

LEGISLATIVE DIGEST

[Public Works Code, Police Code - Posting of Signs on City Property, Increasing Penalty, and Enforcement]

Ordinance amending the Public Works Code by amending Sections 184.62, 184.63, and 184.65 thereof, to (1) increase the minimum criminal penalty for violations of Article 5.6 of the Public Works Code from \$50 to \$100; (2) amend the procedures for administrative enforcement of Article 5.6 of the Public Works Code and specify the amounts of administrative penalties; (3) provide that in any civil action or administrative proceeding to enforce Article 5.6 the City shall have the burden of proof; and (4) provide that where an unlawfully posted sign proposes a commercial transaction, the fact that the sign identifies a person or entity may give rise to an inference that that person or entity posted or caused the posting of the sign; and amending the Police Code by amending Section 39-1 thereof, to provide that that Section shall not apply to administrative citations issued under Public Works Code Section 184.63.

Existing Law

Under current law, any person found to have violated the prohibitions against posting signs on City-owned property contained in Public Works Code Article 5.6 may receive a criminal fine of not less than \$50. Current law also states that the Department of Public Works may recover its costs resulting from illegal signposting and related property damage, and certain penalties, through administrative citations, which are issued and administratively reviewed pursuant to Section 39-1 of the Police Code, but does not specify any standardized amount for administrative fines. Current law also states that in any civil action brought by the City to recover its sign removal costs or civil penalties, the fact that an illegally posted sign names or identifies a person or entity shall give rise to a rebuttable presumption that that person or entity caused the sign to be illegally posted.

Amendments to Current Law

This ordinance would amend the Public Works Code to provide that the minimum criminal fine for a violation of Article 5.6 of that Code is \$100, and that such violations may be punished by administrative fines of \$100 for a first violation, \$200 for a second violation, and \$500 for each subsequent violation within one year. This ordinance also would amend the Public Works Code and the Police Code to provide that the issuance and review of administrative citations for violations of Article 5.6 of the Public Works Code are governed by Chapter 100 of the Administrative Code, not by Police Code Section 39-1. This ordinance would also amend the Public Works Code to state that in administrative enforcement of Article 5.6 of that Code, where an illegally posted sign does no more than propose a commercial transaction, the fact

that the sign names a person or entity may be used as evidence to show that that person or entity caused the sign to be posted, and may, depending on the relevant circumstances, allow the trier of fact to infer that that person or entity caused the sign to be posted. It also would amend the Public Works Code to state that when the City brings a civil action or uses administrative enforcement to enforce Article 5.6 of that Code, the City at all times shall bear the burden of proving that the person named in the civil action, or to whom an administrative citation was issued, posted or caused the posting of the sign at issue.

Background Information

Public Works Code Section 184.65 currently provides that in any civil action seeking civil penalties or the costs of removing an unlawfully posted sign, the fact that the sign names or identifies a person or entity shall give rise to a rebuttable presumption that that person or entity posted or caused the posting of the sign. In 2009, the California Court of Appeal held that the Department of Public Works may not issue or enforce administrative citations in reliance on the current Section 184.65, because that ordinance does not refer to administrative enforcement. (*Act Now to Stop War and End Racism Coalition – San Francisco v. City and County of San Francisco*, No. A118134.)