, Kim, Mar, Mirkarimi and Wiener

April 26, 2011 Board of Supervisors - PASSED ON FIRST READING AS AMENDED

Ayes: 11 - Avalos, Campos, Chiu, Chu, Cohen, Elsbernd, Farrell, Kim, Mar, Mirkarimi and Wiener

May 03, 2011 Board of Supervisors - FINALLY PASSED

Ayes: 11 - Avalos, Campos, Chiu, Chu, Cohen, Elsbernd, Farrell, Kim, Mar, Mirkarimi and Wiener

File No. 110222

I hereby certify that the foregoing Ordinance was FINALLY PASSED on 5/3/2011 by the Board of Supervisors of the City and County of San Francisco.

Angela Calvillo
Clerk of the Board

Mayor Edwin Lee

5/5/11

Date Approved