

BOARD of SUPERVISORS



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MEMORANDUM

TO: Carla Short, Interim Director, Department of Public Works

FROM: Brent Jalipa, Assistant Clerk, Budget and Finance Committee

DATE: May 17, 2022

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Budget and Finance Committee has received the following proposed legislation, introduced by Supervisor Myrna Melgar:

File No. 220538

Ordinance amending the Public Works Code to require Public Works to create a pilot program allowing property owners in commercial areas to opt into graffiti abatement by Public Works at no cost to the property owner; 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: David Steinberg, Public Works
Bryan Dahl, Public Works
Lena Liu, Public Works

1 [Public Works Code - Public Works Graffiti Abatement Pilot Program]

2

3 **Ordinance amending the Public Works Code to require Public Works to create a pilot**
4 **program allowing property owners in commercial areas to opt into graffiti abatement by**
5 **Public Works at no cost to the property owner; and affirming the Planning**
6 **Department's determination under the California Environmental Quality Act.**

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

11

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

13

14 Section 1. Land Use Findings.

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

20

21 Section 2. Article 23 of the Public Works Code is hereby amended by revising
22 Sections 2304, and 2306, to read as follows:

23 **SEC. 2304. VIOLATIONS.**

24 (a) **Notice of Violation.** Where the Director determines that any property contains
25 graffiti in violation of Section 2303, the Director may issue a notice of violation to the property

1 owner and/or any Offending Party. At the time the notice of violation is issued, the Director
2 shall take one or more photographs of the alleged graffiti, and shall make copies of the
3 photographs available to the property owner and/or any Offending Party upon request. The
4 photographs shall be dated and retained as a part of the file for the violation. The notice shall
5 give the owner and/or any Offending Party 30 calendar days from the date of the notice to
6 either remove the graffiti or request a hearing on the notice of violation, and shall set forth the
7 procedure for requesting the hearing. The notice shall also inform the owner and/or any
8 Offending Party that where the owner and/or any Offending Party fail to either remove the
9 graffiti or request a hearing within 30 calendar days from the date of the notice, the Director
10 may initiate proceedings in accordance with this Article 23 to enter upon the property and
11 abate the graffiti. The notice shall inform the owner and/or any Offending Party that should the
12 Director need to abate the graffiti, ~~that~~ the owner and/or any Offending Party shall be liable for
13 all costs of enforcement and abatement. The notice shall further inform the owner and/or any
14 Offending Party that the minimum charge for removing graffiti is the greater of either \$500 or
15 the actual cost to the City, including overhead and administrative costs, as well as attorneys'
16 fees where the Director has elected to seek recovery of attorneys' fees. The Director shall
17 serve the notice of violation as follows:

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

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

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

23 (B) The owner of record; and

24 (C) Any Offending Party.

25

1 (3) The Director shall serve one copy of the Notice upon any Community Benefits
2 District, Business Improvement District, or Green Benefits District., as those districts are defined in
3 Articles 15 and 15A of the Business and Tax Regulation Code, in the neighborhood where the Notice is
4 posted. The Director may also serve one copy of the notice upon any other parties with a
5 recorded interest.

6 Service required by subsections (a)(2) and (3) may be made by personal service or by
7 certified mail.

8 * * * *

9 **SEC. 2306. ABATEMENT BY DIRECTOR.**

10 * * * *

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

13 (1) **Abatement Action.** After obtaining a court order, the Director shall implement
14 the Abatement Order. The Director may enter upon the property and cause the removal,
15 painting over, or other eradication of the graffiti as the Director deems appropriate. The
16 Director shall not authorize or undertake to provide for the painting or repair of any more
17 extensive area than that where the graffiti is located, except where the Director determines in
18 a written notice to the owner that a more extensive area is required to be repainted or repaired
19 in order to avoid an aesthetic disfigurement to the neighborhood or community. Where the
20 Director removes graffiti in accordance with the requirements of this Article 23, the owner
21 and/or any Offending Party shall pay the greater of either \$500 or the actual cost (including
22 overhead and administrative costs, as well as attorneys' fees where the Director has elected
23 to seek recovery of attorneys' fees) of removing the graffiti. The Director shall provide an
24 accounting to the owner and/or any Offending Party of the costs of the abatement action
25 (Abatement Accounting) on a full cost recovery basis not later than 10 days from the date the

1 abatement action is completed. The Abatement Accounting shall include all administrative
2 costs incurred by the City in abating graffiti on the property. The total amount set forth in the
3 Abatement Accounting shall be due and payable by the owner and/or any Offending Party
4 within 30 days from the date of mailing of the Abatement Accounting.

5 * * * *

6 (e) **Abatement in Commercial Areas: Pilot Program.** Within 90 days of the effective date of the
7 ordinance in Board File No. _____ adding this subsection (e), the Director shall create a pilot program
8 that allows property owners in Commercial Corridors to provide written consent authorizing Public
9 Works to enter onto their property and remove graffiti. The scope of any graffiti abatement shall be
10 consistent with the scope of abatement provided in subsection (d)(1). Such removal and abatement shall
11 be offered at no cost to the property owner, provided that the owner waives any claims arising from the
12 work, other than any claims for damages arising from negligence or non-compliance with laws. The
13 pilot program is an alternative to the other abatement procedures in this Article 23, and a property
14 owner may enroll in the pilot program at any time, including upon receipt of a Notice of Violation;
15 provided, however, that a property owner who contests the Notice of Violation shall be ineligible to
16 participate in the program. The Director is authorized to issue regulations consistent with this
17 subsection (e).

18 _____ (1) **Commercial Corridors.** For purposes of this subsection (e), Commercial Corridors
19 shall include properties in the following areas: Neighborhood Commercial Districts, Named
20 Neighborhood Commercial Districts, Neighborhood Commercial Transit Districts, and Named
21 Neighborhood Commercial Transit Districts, listed in Section 201 of the Planning Code, and defined in
22 Section 702 of the Planning Code; the Chinatown Community Business District, as defined in Planning
23 Code Section 810; the Chinatown Residential/Neighborhood Commercial District, as defined in
24 Planning Code Section 812; and the Chinatown Visitor Retail District, as defined in Planning Code
25 Section 811.

1 (2) **Relationship to Community Benefits Districts and Green Benefits Districts.** The
2 owner of any property located in a Community Benefits District or Green Benefits District, as defined
3 in Articles 15 and 15A of the Business and Tax Regulations Code, must first demonstrate to the
4 Director's satisfaction that the relevant district lacks funding for graffiti abatement, or has exhausted
5 all available funding for graffiti abatement, in order to participate in the pilot program established in
6 this subsection (e).

7 (3) **Expiration of Pilot Program.** Unless the Board of Supervisors by ordinance
8 extends the term of the Pilot Program, this subsection (e) shall expire by operation of law 27 months
9 following the effective date of the ordinance in Board File No. _____ establishing the Pilot Program.
10 After that date, the City Attorney is authorized to remove this subsection (e) to be removed from the
11 Public Works Code.

12
13 Section 3. Effective Date. This ordinance shall become effective 30 days after
14 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
15 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
16 of Supervisors overrides the Mayor's veto of the ordinance.

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18 ///

LEGISLATIVE DIGEST

[Public Works Code - Public Works Graffiti Abatement Pilot Program]

Ordinance amending the Public Works Code to require Public Works to create a pilot program allowing property owners in commercial areas to opt into graffiti abatement by Public Works at no cost to the property owner; and affirming the Planning Department's determination under the California Environmental Quality Act

Existing Law

Under Public Works Code Article 23, it is unlawful for a property owner to allow graffiti to remain on the property owner. Public Works is charged with issuing Notices of Violations when the Director determines that property contains graffiti in violation of the code. Property owners can request hearings to demonstrate a hardship, in which case, the Director may remove the graffiti at no cost, subject to certain conditions. If no hardship is shown, the Director may provide paint to the property owner at no charge. In addition, the Director may order that the graffiti be abated, but must obtain a court order prior to the Public Works entering onto the property, and any abatement is subject to state and federal art preservation laws.

Amendments to Current Law

The amendment would create a pilot program in which property owners in commercial corridors may opt into having Public Works abate graffiti. The program would last for approximately two years.

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Introduction Form

By a Member of the Board of Supervisors or Mayor

Time stamp
or meeting date

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee. (An Ordinance, Resolution, Motion or Charter Amendment).
- 2. Request for next printed agenda Without Reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning : "Supervisor inquiries"
- 5. City Attorney Request.
- 6. Call File No. from Committee.
- 7. Budget Analyst request (attached written motion).
- 8. Substitute Legislation File No.
- 9. Reactivate File No.
- 10. Topic submitted for Mayoral Appearance before the BOS on

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission
- Youth Commission
- Ethics Commission
- Planning Commission
- Building Inspection Commission

Note: For the Imperative Agenda (a resolution not on the printed agenda), use the Imperative Form.

Sponsor(s):

Subject:

The text is listed:

Signature of Sponsoring Supervisor:

For Clerk's Use Only