

File No. 211151

Committee Item No. 3

Board Item No. 10

COMMITTEE/BOARD OF SUPERVISORS

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Comm: Public Safety & Neighborhood Services

Date: March 10, 2022

Board of Supervisors Meeting:

Date: April 5, 2022

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Prepared by: Alisa Somera

Date: March 4, 2022

Prepared by: Alisa Somera

Date: March 17, 2022

[Public Works Code - Graffiti Abatement - Lifting Suspension of Issuance of Certain Violations; Reinstating Collection of Certain Fees and Fines]

Ordinance lifting the suspension of certain provisions of the Graffiti Removal and Abatement Ordinance regarding issuance of certain violations, and reinstating the collection of certain assessed fees and fines; requiring notice to certain Community Benefits Districts, Business Improvement Districts, or Green Benefits Districts as those districts are defined in Article 15 and 15A of the Business and Tax Regulation Code; and requiring Public Works to report to the Board of Supervisors within 60 days the forms necessary to implement the Graffiti Abatement Ordinance; and affirming the Planning Department's determination under the California Environmental Quality Act.

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

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

Section 1. Background and Findings.

(a) The Planning Department has determined that the actions contemplated in this ordinance comply with the California Environmental Quality Act (California Public Resources Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of Supervisors in File No. 211151 and is incorporated herein by reference. The Board affirms this determination.

(b) The City's Graffiti Removal and Abatement Ordinance ("Ordinance") is in Article 23 of the Public Works Code. Pursuant to Ordinance No. 64-21, Public Works Code Section

1 2304(a) has been suspended, with the result that Public Works may not issue any violations
2 under Section 2304(a). This suspension does not affect Public Works actions under the
3 authority of Sections 2304(b) or 2304(c), which include, but are not limited to, abatement of
4 graffiti on public property and performance of immediate abatement on private property if the
5 amount, frequency, level, type, or scope of graffiti warrants such action.

6 (c) Pursuant to Ordinance No. 64-21, Public Works Code Sections 2305 and 2306
7 have been suspended, but only as those sections apply to graffiti on private property. These
8 suspensions do not affect other Public Works actions under the authority of Sections 2305
9 and 2306.

10 (d) The suspensions mandated in Ordinance No. 64-21, referenced in subsections (b)
11 and (c) above, are set to remain in place until 90 days after the expiration of the Mayor's
12 Emergency Proclamation regarding the COVID-19 pandemic, issued on February 25, 2020,
13 and amended or supplemented thereafter from time to time (the "Mayor's Emergency
14 Proclamation").

15 (e) Ordinance No. 64-21 also waived the collection of certain unpaid fees and fines, as
16 of January 1, 2021, assessed under Public Works Code Sections 2304(a), 2306, and
17 2307.5(b). In addition, it waived fees and fines under Section 2307.6 to the extent they relate
18 to private property.

19 (f) Ordinance No. 64-21 authorizes Public Works to resume the enforcement,
20 issuance, and collection of fees and fines, referenced in subsection (e) above, except for
21 those that were waived by Ordinance No. 64-21, upon the expiration of the Mayor's
22 Emergency Proclamation.

23 (g) The date that the Mayor's Emergency Proclamation will expire is uncertain. There
24 are public health and safety benefits to reinstating in full enforcement of Public Works Code
25 Sections 2304(a), 2305, and 2306, and collection of fees and fines under the Graffiti Removal

1 and Abatement Ordinance, including promoting the uniform enforcement of laws, the
2 abatement of public nuisances, and the reduction of visual pollution.

3
4 Section 2. Article 23 of the Public Works Code is hereby amended by revising Section
5 2304, to read as follows:

6 **SEC. 2304. VIOLATIONS.**

7 (a) **Notice of Violation.** Where the Director determines that any property contains
8 graffiti in violation of Section 2303, the Director may issue a notice of violation to the property
9 owner and/or any Offending Party. At the time the notice of violation is issued, the Director
10 shall take one or more photographs of the alleged graffiti, and shall make copies of the
11 photographs available to the property owner and/or any Offending Party upon request. The
12 photographs shall be dated and retained as a part of the file for the violation. The notice shall
13 give the owner and/or any Offending Party 30 calendar days from the date of the notice to
14 either remove the graffiti or request a hearing on the notice of violation, and shall set forth the
15 procedure for requesting the hearing. The notice shall also inform the owner and/or any
16 Offending Party that where the owner and/or any Offending Party fail to either remove the
17 graffiti or request a hearing within 30 calendar days from the date of the notice, the Director
18 may initiate proceedings in accordance with this Article 23 to enter upon the property and
19 abate the graffiti. The notice shall inform the owner and/or any Offending Party that should the
20 Director need to abate the graffiti, ~~that~~ the owner and/or any Offending Party shall be liable for
21 all costs of enforcement and abatement. The notice shall further inform the owner and/or any
22 Offending Party that the minimum charge for removing graffiti is the greater of either \$500 or
23 the actual cost to the City, including overhead and administrative costs, as well as attorneys'
24 fees where the Director has elected to seek recovery of attorneys' fees. The Director shall
25 serve the notice of violation as follows:

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

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

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

6 (B) The owner of record; and

7 (C) Any Offending Party.

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

13 Service, as referenced in ~~required by~~ subsections (a)(2) and (3), may be made by
14 personal service or by certified mail.

15 * * * *

16
17 Section 3. Terminating Suspension of Certain Provisions of the Graffiti Removal and
18 Abatement Ordinance.

19 The suspension of Public Works Code Sections 2304(a), 2305, and 2306 as set forth in
20 Ordinance No. 64-21 is hereby lifted. As a result of the suspension being lifted, those
21 provisions are fully operative.

22
23 Section 34. Reinstating the Collection of Certain Fees and Fines Assessed under the
24 Graffiti Removal and Abatement Ordinance.

1 The prohibition imposed by Ordinance No. 64-21 on Public Works collecting certain
2 fees and fines under Public Works Code Sections 2304(a), 2306, and 2307.5(b), and Section
3 2307.6, as it applies to private property, is hereby ended. As a result of the prohibition
4 ending, those provisions are fully operative. However, any fines or fees that were waived by
5 Ordinance No. 64-21 shall remain waived.

6
7 Section 45. Notice of Ordinance.

8 (a) Public Works shall provide information on its website summarizing the provisions of
9 this ordinance.

10 (b) The Clerk of the Board of Supervisors shall include a copy of this ordinance in
11 Board File No. 210258, the file for Ordinance No. 64-21. In addition, the Clerk shall include
12 on the Board's website notice for Ordinance No. 64-21 a cross-reference to this ordinance.

13
14 Section 6. Report to the Board of Supervisors.

15 Within 60 days of the effective date of this ordinance, Public Works shall provide in a
16 report to the Board of Supervisors any forms necessary for the administration of the Graffiti
17 Abatement Ordinance.

18
19 Section 57. Effective Date; Effect of Ordinance.

20 (a) This ordinance shall become effective 30 days after enactment. Enactment occurs
21 when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not
22 sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the
23 Mayor's veto of the ordinance.

24 (b) The primary effect of this ordinance is to repeal Ordinance No. 64-21 in its entirety.
25 Accordingly, on the effective date of this ordinance, Ordinance No. 64-21 has no further force

1 and effect, except, as stated in Section 3 of this ordinance, that any fines or fees that were
2 waived by Ordinance No. 64-21 shall remain waived.

3
4 APPROVED AS TO FORM:
5 DAVID CHIU, City Attorney

6 By: /s/ Austin M. Yang
7 AUSTIN M. YANG
8 Deputy City Attorney

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REVISED LEGISLATIVE DIGEST

(3/10/2022, Amended in Committee)

[Public Works Code - Graffiti Abatement - Lifting Suspension of Issuance of Certain Violations; Reinstating Collection of Certain Fees and Fines]

Ordinance lifting the suspension of certain provisions of the Graffiti Removal and Abatement Ordinance regarding issuance of certain violations, and reinstating the collection of certain assessed fees and fines; requiring notice to certain Community Benefits Districts, Business Improvement Districts, or Green Benefits Districts as those districts are defined in Article 15 and 15A of the Business and Tax Regulation Code; and requiring Public Works to report to the Board of Supervisors within 60 days the forms necessary to implement the Graffiti Abatement Ordinance; and affirming the Planning Department's determination under the California Environmental Quality Act

Existing Law

The Graffiti Removal and Abatement Ordinance, Public Works Code Article 23, establishes a program for Public Works regulation and enforcement of the removal of graffiti on both private and public property. Enforcement involves the issuance of violations and in some cases imposition of fees and fines for the graffiti and/or failure to abate.

Ordinance No. 64-21, suspended Public Works Code Section 2304(a), with the result that Public Works may not issue any violations under Section 2304(a). Ordinance No. 64-21 also suspended Public Works Code Sections 2305 and 2306, but only as those sections apply to graffiti on private property. Ordinance No. 64-21 also waived the collection of certain unpaid fees and fines, as of January 1, 2021, assessed under Public Works Code Sections 2304(a), 2306, and 2307.5(b). In addition, it waived fees and fines under Section 2307.6 to the extent they relate to private property. Ordinance No. 64-21 is effective until the expiration of the Mayor's Emergency Proclamation.

Amendments to Current Law

This ordinance repeals Ordinance No 64-21.

On March 10, 2022, the ordinance was amended to require the Public works sent a copy of any Notice of Violation to Community Benefits Districts, Business Improvement Districts, or Green Benefits Districts in the neighborhood where the NOV is issued. It was also amended to require Public Works to provide to the Board of Supervisors any forms used to implement or enforce the Graffiti Abatement Ordinance within 60 days of the effective date of the ordinance.

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BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. (415) 554-5184
Fax No. (415) 554-5163
TDD/TTY No. (415) 554-5227

November 15, 2021

File No. 211151

Lisa Gibson
Environmental Review Officer
Planning Department
49 South Van Ness Ave, Suite 1400
San Francisco, CA 94103

Dear Ms. Gibson:

On November 2, 2021, Supervisor Peskin introduced the following legislation:

File No. 211151 [Public Works Code - Graffiti Abatement - Lifting Suspension of Issuance of Certain Violations; Reinstating Collection of Certain Fees and Fines]

Ordinance lifting the suspension of certain provisions of the Graffiti Removal and Abatement Ordinance regarding issuance of certain violations, and reinstating the collection of certain assessed fees and fines; and affirming the Planning Department's determination under the California Environmental Quality Act.

This legislation is being transmitted to you for environmental review.

A handwritten signature in black ink, appearing to read "Angela Calvillo".

Angela Calvillo, Clerk of the Board

By: Alisa Somera, Clerk

Public Safety and Neighborhood Services Committee

Attachment

- c: Devyani Jain, Deputy Environmental Review Officer
- Joy Navarrete, Environmental Planner
- Don Lewis, Environmental Planner

Not defined as a project under CEQA Guidelines Sections 15378 and 15060(c)(2) because it would not result in a direct or indirect physical change in the environment.

02/16/2022

A handwritten signature in black ink, appearing to read "Joy Navarrete".



CITY AND COUNTY OF SAN FRANCISCO
LONDON BREED, MAYOR

OFFICE OF SMALL BUSINESS
DIRECTOR KATY TANG

January 19, 2022

Ms. Angela Calvillo, Clerk of the Board
City Hall Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

RE: BOS File No. 211151 - Public Works Code - Graffiti Abatement - Lifting Suspension of Issuance of Certain Violations; Reinstating Collection of Certain Fees and Fines

Dear Ms. Calvillo,

On January 10, 2022 the Small Business Commission (SBC) heard BOS File No. 211151 - Public Works Code - Graffiti Abatement - Lifting Suspension of Issuance of Certain Violations; Reinstating Collection of Certain Fees and Fines. Lee Hepner, Legislative Aide to Supervisor Peskin and Jimmer Cassiol, Department of Public Works (DPW), presented the legislation.

After extensive discussion, the SBC unanimously voted (5-0) to support this legislation contingent upon the addition of the following recommendations:

For the duration of the local emergency:

- DPW reinstate Notices of Violation to notify property owners of their responsibilities, but make clear that no financial penalties will be issued.

For the program in perpetuity:

- If small business tenants (businesses with 100 or fewer employees) who occupy a property receive a graffiti abatement notice, DPW should grant automatic hardship exemptions and offer to:
 - o Abate the graffiti free of charge, or
 - o Provide a grant to the small business to cover the cost of abatement once completed.

If the above recommendation is not feasible, at the very minimum:

- DPW develop alternative remedies whereby property owners (and/or business tenants) can collaborate with the City on graffiti abatement, prioritizing strategies (2) and (3) currently listed in Public Works Code (Article 23, Section 2306), which allows the DPW to:
 - o Provide property owners with paint to abate graffiti within 10 days
 - o Remove the graffiti at no cost to the property owner if hardship exists
- In conjunction with prioritizing collaborative remedies for graffiti abatement, reassess the abatement notice language to lead with the above-stated alternative remedies.

Discussion

The SBC supports graffiti abatement and recognizes the negative impacts of graffiti on neighborhoods and commercial corridors. At the same time, the SBC recognizes that small businesses who experience graffiti are themselves victims of vandalism. As such, the SBC recommends a supportive abatement strategy over a punitive one.

A review of graffiti abatement strategies in other cities shows that comparable municipalities have adopted a supportive abatement policy of covering the cost of graffiti abatement at no charge to property owners. Those cities include: Boston, Chicago, Dallas, Los Angeles, Montreal, and New York City.¹

While property owners may be the intended target of these fees and penalties, most commercial leases require the small business tenant to cover these costs. Given the current surge in COVID cases, the high number of small business closures over the past two years, and the fact that San Francisco's small businesses continue to lag far behind the rest of the country in economic recovery, the SBC feels that now is not the right time to reinstate fines and fees.

Members of the SBC note that instances of graffiti are not uniform across the City; communities of color often experience greater rates of vandalism as well as enforcement. A reinstatement of fees and fines for graffiti abatement will disproportionately impact small businesses in communities of color who also felt the greatest negative impacts of COVID-19.²

The current suspension of certain provisions of the Graffiti Removal and Abatement Ordinance came as a direct result of a [Small Business Commission Resolution](#) in February 2021 which included a recommendation that a moratorium on such fees and fines be implemented for the duration of the local emergency:

RESOLVED, that the Notice of Violation and Abatement Order form utilized by the Department of Public Works be updated to include more customer friendly language that emphasizes compliance and include information regarding language services; and therefore be it,

RESOLVED, that the Notice of Violation and Abatement Order form utilized by the Department of Public Works be updated to include resources that may be available to the small business that would assist with compliance; and be it

RESOLVED, that the Department of Public Works be urged to work with the Office of Economic and Workforce Development and the Office of Small Business to collect and better understand what those resources are; and be it,

RESOLVED, that the Notice of Violation and Abatement Order form utilized by the Department of Public Works be updated to include a notice regarding the local emergency and resources to help assist businesses during this time; and be it,

¹ <https://sfosb.org/sites/default/files/documents/SBC/Legislative%20Review%20211151.pdf>

²

https://sfosb.org/sites/default/files/documents/SBC/Covid%20Impact%20Final%20Report%20with%20Survey_May%2028%202021.pdf Chart 39, "Business Closures by Business Owner Ethnicity."

RESOLVED, that for the duration of the local emergency, a moratorium be placed on the issuance of fees and fines related to the abatement of certain conditions outlined in the Notice of Violation and Abatement Order.³

The SBC thanks Supervisor Peskin and his staff, as well as the Department of Public Works for their ongoing engagement on this important issue. Thank you for considering the Commission's recommendations. Please feel free to contact me should you have any questions.

Sincerely,



Katy Tang
Director, Office of Small Business

³ https://sfosb.org/sites/default/files/documents/SBC/SBC%20RESO%202021-002-%20DPW%20and%20Small%20Business_1.pdf

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MEMORANDUM

TO: Carla Short, Interim Director, Public Works

FROM:  Alisa Somera, Clerk, Public Safety and Neighborhood Services Committee
Board of Supervisors

DATE: November 15, 2021

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Public Safety and Neighborhood Services Committee has received the following proposed legislation, introduced by Supervisor Peskin on November 2, 2021:

**File No. 211151 Public Works Code - Graffiti Abatement - Lifting
Suspension of Issuance of Certain Violations; Reinstating
Collection of Certain Fees and Fines**

Ordinance lifting the suspension of certain provisions of the Graffiti Removal and Abatement Ordinance regarding issuance of certain violations, and reinstating the collection of certain assessed fees and fines; and affirming the Planning Department's determination under the California Environmental Quality Act.

You are being provided this informational referral since the legislation may affect your department.

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

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November 15, 2021

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Environmental Review Officer
Planning Department
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Angela Calvillo, Clerk of the Board

By: Alisa Somera, Clerk

Public Safety and Neighborhood Services Committee

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- Joy Navarrete, Environmental Planner
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