

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

Ordinance amending Article 23 of the San Francisco Public Works Code by (1) amending Sections 1301 through 1304, deleting existing Section 1305, amending and retaining part of existing Section 1306 as renumbered Section 1305, and amending and placing part of existing Section 1306 in new Section 1306, to require that property owners either remove graffiti from their property or request a hearing within 30 days of receiving a notice of violation, clarify and streamline review procedures for graffiti violations, and authorize special assessments to recover graffiti removal costs; and (2) making technical corrections to Sections 1307 and 1308.

Note: Additions are single-underline italics Times New Roman; deletions are ~~strikethrough 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. Article 23 of the San Francisco Public Works Code is hereby amended by amending Sections 1301 through 1304, deleting Section 1305, amending and retaining part of existing Section 1306 as renumbered Section 1305, amending and placing part of existing Section 1306 in new Section 1306, and making technical corrections to Sections 1307 and 1308, to read as follows:

SEC. 1301. PURPOSE AND INTENT.

The Board of Supervisors hereby finds and declares that:

(a) Graffiti is detrimental to the health, safety and welfare of the community in that it promotes a perception in the community that the laws protecting public and private property can be disregarded with impunity. This perception fosters a sense of disrespect of the law that results in an increase in crime; degrades the community and leads to urban blight;

1 is detrimental to property values, business opportunities and the enjoyment of life; is
2 inconsistent with the City's property maintenance goals and aesthetic standards; and results
3 in additional graffiti and in other properties becoming the target of graffiti unless it is quickly
4 removed from public and private property.

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

8 (c) Graffiti is increasingly used by gangs to frighten residents of neighborhoods.
9 Therefore, gang graffiti, in particular, exacerbates the degradation of San Francisco's quality of life.
10 In order to alleviate this fear caused by gang graffiti, and to assist the partnership between the City and
11 County and the neighborhoods in their mutual efforts to make streets safe, gang graffiti must be abated
12 as quickly as possible.

13 (d) It is the purpose of this Article to provide a program for the removal of
14 graffiti from walls, pavement, structures and other improvements on both public and private
15 property.

16 **SEC. 1302. DEFINITIONS.**

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

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

21 (c) Graffiti. "Graffiti" means any inscription, word, figure, marking or design
22 that is affixed marked, scratched, drawn or painted on any building, structure, fixture or other
23 improvement, whether permanent or temporary, including by way of example only and without
24 limitation, signs, banners, billboards and fencing surrounding construction sites, whether public
25 or private, without the consent of the owner of the property or the owner's authorized agent,

1 and which is visible from the public right-of-way. "Graffiti" shall not include: (1) any sign or
2 banner that is authorized by, and in compliance with, the applicable requirements of this Code, the
3 San Francisco Planning Code or the San Francisco Building Code; or (2) any mural or other painting
4 or marking on the property that is protected as a work of fine art under the California Art Preservation
5 Act (California Civil Code Sections 987 et seq.) or as a work of visual art under the Federal Visual
6 Artists Rights Act of 1990 (17 U.S.C. §§101 et seq.).

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

9 **SEC. 1303. PROHIBITION.**

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

12 **SEC. 1304. ~~GRAFFITI ABATEMENT PROCEDURES VIOLATIONS.~~**

13 (a) ~~Once every 12 months, the Director may remove any graffiti he or she determines to be~~
14 ~~in violation of Section 1303 of this Article upon receiving written consent and a waiver of liability from~~
15 ~~the owner of the property in accordance with paragraph (c) of this Section. The Director may prepare~~
16 ~~and distribute forms for this purpose.~~ **Notice of Violation.** Where the Director determines that any
17 property contains graffiti in violation of Section 1303, the Director may issue a notice of violation to
18 the property owner. At the time the notice of violation is issued, the Director shall take one or more
19 photographs of the alleged graffiti, and shall make copies of the photographs available to the property
20 owner upon request. The photographs shall be dated and retained as a part of the file for the violation.
21 The notice shall give the owner thirty (30) calendar days from the date of the notice to either remove
22 the graffiti or request a hearing on the notice of violation, and shall set forth the procedure for
23 requesting the hearing. The notice shall also inform the owner that where the owner fails to either
24 remove the graffiti or request a hearing within thirty (30) calendar days from the date of the notice, the
25 Director may initiate proceedings in accordance with this Article to enter upon the owner's property

1 and abate the graffiti at the owner's expense. The notice shall further inform the owner that the
2 minimum charge for removing graffiti is the greater of either \$500 or the actual cost to the City,
3 (including overhead and administrative costs, as well as attorneys' fees where the Director has elected
4 to seek recovery of attorneys' fees). The Director shall serve the notice of violation as follows:

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

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

8 A. The person, if known, in real or apparent charge and control of the premises or property
9 involved;

10 B. The owner of record.

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

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

14 ~~(b) — If the Director is otherwise unable to obtain consent from the property owner, the~~
15 ~~Director shall provide notice to the property owner of the Director's determination that the property~~
16 ~~contains graffiti in violation of Section 1303. The notice shall also state that the owner may authorize~~
17 ~~the Director to remove the graffiti by giving written consent and a waiver of liability in accordance~~
18 ~~with paragraph (c) of this Section. The notice shall be provided through the means specified in Section~~
19 ~~1305(a).~~

20 ~~(c) — As a condition for allowing the Director to cause removal of the graffiti, the owner shall~~
21 ~~also sign a release on a form provided by the Director releasing the City and County from liability for~~
22 ~~damage to public or private property in connection with the removal of graffiti. If the Director makes~~
23 ~~the hardship determination described in paragraph (g), the owner may, if he or she desires, give~~
24 ~~advance consent to the Director to remove graffiti from the property in the future without the need for~~
25 ~~the Director to obtain the owner's consent prior to each removal. Such prior authorization shall be in~~

1 ~~writing to the Director and shall be signed by the owner. The prior authorization may be revoked by~~
2 ~~the owner at any time by notifying the Director in writing.~~

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

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

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

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

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

21 ~~(g) — It is the policy of the CCSF that the city will provide not more than one graffiti removal, at~~
22 ~~the public expense, from a specific property during a 12 month period. After the initial removal of~~
23 ~~graffiti by the Director, the owner shall remove all graffiti, in violation of Section 1303, placed on the~~
24 ~~same property within a 12 month period from the date of the removal. If the owner has failed to~~
25 ~~remove the graffiti within 10 days after Director notification specified in Section 1305(a), the Director~~

1 *may initiate a Graffiti Abatement Action in accordance with Sections 1305 and 1306. The Director of*
2 *Public Works may provide paint to a property owner for graffiti removal without charge. Where the*
3 *Director determines that a property is burdened with a disproportionate share of graffiti vandalism and*
4 *requiring the owner to remove the graffiti would result in an unfair hardship, the Director is*
5 *authorized, at the City's expense, to remove graffiti placed on the same property more than once during*
6 *that 12 month period.*

7 **SEC. 1305. NOTICE OF GRAFFITI ABATEMENT ACTION.**

8 *(a) Whenever the Director determines that graffiti exists in violation of Section 1303, and*
9 *the Director has been unable to obtain the owner's consent to remove the graffiti in accordance with*
10 *Section 1304, the Director may initiate a Graffiti Abatement Action by causing a written Graffiti*
11 *Abatement Notice to be served as follows:*

12 *1. One copy of the Notice shall be posted in a conspicuous place upon the building or*
13 *property.*

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

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

17 *B. The owner of record.*

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

20 *(b) The Graffiti Abatement Notice shall provide the property owner seven calendar days*
21 *from the date of the Notice in which to remove the graffiti, consent to removal of the graffiti by the*
22 *Director, notify the Director in writing that he or she has consented or consents to the graffiti, or*
23 *request a hearing before the Director. If the property owner fails to take one of these actions within the*
24 *above time, the property shall thereafter be subject to abatement of the graffiti by the Director in*
25 *accordance with Section 1306. The City will provide the owner, not more than once during a 12-*

1 ~~month period, the option to consent to the Director's removal of graffiti from a specific property. If the~~
2 ~~Director makes the hardship determination described in 1304(g), the Director is authorized to provide~~
3 ~~the owner with the option to consent to the Director's removal of graffiti more than once during the 12-~~
4 ~~month period.~~

5 **SEC. 1306. GRAFFITI ABATEMENT ACTION; REOUEST FOR HEARING; HEARING.**

6 (a) **Request for Hearing.** At a hearing requested by the A property owner may request a
7 hearing in order to contest the notice of violation issued in accordance with Section 1304 by filing with
8 the Director within thirty (30) calendar days from the date of the notice of violation, a request for
9 hearing that specifies in detail the basis for contesting the notice of violation.

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

15 (c) **Submittals for the Hearing.** At least five (5) City business days prior to the hearing, the
16 property owner and the City shall submit to the hearing officer and exchange with one another, written
17 information including, but not limited to, the following: a statement of the issues to be determined by
18 the hearing officer, a statement of the evidence to be offered at the hearing and the identity of any
19 witnesses to appear at the hearing.

20 (d) **Hearing Procedure.** The hearing shall be conducted by a neutral hearing officer from a
21 City office or department outside the Department of Public Works, appointed by the Director of
22 Administrative Services. The burden of proof to establish that the property contains graffiti shall be on
23 the City. The ~~the~~ owner shall be entitled to present evidence and ~~argue~~ demonstrate that his or
24 her property does not contain graffiti. The property owner shall also be entitled to present evidence
25 and demonstrate that his or her property is burdened with a disproportionate share of graffiti

1 vandalism, based on factors such as the frequency or extent of the graffiti, such that requiring the
2 owner to remove the graffiti would result in an unfair hardship. All testimony shall be under oath, and
3 witnesses may be cross-examined. The hearing officer shall ensure that a record of the proceedings is
4 maintained. The determination of the ~~Director~~ hearing officer after the hearing shall be final and
5 not appealable. ~~After the hearing, if the Director determines that the property contains graffiti, the~~
6 ~~Director may order that the graffiti be abated. If a hearing is not requested, the Director may~~
7 ~~immediately order that the graffiti be abated. Before ordering such abatement, the Director shall give~~
8 ~~written notice (Abatement Order) served in accordance with Section 1305(a) that, unless the graffiti is~~
9 ~~removed within five calendar days from the date of the notice, the Department of Public Works shall~~
10 ~~enter upon the property and cause the removal, painting over or such other eradication of the graffiti~~
11 ~~as the Director determines appropriate.~~

12 (e) **Decision.** The hearing officer shall issue a decision including a summary of the issues
13 and the evidence presented, and findings and conclusions, within ten (10) calendar days of the
14 conclusion of the hearing. A copy of the decision shall be served upon the property owner by certified
15 mail. The decision shall be the City's final administrative determination. An aggrieved party may seek
16 judicial review of the decision pursuant to California Code of Civil Procedure Sections 1094.5 and
17 1094.6.

18 **SEC. 1306. ABATEMENT BY DIRECTOR**

19 (a) Following the hearing if the City sustains its burden of proof, or if the property owner
20 does not request a hearing and fails to remove the graffiti within thirty (30) calendar days from the
21 date of the notice of violation, the Director may immediately order that the graffiti be abated. Unless
22 the Director has obtained written consent from the property owner to enter the property and remove
23 the graffiti, before initiating abatement the Director shall obtain a court order authorizing the
24 Department of Public Works to enter upon the property and remove the graffiti and give written notice
25 of the abatement (Abatement Order) served in accordance with Section 1304(a). The Director may not

1 order a graffiti abatement action that may violate the California Art Preservation Act (California Civil
2 Code Sections 987 et seq.) or the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§101 et seq.)
3 without first consulting with the City Attorney.

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

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

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

15 (1) Abatement Action. ~~Not sooner than the time specified in the Abatement~~ After
16 obtaining a court ~~Order~~ order, the Director shall implement the Abatement Order. The Director
17 may enter upon the property and cause the removal, painting over or other eradication of the graffiti as
18 the Director deems appropriate. The Director shall not authorize or undertake to provide for the
19 painting or repair of any more extensive area than that where the graffiti is located, except where the
20 Director determines in a written notice to the owner that a more extensive area is required to be
21 repainted or repaired in order to avoid an aesthetic disfigurement to the neighborhood or community.
22 Where the Director removes graffiti in accordance with the requirements of this Article, the owner
23 shall pay the greater of either \$500 or the actual cost (including overhead and administrative costs, as
24 well as attorneys' fees where the Director has elected to seek recovery of attorneys' fees) of removing
25 the graffiti. The Director shall provide an accounting to the owner of the costs of the

1 abatement action (Abatement Accounting) on a full cost recovery basis not later than 10 days
2 from the date the abatement action is completed. The Abatement Accounting shall include all
3 administrative costs incurred by the ~~Department of Public Works~~ City in abating graffiti on the
4 property. The total amount set forth in the Abatement Accounting shall be due and payable
5 by the owner within 30 days from the date of *mailing* of the Abatement Accounting.

6 (2) Recovery of Attorneys' Fees. At the time the abatement action is filed, the Director may
7 elect to seek recovery of attorneys' fees incurred in a graffiti abatement action under this Article. In a
8 case where the Director makes this election, the prevailing party shall be entitled to recover attorneys'
9 fees. In no event shall the award of attorneys' fees to a prevailing party exceed the amount of
10 reasonable attorneys' fees incurred by the City in the action.

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

18 (A) In addition to the requirements imposed under Section 10.232 of the San Francisco
19 Administrative Code, the notice to the property owner of the hearing on the proposed lien shall be
20 served in the same manner as a summons in a civil action in accordance with Article 3 (commencing
21 with Section 415.10) of Chapter 4 of Title 5 of Part 2 of the California Code of Civil Procedure.
22 Where, after diligent search, the owner of record cannot be found, the notice may be served by posting
23 a copy in a conspicuous place upon the property for a period of ten (10) days and publication thereof in
24 a newspaper of general circulation.

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1 (B) Any lien authorized by this Section shall specify the amount of the lien, the name of
2 the department initiating the abatement proceeding, the date of the abatement order, the street address,
3 legal description and assessor's parcel number of the parcel on which the lien is imposed, and the
4 name and address of the recorded owner of the parcel.

5 (C) Where a lien authorized by this Section is discharged, released or satisfied, either
6 through payment or foreclosure, the Tax Collector shall record a notice of the discharge containing the
7 information specified in subparagraph (B). Any such notice of discharge shall be subject to the Release
8 of Lien Fee imposed pursuant to Section 10,237 of the San Francisco Administrative Code.

9 (4) Special Assessment. Notwithstanding anything to the contrary in Article XX of Chapter 10,
10 pursuant to Section 38773.5 of the California Government Code, the Board of Supervisors may order
11 that the amount of the lien be specially assessed against the parcel. Upon such an order, the entire
12 unpaid balance of the costs, including any penalty and interest payments on the unpaid balance to the
13 date that the Director reports to the Board shall be included in the special assessment lien against the
14 property. The Director shall report charges against delinquent accounts to the Board of Supervisors at
15 least once each year. At the time the special assessment is imposed, the Director shall give notice to
16 the property owner by certified mail, and shall inform the property owner that the property may be sold
17 by the Tax Collector for unpaid delinquent assessments after three years. The assessment may be
18 collected at the same time and in the same manner as ordinary municipal taxes are collected, and shall
19 be subject to the same penalties and procedure and sale in case of delinquency as provided for
20 ordinary municipal taxes. All tax laws applicable to the levy, collection and enforcement of ordinary
21 municipal taxes shall be applicable to the special assessment. However, if any real property to which a
22 cost of abatement relates has been transferred or conveyed to a bona fide purchaser for value, or if a
23 lien of a bona fide encumbrancer for value has been created and attaches thereon, prior to the date on
24 which the first installment of taxes would become delinquent, then the cost of abatement shall not result
25 in a lien against the real property but instead shall be transferred to the unsecured roll for collection.

1 **SEC. 1307. STAY OF PROCEEDING DURING CRIMINAL PROSECUTION.**

2 In any case in which a criminal prosecution is pending or is about to be instituted for
3 violation of Penal Code Sections 594 and 640.6, or of any other law that authorizes a court to
4 sentence a criminal defendant to remove graffiti placed ~~at~~ on property by that defendant, the
5 Director may suspend abatement actions under this Article. In such a case, the abatement
6 action shall be suspended only in connection with any property upon which the defendant is
7 charged with placing graffiti, and only until such time as the defendant is sentenced or the case
8 is otherwise closed. This provision shall not prohibit a property owner from removing graffiti
9 from his or her own property during such time as the criminal proceeding is pending.

10 **SEC. 1308. LIMITATION OF LIABILITY.**

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

15
16 APPROVED AS TO FORM:
17 DENNIS J. HERRERA, City Attorney

18
19 By: 
20 DAVID A. GREENBURG
21 Deputy City Attorney



City and County of San Francisco

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

Tails Ordinance

File Number: 041150

Date Passed:

Ordinance amending Article 23 of the San Francisco Public Works Code by (1) amending Sections 1301 through 1304, deleting existing Section 1305, amending and retaining part of existing Section 1306 as renumbered Section 1305, and amending and placing part of existing Section 1306 in new Section 1306, to require that property owners either remove graffiti from their property or request a hearing within 30 days of receiving a notice of violation, clarify and streamline review procedures for graffiti violations, and authorize special assessments to recover graffiti removal costs; and (2) making technical corrections to Sections 1307 and 1308.

October 19, 2004 Board of Supervisors — PASSED ON FIRST READING

Ayes: 11 - Alioto-Pier, Ammiano, Daly, Dufty, Elsbernd, Gonzalez, Ma, Maxwell, McGoldrick, Peskin, Sandoval

October 26, 2004 Board of Supervisors — FINALLY PASSED


Ayes: 11 - Alioto-Pier, Ammiano, Daly, Dufty, Elsbernd, Gonzalez, Ma, Maxwell, McGoldrick, Peskin, Sandoval

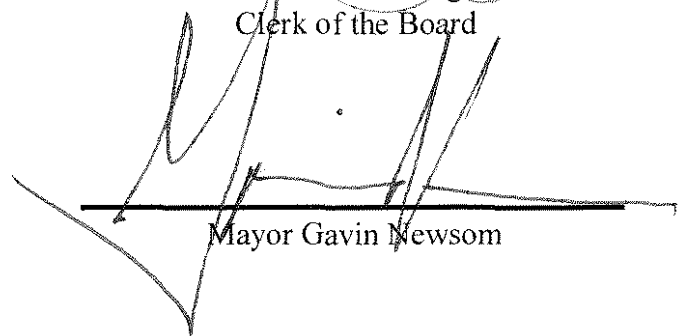
File No. 041150

I hereby certify that the foregoing Ordinance
was FINALLY PASSED on October 26, 2004
by the Board of Supervisors of the City and
County of San Francisco.

NOV 04 2004

Date Approved


Gloria L. Young
Clerk of the Board


Mayor Gavin Newsom