

BOARD of SUPERVISORS



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MEMORANDUM

TO: Nancy Alfaro, Director, 311
Jon Givner, Office of the City Attorney
Mohammed Nuru, Director, Public Works
Jose Cisneros, Treasurer, Office of the Treasurer and Tax Collector

FROM: Erica Major, Assistant Committee Clerk, Government Audit and Oversight
Committee, Board of Supervisors

DATE: February 8, 2016

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Government Audit and Oversight Committee has received the following proposed legislation, introduced by Supervisor Peskin on February 2, 2016:

File No. 160103

Ordinance amending the Public Works Code to clarify that prohibited graffiti extends to all public property, including all City assets; establish expedited notice and hearing procedures, create administrative penalties for an offending party, and renumber code sections; 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:
Andy Maimoni, 311
Frank Lee, Public Works
Fuad Sweiss, Public Works
Amanda Kahn Fried, Office of the Treasurer and Tax Collector

1 [Public Works Code - Clarifying Graffiti Prohibition and Establishing Administrative Penalties]

2
3 **Ordinance amending the Public Works Code to clarify that prohibited graffiti extends to**
4 **all public property, including all City assets; establish expedited notice and hearing**
5 **procedures, create administrative penalties for an offending party, and renumber code**
6 **sections; and affirming the Planning Department's determination under the California**
7 **Environmental Quality Act.**

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

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

16 Section 1. Findings.

17 (a) Guerrilla marketing involving sidewalk graffiti unlawfully exploits San Francisco's
18 walkable neighborhoods, heavy foot traffic, and robust tourism for commercial or non-
19 commercial benefit. It gives wrongdoers an unfair competitive advantage over law-abiding
20 companies that pay to market their identities and products through lawful means, and
21 regrettably creates powerful market incentives for competing companies and products to
22 similarly deface San Francisco sidewalks for their own advertising purposes. In addition,
23 graffiti marketing creates visual distractions that pose risks to pedestrians on busy public right-
24 of-ways, and irresponsibly tells the public that lawlessness and contempt for public property,
25 particularly by corporate interests, are condoned and encouraged by its beneficiaries.

1 (b) During the past decade, the Department of Public Works, the City Attorney's Office,
2 and other City departments have aggressively pursued and attempted to eradicate such
3 guerilla marketing tactics by corporate bad actors, including IBM, NBC Universal, Turner
4 Broadcasting, and Zynga, as well as prolific graffiti taggers. Nevertheless, these forms of
5 graffiti continue, as evidenced by guerilla marketing advertisements recently spray painted on
6 San Francisco sidewalks to promote recording artist Justin Bieber. Proliferation of this public
7 nuisance continues, in part, due to limited enforcement capabilities.

8 (c) This ordinance would clarify that prohibited graffiti extends to all public property,
9 including sidewalks and other components of the public right-of-way, as well as to City-owned
10 property, and to other assets under City jurisdiction, including buses and trolleys. The
11 ordinance would allow for expedited graffiti enforcement procedures against offending parties
12 and would establish administrative penalties as an additional tool beyond conventional
13 criminal and civil actions to combat graffiti.

14
15 Section 2. Environmental Findings. The Planning Department has determined that the
16 actions contemplated in this ordinance comply with the California Environmental Quality Act
17 (California Public Resources Code Sections 21000 et seq.). Said determination is on file with
18 the Clerk of the Board of Supervisors in File No. _____ and is incorporated herein
19 by reference. The Board affirms this determination.

20
21 Section 3. The Public Works Code is hereby amended by revising Sections 1301,
22 1302, 1303, and 1304; renumbering Sections 1300-1309 to be Sections 2300-2309; and
23 adding Section 2307.6, to read as follows:

24
25 **SEC. ~~2300-1300~~. TITLE.**

1 * * * *

2 **SEC. ~~23011301~~. PURPOSE AND INTENT.**

3 The Board of Supervisors hereby finds and declares that:

4 (a) Graffiti is detrimental to the health, safety, and welfare of the community in that it
5 promotes a perception in the community that the laws protecting public and private property
6 can be disregarded with impunity. This perception fosters a sense of disrespect for the law
7 that results in an increase in crime; degrades the community and leads to urban blight; is
8 detrimental to property values, business opportunities, and the enjoyment of life; is
9 inconsistent with the City's property maintenance goals and aesthetic standards; and results
10 in additional graffiti and in other properties becoming the target of graffiti unless it is quickly
11 removed from public and private property.

12 (b) Graffiti results in visual pollution and is hereby deemed a public nuisance. Graffiti
13 must be abated as quickly as possible to avoid detrimental impacts on the City ~~and County~~ and
14 its residents, and to prevent the further spread of graffiti.

15 (c) Graffiti is increasingly used by gangs to frighten residents of neighborhoods and
16 instigate and escalate disputes with opposing gangs. Therefore, gang graffiti, in particular,
17 exacerbates the degradation of San Francisco's quality of life. In order to alleviate this fear
18 caused by gang graffiti, and to assist the partnership between the City ~~and County~~ and the
19 neighborhoods in their mutual efforts to make streets safe, gang graffiti must be abated as
20 quickly as possible.

21 (d) Graffiti also is used in guerilla marketing campaigns to promote or publicize, for
22 commercial or non-commercial purposes, goods, products, and services in lieu of or to supplement
23 conventional advertising techniques. This type of graffiti must be abated as quickly as possible to avoid
24 detrimental impacts on the City and its residents, and to prevent the further spread of graffiti.

1 (e) It is the purpose of this Article 23 to provide a program for the removal of graffiti
2 from walls, pavement, structures, and other improvements on both public and private property,
3 including the public right-of-way.

4 **SEC. ~~23021302~~. DEFINITIONS.**

5 For purposes of this Article 23, the following definitions shall apply:

6 **City.** "City" means the City and County of San Francisco.

7 **Director.** "Director" means the Director of the Department of Public Works or his or her
8 designee.

9 **Graffiti.** "Graffiti" means any inscription, word, figure, marking, or design that is affixed,
10 applied, marked, etched, scratched, drawn, or painted on any building, structure, Public
11 Property, fixture, or other improvement, whether permanent or temporary, including by way of
12 example only and without limitation, signs, banners, billboards, and fencing surrounding
13 construction sites, whether public or private, without the consent of the owner of the property
14 or the owner's authorized agent, and which is visible from the public right-of-way or located on,
15 in, above, or under the public right-of-way. "Graffiti" shall not include: (1) any sign or banner that
16 is authorized by, and in compliance with, the applicable requirements of this Code, the ~~San~~
17 ~~Francisco~~ Planning Code, or the San Francisco Building Code; or (2) any mural or other
18 painting or marking on the property that is protected as a work of fine art under the California
19 Art Preservation Act (California Civil Code Sections 987 et seq.) or as a work of visual art
20 under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 et seq.).

21 **Offending Party/ies.** "Offending Party/ies" shall mean any person or ~~persons~~ entity who
22 defaces, damages, or destroys ~~Public~~ Property or private property with graffiti. "Offending
23 Party/ies" also shall include any person or entity who assists, enables, or permits another to
24 deface, damage, or destroy ~~Public~~ Property or private property with graffiti.

1 **Owner.** "Owner" shall mean the owner of record of the property as set forth in the most
2 current records of the Tax Assessor, or the owner's authorized agent.

3 **Public Property.** "Public Property" shall mean those areas on, in, above, or under the public
4 right-of-way, including, but not limited to, sidewalks, streets, and plazas and City-owned or other
5 public entity-owned property, buildings, and assets or public assets otherwise subject to City
6 jurisdiction, including, but not limited to, artwork, buses and trolleys, encroachments, lampposts,
7 manhole covers, parking meters, poles, signs and banners, street furniture, traffic control devices and
8 boxes, transit stations, and street trees.

9 **SEC. ~~2303~~303. PROHIBITION.**

10 (a) It shall be unlawful for the owner of any real property within the City ~~and County~~
11 bearing graffiti to allow the graffiti to remain on the property in violation of this Article 23.

12 (b) It shall be unlawful for any Offending Party~~ies~~ to deface, damage, or destroy
13 ~~Public Property~~ or private property with graffiti.

14 **SEC. ~~2304~~304. VIOLATIONS.**

15 (a) **Notice of Violation.** Where the Director determines that any property contains
16 graffiti in violation of Section ~~2303~~303, the Director may issue a notice of violation to the
17 property owner and/or any Offending Party~~ies~~. At the time the notice of violation is issued, the
18 Director shall take one or more photographs of the alleged graffiti, and shall make copies of
19 the photographs available to the property owner and/or any Offending Party~~ies~~ upon request.
20 The photographs shall be dated and retained as a part of the file for the violation. The notice
21 shall give the owner and/or any Offending Party~~ies~~ ~~thirty (30)~~ calendar days from the date of
22 the notice to either remove the graffiti or request a hearing on the notice of violation, and shall
23 set forth the procedure for requesting the hearing. The notice shall also inform the owner
24 and/or any Offending Party~~ies~~ that where the owner and/or any Offending Party~~ies~~ fail to
25 either remove the graffiti or request a hearing within ~~thirty (30)~~ calendar days from the date of

1 the notice, the Director may initiate proceedings in accordance with this Article 23 to enter
2 upon the property and abate the graffiti. The notice shall inform the owner and/or any
3 Offending Party/~~ies~~ that should the Director need to abate the graffiti, that the owner and/or
4 any Offending Party/~~ies~~ shall be liable for all costs of enforcement and abatement. The notice
5 shall further inform the owner and/or any Offending Party/~~ies~~ that the minimum charge for
6 removing graffiti is the greater of either \$500 or the actual cost to the City, ~~(including overhead~~
7 ~~and administrative costs, as well as attorneys' fees where the Director has elected to seek~~
8 ~~recovery of attorneys' fees)~~. The Director shall serve the notice of violation as follows:

9 (1) One copy of the Notice shall be posted in a conspicuous place upon the
10 building or property.

11 (2) One copy of the Notice shall be served upon each of the following:

12 (A) The person, if known, in real or apparent charge and control of the
13 premises or property involved;

14 (B) The owner of record; and

15 (C) Any Offending Party/~~ies~~.

16 (3) The Director may also serve one copy of the notice upon any other parties
17 with a recorded interest.

18 Service required by ~~paragraphs subsections (a)(2) and (3)~~ may be made by
19 personal service or by certified mail.

20 (b) Where property defaced by graffiti is owned by a public entity other than the City
21 ~~and County~~, the Director shall cause removal of the graffiti only after securing the consent of
22 an authorized representative of the public entity that has jurisdiction over the property. The
23 Director shall use all reasonable efforts to minimize graffiti on City-owned property, but City-
24 owned property shall not otherwise be subject to the requirements of this Article 23 ~~except as~~
25 ~~provided for in Section 1307.5~~ if it is associated with an Offending Party.

1 (c) Notwithstanding the time periods for noticing, hearings, and abatement specified in
2 Sections 2304, 2305, and 2306, the Director, in his or her discretion, may modify such time periods if
3 the graffiti is associated with an Offending Party to expedite such procedures, including, but not limited
4 to, requiring the immediate abatement of graffiti, if the amount, frequency, level, type, or scope of
5 graffiti warrants such action.

6 **SEC. ~~23051305~~. REQUEST FOR HEARING; HEARING.**

7 (a) Request for Hearing. A property owner and/or any Offending Party/~~ies~~ may
8 request a hearing ~~in order~~ to contest the notice of violation issued in accordance with Section
9 ~~23041304~~ by filing with the Director within ~~thirty (30)~~ calendar days from the date of the notice
10 of violation, a request for hearing that specifies in detail the basis for contesting the notice of
11 violation.

12 (b) Notice of Hearing. Whenever a hearing is requested pursuant to this Section, the
13 Director shall, within ~~seven (7)~~ calendar days of receipt of the request, notify the property
14 owner and/or any Offending Party/~~ies~~ of the date, time, and place of the administrative review
15 hearing by certified mail. Such hearing shall be held no later than ~~forty five (45)~~ calendar days
16 after the Director receives the request, unless time is extended by mutual agreement of the
17 affected parties.

18 (c) Submittals for the Hearing. At least ~~five (5)~~ City business days prior to the
19 hearing, the property owner and/or any Offending Party/~~ies~~ and the City shall submit to the
20 hearing officer and exchange with one another, written information including, but not limited
21 to, the following: a statement of the issues to be determined by the hearing officer; a
22 statement of the evidence to be offered at the hearing, and the identity of any witnesses to
23 appear at the hearing. (d) Hearing Procedure. The hearing shall be conducted by a neutral
24 hearing officer from a City office or department outside the Department of Public Works,
25 appointed by the Director of Administrative Services.

1 (1) Hearing Request by an Owner. The burden of proof to establish that the
2 property contains graffiti shall be on the City. The owner shall be entitled to present evidence
3 and demonstrate that his or her property does not contain graffiti. The property owner shall
4 also be entitled to present evidence and demonstrate that his or her property is burdened with
5 a disproportionate share of graffiti vandalism, based on factors such as the frequency or
6 extent of the graffiti, such that requiring the owner to remove the graffiti would result in an
7 unfair hardship. All testimony shall be under oath, and witnesses ~~maybe~~ may be cross-
8 examined. The hearing officer shall ensure that a record of the proceedings is maintained.
9 The determination of the hearing officer after the hearing shall be final and not appealable.

10 (2) Hearing Request by an Offending Party~~ies~~. The burden of proof to establish
11 that the property contains graffiti and that the Offending Party~~ies~~ defaced, damaged, or
12 destroyed private property with graffiti or assisted another to deface, damage, or destroy
13 private property shall be on the City. The Offending Party~~ies~~ shall be entitled to present
14 relevant evidence. All testimony shall be under oath, and witnesses may be cross-examined.
15 The hearing officer shall ensure that a record of the proceedings is maintained. The
16 determination of the hearing officer after the hearing shall be final and not appealable.

17 (e) Decision. The hearing officer shall issue a decision including a summary of the
18 issues and the evidence presented, and findings and conclusions, within ~~ten~~ (10) calendar
19 days of the conclusion of the hearing. A copy of the decision shall be served upon the
20 property owner and/or any Offending Party~~ies~~ by certified mail. The decision shall be the
21 City's final administrative determination. An aggrieved party may seek judicial review of the
22 decision pursuant to California Code of Civil Procedure Sections 1094.5 and 1094.6.

23 **SEC. ~~23061306~~. ABATEMENT BY DIRECTOR.**

24 (a) Following the hearing if the City sustains its burden of proof, or if the property
25 owner and/or any Offending Party~~ies~~ does not request a hearing and fails to remove the

1 graffiti within ~~thirty~~ (30) calendar days from the date of the notice of violation, the Director may
2 immediately order that the graffiti be abated. Unless the Director has obtained written consent
3 from the property owner to enter the property and remove the graffiti, before initiating
4 abatement the Director shall obtain a court order authorizing the Department of Public Works
5 to enter upon the property and remove the graffiti and give written notice of the abatement
6 (Abatement Order) served in accordance with Section ~~23041304~~(a). The Director may not
7 order a graffiti abatement action that may violate the California Art Preservation Act (California
8 Civil Code Sections 987 et seq.) or the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§
9 101 et seq.) without first consulting with the City Attorney.

10 (b) Alternatively, the Director may provide paint for graffiti removal to a property
11 owner at no charge. In return, the property owner shall agree in writing to paint over the graffiti
12 giving rise to the violation within 10 City business days from receiving the paint. A property
13 owner's failure to paint over the graffiti within that time shall be ground for the Director to issue
14 a new notice of violation under Section ~~23041304~~.

15 (c) If the hearing officer determines that a hardship exists, the Director is authorized
16 to remove the graffiti at no cost to the property owner, provided that the owner releases the
17 City from liability by providing the Director with a signed waiver of liability. The Director may
18 develop forms for this purpose.

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

21 (1) Abatement Action. After obtaining a court order, the Director shall implement
22 the Abatement Order. The Director may enter upon the property and cause the removal,
23 painting over, or other eradication of the graffiti as the Director deems appropriate. The
24 Director shall not authorize or undertake to provide for the painting or repair of any more
25 extensive area than that where the graffiti is located, except where the Director determines in

1 a written notice to the owner that a more extensive area is required to be repainted or repaired
2 in order to avoid an aesthetic disfigurement to the neighborhood or community. Where the
3 Director removes graffiti in accordance with the requirements of this Article 23, the owner
4 and/or any Offending Party/~~ies~~ shall pay the greater of either \$500 or the actual cost (including
5 overhead and administrative costs, as well as attorneys' fees where the Director has elected
6 to seek recovery of attorneys' fees) of removing the graffiti. The Director shall provide an
7 accounting to the owner and/or any Offending Party/~~ies~~ of the costs of the abatement action
8 (Abatement Accounting) on a full cost recovery basis not later than 10 days from the date the
9 abatement action is completed. The Abatement Accounting shall include all administrative
10 costs incurred by the City in abating graffiti on the property. The total amount set forth in the
11 Abatement Accounting shall be due and payable by the owner and/or any Offending Party/~~ies~~
12 within 30 days from the date of mailing of the Abatement Accounting.

13 * * * *

14 **SEC. ~~2307.1307~~. STAY OF PROCEEDINGS DURING CRIMINAL PROSECUTION.**

15 * * * *

16 **SEC. ~~2307.51307.5~~. CIVIL ACTIONS AGAINST OFFENDING PARTY/~~IES~~.**

17 The following procedures shall apply to actions by the City and County of San
18 Francisco against any Offending Party/~~ies~~ to enjoin, abate, and recover costs for abatement of
19 graffiti committed in violation of Section 2303.1303:

20 (a) Graffiti on Public Property. In addition to any other remedies available at law or
21 equity, the City Attorney is authorized to initiate a civil action ~~f~~or injunctive relief, civil
22 penalties, costs, and fees as set forth below. In an action for graffiti violations on public
23 property, any Offending Party/~~ies~~ may be enjoined, shall be liable for civil penalties of up to
24 \$1,000 per graffiti incident or other equivalent equitable or injunctive relief in the form of
25 community or civic service, and shall be liable for any and all investigation, abatement, and

1 litigation costs. Attorneys' fees shall be awarded to the prevailing party in any litigation
2 brought pursuant to this Section ~~2307.5~~2307.5(a).

3 (b) Graffiti on Private Property. If the City Attorney brings a civil action under Section
4 ~~2307.5~~2307.5(a) above, the City Attorney may also, where appropriate, offer evidence that the
5 Offending Party/~~ies~~ committed additional graffiti incidents on private property. In such a case,
6 the City Attorney may seek additional civil penalties of up to \$1,000 per private property graffiti
7 incident or other equivalent equitable or injunctive relief in the form of community or civic
8 service, any and all associated investigation, abatement, and litigation costs, as well as any
9 restitution to any affected private property owners for out of pocket expenses associated with
10 the abatement.

11 (c) The remedies in this Section ~~2307.5~~2307.5 are in addition to any other remedies
12 provided by law. No provision in this Article 23 shall preclude prosecution of actions for civil
13 and criminal penalties concurrently, sequentially, or individually.

14 **SEC. 2307.6. ADMINISTRATIVE PENALTIES.**

15 (a) In addition to any other remedies that may be available, a violation of this Article 23 may
16 be punishable by an administrative fine, which may be assessed by an administrative citation issued by
17 Public Works officials or employees designated in Section 38 of the Police Code. Administrative Code
18 Chapter 100, "Procedures Governing the Imposition of Administrative Fines," as may be amended from
19 time to time, is hereby incorporated and shall govern the procedure for the imposition, enforcement,
20 collection, and administrative review of administrative citations issued to enforce this Article, except
21 that the amount of the administrative fine shall be up to \$1,000 per violation per day during the term of
22 the violation.

23 (b) All monies received by the City in payment of administrative fines for violation of this
24 Article 23 shall be deposited to the credit of Public Works to be used for the graffiti removal,
25 abatement, education, and enforcement activities of the Department and other City departments.

1 including the City Attorney's Office. Balances remaining from the fine collection at the close of any
2 fiscal year shall have been deemed to have been provided for a specific purpose within the meaning of
3 Section 9.113 of the Charter, and shall be carried forward and accumulated for the purposes recited in
4 this subsection (b). The monies received through payment of such fines are hereby appropriated
5 exclusively for those purposes.

6
7 **SEC. ~~23081308~~. LIMITATION OF LIABILITY.**

8 * * * *

9 **SEC. ~~23091309~~. SEVERABILITY.**

10 * * * *

11
12 Section 4. Effective Date. This ordinance shall become effective 30 days after
13 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
14 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
15 of Supervisors overrides the Mayor's veto of the ordinance.

16
17 Section 5. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
18 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
19 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
20 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
21 additions, and Board amendment deletions in accordance with the "Note" that appears under
22 the official title of the ordinance.

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

By: 
John D. Malámut
Deputy City Attorney

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