

File No. 110281

Committee Item No. 3
Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS AGENDA PACKET CONTENTS LIST

Committee: City Operations and Neighborhood Ser. Date: April 25, 2011

Board of Supervisors Meeting Date _____

Cmte Board

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| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Legislative Digest |
| <input type="checkbox"/> | <input type="checkbox"/> | Budget and Legislative Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Ethics Form 126 |
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Completed by: Victor Young
Completed by: Victor Young

Date: April 21, 2011
Date: _____

An asterisked item represents the cover sheet to a document that exceeds 25 pages. The complete document is in the file.

1 [Public Works Code, Administrative Code, and Health Code - Consolidate Existing
2 Department of Public Works' Nuisance Enforcement, Abatement, and Cost Collection
3 Processes]

4 **Ordinance amending portions of the Public Works Code, Administrative Code, and**
5 **Health Code to: 1) consolidate and streamline Department of Public Works'**
6 **enforcement, abatement, and cost collection processes for public nuisances, including**
7 **amendments to Administrative Code Chapter 80, Sections 80.3 and 80.8, Public Works**
8 **Code Sections 170, 174.1, 707.1, 727, 735, and Health Code Article 6, Section 291.2; 2)**
9 **repealing Public Works Code Sections 174.2 through 174.13, 728 through 734, and**
10 **735.1 through 735.4; 3) renumbering Public Works Code Section 707.1 as 706.9; and 4)**
11 **to make environmental and other required findings.**

12 NOTE: Additions are *single-underline italics Times New Roman*;
13 deletions are *strike-through italics Times New Roman*.
14 Board amendment additions are double-underlined;
15 Board amendment deletions are ~~strikethrough normal~~.

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

17 **Section 1. Findings.**

18 (1) The Department of Public Works ("Department") enforces a broad range of
19 nuisance and anti-blight regulations dispersed throughout the San Francisco Municipal
20 Code, including the Public Works Code, the Police Code, the Health Code, and the
21 Administrative Code. In order to maintain public health and promote the general welfare,
22 the City, acting through DPW and other City agencies, responds to complaints regarding
23 public nuisances, performs inspections, enforces the anti-nuisance provisions, and
24 conducts abatement actions to maintain the City's public right-of-ways in safe and blight-
25 free condition.

1 Departments. As a consequence, nuisance and anti-blight Code provisions contain minor
2 variations in enforcement processes that inhibit the Department's ability to administer
3 related enforcement actions through a consolidated citation, appeal, abatement, and
4 collection process.

5 (3) The City adopted a comprehensive Community Preservation and Blight
6 Prevention Ordinance ("Blight Ordinance") in November 2008 (Ordinance No. 256-08)
7 establishing a procedure for uniform abatement processes for nuisances throughout the
8 City. The Blight Ordinance provided the Department with an abatement process in
9 addition to the option of using code enforcement provisions as they already existed; the
10 Blight Ordinance left other code provisions in place and unaffected.

11 (4) The Blight Ordinance, however, focused primarily on abatement processes. It
12 did not consolidate the City's processes for issuing administrative citations for violations of
13 Municipal Code provisions restricting nuisances in the public right-of-way. The Blight
14 Ordinance gave the Department the option of utilizing the administrative citation process
15 set forth in Administrative Code Chapter 100, but did not integrate the Blight Ordinance's
16 abatement process with the enforcement process set out in Police Code Article 1, Section
17 39-1 (referenced herein as "Section 39-1"). Multiple regulations in the Public Works Code,
18 the Municipal Health Code, and the Police Code provide for Department enforcement via
19 Section 39-1 including, but not limited to:

20 a. Police Code, Article 1:

- 21 i. Section.33 (throwing/sweeping litter on the sidewalk or street)
- 22 ii. Section 34 (accumulation of litter on the sidewalk)
- 23 iii. Section 35(a)(3) (misuse of City litter receptacle)
- 24 iv. Section 63(a) (obstructions of streets and sidewalks)

25 b. Health Code:

- i. Section 40(b) (not picking up dog feces / no container for feces)
- ii. Section 283 (improper containerization of garbage)
- iii. Section 581 (nuisance – health/safety)

c. Public Works Code

- i. Section 170(a) (garbage receptacles prohibited on sidewalk, street, or any public right-of-way before 6 p.m. or on a non-collection day)
- ii. Section 170(b) (lock required on refuse can, container, or receptacle)
- iii. Section 173 (placement and maintenance of litter receptacles)
- iv. Sections 174 through 174.13 (sidewalk nuisance and enforcement)
- v. Section 184 (posting of signs and handbill ordinances)
- vi. Section 724.4 (condition of construction site)
- vii. Section 808 (injury to trees or injury to landscape materials)

(5) It is therefore in the public interest to amend the Blight Ordinance in order to integrate the Section 39.1 citation process with the nuisance abatement process.

(6) In addition, the Public Works Code contains code sections that incorporate custom enforcement and abatement procedures addressing specific types of public nuisance. Certain of these stand-alone procedures were adopted to address specific legal requirements attributable to the nuisance in question. Other code sections, however, have individualized requirements primarily as a result of the layered amendments to the Public Works Code over time. Accordingly, there is potential to eliminate redundant or conflicting procedures in the Public Works Code by enabling uniform application of primary administrative enforcement processes under Police Code Section 39-1 and the Blight Ordinance.

1 (7) Consolidation of public nuisance enforcement procedures with regard to
2 administrative citations, appeals, abatement of violations, and cost/debt collection will
3 promote the public welfare by streamlining the City's enforcement process for nuisance
4 and blight conditions.

5 (8) The following sections of the Public Works Code will benefit from further
6 consolidation of DPW procedures:

- 7 a. Section 706 (sidewalk revitalization)
- 8 b. Section 727 (drifting or blowing of sand or dirt)
- 9 c. Section 735 (blighted vacant lots)

10 (9) The following sections of the Health Code will also benefit from further
11 consolidation of DPW procedures:

- 12 a. Section 291.1 et seq. (garbage collection services)

13 (10) The Planning Department has determined that the actions contemplated in this
14 Ordinance are in compliance with the California Environmental Quality Act (California
15 Public Resources Code sections 21000 et seq.). Said determination is on file with the
16 Clerk of the Board of Supervisors in File No. 110281 and is incorporated herein by
17 reference.

18
19 Section 2. The San Francisco Administrative Code is hereby amended by amending
20 Chapter 80, Sections 80.3 and 80.8, to read as follows:

21 **SEC. 80.3. ADMINISTRATIVE ENFORCEMENT PROCEDURES**

22 (a) Purpose. The Board of Supervisors finds that enforcement of anti-blight
23 provisions of the Municipal Code is vital to ensuring quality of life in San Francisco's
24 neighborhoods and in the City and County as a whole. A centralized administrative
25 enforcement program with staff will promote coordination of anti-blight efforts across City

1 departments, including, but not limited to, the Department of Public Works, the Planning
2 Department, the Department of Building Inspections, and the Department of Public Health.
3 This Chapter is intended to promote the general health, safety and welfare of the people of
4 the City by promoting uniform, fair, and efficient enforcement of anti-blight provisions of the
5 Municipal Code and related departmental regulations.

6 The Director of Public Works is authorized to administer and enforce the provisions of
7 this Chapter. All staff to whom the Director has delegated enforcement responsibilities are
8 authorized to inspect property and to take any other enforcement actions as may be required
9 or appropriate to administer or enforce the provisions of this Chapter.

10 Nothing in this Chapter shall be construed to limit any right or remedy otherwise
11 available in law or equity to any party harmed by a blighted property, nor shall this Chapter in
12 any way limit the City's right to enforcement under any other provision of the Municipal Code
13 or state law or create a duty or obligation on the part of the City to enforce this Chapter. (b)

14 Definitions.

15 "Blight." The presence of any one or more of the following conditions on property
16 constitutes property blight: (i) any condition that constitutes a public nuisance as defined in
17 California Civil Code Sections 3479- 3480, including but not limited to the conditions defined
18 in San Francisco Public Works Code Section 174; (ii) any condition of deterioration or
19 disrepair that creates a substantial adverse impact on neighboring properties, including but
20 not limited to the conditions defined in San Francisco Public Works Code Section 735; or (iii)
21 any violation of the San Francisco Municipal Code that is visible from the public way and
22 creates a substantial adverse impact on neighboring properties. Notwithstanding the above
23 definition, public nuisances pertaining to unsafe buildings, structures, or property conditions,
24 as defined by Section 102A of the Building Code, shall not constitute blight for purposes of
25 this Chapter and shall remain within the exclusive enforcement authority of the Department of

1 Building Inspection to the extent required by state and local law. Blight includes, but is not
2 limited to, the following enumerated conditions:

3 (A) Property, whether improved or not, which is not kept substantially clean
4 and free from accumulations including, but not limited to, overgrown, dead or decayed trees,
5 weeds or other vegetation, rank growth, rubbish, junk, garbage, litter, debris, flyers or
6 circulars.

7 (B) Buildings or structures which are unpainted or the exterior paint is
8 substantially worn off, provided, however, that nothing in this section shall be construed to
9 require an owner to paint a building where the architectural style indicates it was intended to
10 be unpainted, such as a brown shingle building.

11 (C) Buildings or structures or significant sections thereof including, but not
12 limited to, awnings, canopies, exterior stairs, roof, foundation, walls, fences, signs, retaining
13 walls, driveways, or walkways which are substantially deteriorated or defaced, or windows
14 which are missing or broken. For the purposes of this section "defaced" includes, but is not
15 limited to, writings, inscriptions, figures, scratches, or other markings commonly referred to as
16 "graffiti."

17 (D) Property which contains, in the outdoor area, any refrigerator, washing
18 machine, sink, stove, heater, boiler, tank or any other household equipment, machinery,
19 furniture, or item, appliance or appliances, boxes, lumber, dirt or debris, trash, garbage or
20 refuse cans, or any items other than those commonly stored outdoors, or any parts of such
21 items, for a period of time in excess of seventy-two consecutive hours. This subsection does
22 not prohibit machinery installed in the rear setback areas for household or recreational use,
23 furniture designed and used for outdoor activities, trash cans in the front yard during the
24 twenty-four hour period allowed for garbage pick-up and garbage bins or debris boxes for
25 which a valid permit has been issued by the City.

1 Notwithstanding the foregoing, this Chapter shall not apply to building, structural, or
2 property conditions that present public safety risks under the San Francisco Building Code
3 and construction codes. The Department of Building Inspection and the Fire Department
4 retain their respective jurisdiction over such conditions pursuant to applicable state and local
5 law.

6 "Director." The Director of Public Works or the Director's designee, including any
7 Enforcement staff so designated by the Director to carry out responsibilities under this
8 Chapter.

9 "Staff." Employees charged with enforcement of anti-blight provisions pursuant to this
10 Chapter.

11 "Owner" or "property owner." The owner of the property, her agent, and/or any lessee,
12 occupant, or other person having charge or control over the property.

13 (c) Procedures of this Chapter – Cumulative. The determination by the City
14 to seek enforcement of its code requirements pursuant to this Chapter is solely at the City's
15 discretion and is only one option available to the City to seek redress for the violation of its
16 ordinances. By adopting this Chapter, the Board does not intend to limit the ability of the City
17 to use any other remedy, civil or criminal, that may be available in a particular case. The City
18 may use the procedures set forth herein as an alternative to, or in conjunction with, any other
19 available remedy and in any order that seems appropriate to the City.

20 All property blight conditions that are required to be abated according to the provisions
21 and permit requirements of this Chapter shall be subject to all provisions of the Municipal
22 Code including, but not limited to, all property improvement, zoning and fire code provisions.

23 The Director's election to utilize the procedures set forth in this Chapter shall not affect
24 the City Attorney's independent authority under the Charter to pursue a civil action against a
25 property owner.

1 (d) Enforcement. In consultation with relevant City agencies, the Director shall
2 oversee staff with direct responsibility for enforcing the blight provisions of this Chapter. Staff
3 shall be authorized under the Director's authority to inspect properties for blighted conditions
4 as defined in this Chapter and elsewhere in the Municipal Code. Pursuant to this Chapter,
5 staff shall have authority to issue notices of violation and/or take other enforcement actions
6 consistent with the requirements of this Chapter, including but not limited to initiation of
7 abatement actions pursuant to Section 80.4, ~~or~~ and pursuing administrative penalties pursuant
8 to Administrative Code Chapter 100 or Police Code Article 1, Section 39-1, the provisions of
9 which are hereby incorporated into this Chapter. Nothing in this Chapter shall be interpreted
10 as restricting or otherwise limiting the inspection and enforcement authority conferred upon
11 other City employees by other provisions of the Municipal Code.

12
13 **SEC. 80.8. COST RECOVERY.**

14 (a) Blight Abatement Fund. The City shall maintain a special revolving fund designated
15 as the "Blight Abatement Fund." The Blight Abatement Fund is established as a Category 6
16 special fund within the meaning of Administrative Code Article XIII, Section 10.100-1, meaning
17 that funds may be appropriated, interest shall not accumulate and that any fund balance shall
18 carry forward year to year. Payments shall be made out of said fund upon the demand of the
19 Director. The Blight Abatement Fund shall be used exclusively to defray costs and expenses
20 incurred by the City in ascertaining violations, enforcing the provisions of this Chapter, and
21 doing or causing to be done the necessary work of repair or other abatement work performed
22 pursuant to this Chapter. This fund may also be used to defray the costs of the City
23 performing any blight abatement where it is determined that requiring private abatement of a
24 blighted condition by a property owner would impose an extreme financial burden on that
25 property owner.

1 All funds collected pursuant to this Chapter shall be paid to the Controller who shall
2 credit the same to the Blight Abatement Fund.

3 (b) Expenses - Accounting and Report Required. The Director shall keep an itemized
4 account of the expense incurred by the City for enforcement and abatement actions
5 performed pursuant to the provisions of this Chapter. Upon the completion of any enforcement
6 or abatement action, the Director shall prepare an invoice specifying the actions taken, the
7 itemized and total cost of the actions, and any allowable inspection fees, a description of the
8 property where the action was performed, and the names and addresses of the persons
9 entitled to notice pursuant to Section 80.5(e). This invoice shall be served on such persons in
10 accordance with the provisions of Section 80.5(f). Such invoices may be served upon the
11 completion of each enforcement or abatement action or may be served upon the completion
12 of all necessary enforcement and abatement actions.

13 (c) Payment Required. This invoice shall be paid within 30 days of the date it is served
14 or within the time and in the manner specified by the Controller or Bureau of Delinquent
15 Revenue Collection. Such payment shall be made to the Controller.

16 (d) Failure to Pay. If the responsible party fails to pay the invoice within thirty days of
17 service, the Director may take such action to collect the fees as he or she deems appropriate,
18 including (i) referral of the matter to the Bureau of Delinquent Revenue Collection under
19 Article V, Section 10.39 of the Administrative Code, (ii) initiation of lien proceedings under
20 Article XX, Section 10.230 et seq. of the Administrative Code whereby the amount of the lien
21 shall be payable in the same time and manner as outstanding ad valorem real property taxes
22 due, consistent with Article XX, Section 10.236, and/or (iii) requesting that the City Attorney
23 pursue collection of the penalties imposed against the responsible party in a civil action. The
24 City Attorney may request its attorneys' fees in any action that he or she pursues to collect the
25 administrative penalties or to enforce collection of the penalties.

1 Notwithstanding anything to the contrary under Article XX, Sections 10.230 et seq., if the
2 Director initiates lien proceedings to collect the costs of abating a nuisance, then the Board of
3 Supervisors may order that the amount of the lien be specially assessed against the parcel pursuant to
4 its authority under Sections 25845, 38773.5, or 54988 of the California Government Code. Upon such
5 an order, the entire unpaid balance of the costs, including administrative costs and any penalty and
6 interest payments on the unpaid balance to the date that the Director reports to the Board shall be
7 included in the special assessment lien against the property. The Director shall report charges against
8 delinquent accounts to the Board of Supervisors at least once each year. At the time the special
9 assessment is imposed, the Director shall give notice to the property owner by certified mail, and shall
10 inform the property owner that the property may be sold by the Tax Collector for unpaid delinquent
11 assessments after three years. The assessment may be collected at the same time and in the same
12 manner as ordinary municipal taxes are collected, and shall be subject to the same penalties and
13 procedure and sale in case of delinquency as provided for ordinary municipal taxes. All tax laws
14 applicable to the levy, collection and enforcement of ordinary municipal taxes shall be applicable to
15 the special assessment. However, if any real property to which a cost of abatement relates has been
16 transferred or conveyed to a bona fide purchaser for value, or if a lien of a bona fide encumbrancer for
17 value has been created and attaches thereon, prior to the date on which the first installment of taxes
18 would become delinquent, then the cost of abatement shall not result in a lien against the real property
19 but instead shall be transferred to the unsecured roll for collection.

20
21 Section 3. The San Francisco Health Code is hereby amended by amending Article 6,
22 Section 291.2, to read as follows:

23 **SEC. 291.2. FAILURE TO INITIATE SERVICE, MAINTAIN ADEQUATE SERVICE,**
24 **OR TO PROVIDE SUFFICIENT REFUSE CONTAINERS**

1 When an owner fails to initiate adequate refuse collection service within 15 days of
2 occupancy of a Dwelling or commercial property by any person, including a business entity, or
3 fails to maintain adequate refuse collection service, the Director will evaluate the need for
4 service and what would constitute adequate service in this context, and, where appropriate,
5 give the Owner an order from the Director that such service or additional service is required.
6 In determining the need for service or additional service, the Director may make use of any
7 relevant information or evidence, including information provided by the Collector regarding the
8 existing level of service. A copy of the Director's order will be sent to the Collector. If the
9 Owner does not arrange with the Collector for service within 15 days from the date of mailing
10 of the order, or request within that time a hearing before the Director to dispute a service or
11 change of service requirement, then the Collector shall, consistent with the Director's order,
12 initiate, maintain, or increase refuse collection service for said dwelling or commercial
13 property.

14 When in the judgment of the Director additional refuse containers are required, they
15 shall be provided by the Owner upon written notification from the Director.

16 The Director, in consultation with the Department of the Environment and after a public
17 notice and hearing, may adopt forms, regulations, and guidelines to ensure the payment and
18 collection of refuse services from any commercial property managers who fail to initiate or
19 maintain sufficient refuse service, including standards and criteria for determining whether a
20 Commercial property has provided for sufficient refuse service, or to otherwise implement and
21 enforce Sections 291 et seq.

22 The Director of Public Health, or his or her designee, may impose administrative fines
23 for violations of Sections 291.1 and 291.2, or any rules or regulations adopted by the Director
24 to implement and enforce Sections 291 et seq. San Francisco Administrative Code Chapter
25 100, "Procedures Governing the Imposition of Administrative Fines," as amended, is hereby

1 incorporated in its entirety and shall govern the imposition, enforcement, collection, and
2 review of administrative citations issued to enforce this Chapter and any rule or regulation
3 adopted pursuant to this Chapter; provided, however, that the Director may adopt regulations
4 providing for lesser penalties than those provided in Administrative Code Section 100.5.

5 Notwithstanding the foregoing, if Director delegates authority to the Department of Public Works to
6 implement and enforce Sections 291 et seq., the Department of Public Works may elect to assess,
7 enforce, and collect administrative penalties in accordance with Section 39-1 of the Police Code.

8 No person who is the owner, tenant, manager, employee, contractor, or visitor of a
9 multifamily dwelling or of a multi-tenant commercial property shall be subject to fines or
10 penalties for failure to provide adequate refuse collection service, unless and until the Director
11 has adopted specific regulations establishing the responsibilities of such persons under this
12 Article.

13 The fine for any violation at a dwelling or commercial property which generates less
14 than one cubic yard of refuse per week may not initially exceed \$100.

15 In addition to any administrative penalty assessed pursuant to this Article, the Director
16 may assess the responsible Owner the reasonable enforcement costs incurred by the City,
17 including reasonable attorneys' fees. The imposition of enforcement costs is within the
18 discretion of the Director.

19
20 Section 4. The San Francisco Public Works Code is hereby amended by amending
21 Sections 170, 174.1, 707.1, 727, and 735, and repealing Sections 174.2 through 174.13, 728
22 through 734, 735.1 through 735.4, to read as follows:

23 **SEC. 170. GARBAGE RECEPTACLES.**

24 (a) **Garbage Receptacles Prohibited on Sidewalk, Street, or Any Public Right-of-**
25 **Way.** Except as otherwise provided in Sections 170.1 and 173, Chapter X, Part II, San

1 Francisco Municipal Code (Public Works Code), no person, firm or corporation occupying or
2 having charge or control of any premises shall place or cause to be placed, or suffer to
3 remain, upon the sidewalk, street or any other dedicated public right-of-way, any can,
4 container or receptacle used for the collection of garbage, refuse, ashes, cinder, sludge, offal,
5 broken glass, crockery, tins, boxes, animal or vegetable matter, rubbish or other like matter,
6 recycling, or green waste, except on the day the contents of said receptacle are to be
7 collected by the licensed collector thereof or after the hour of 6:00 p.m. of the day immediately
8 prior to the day of said collection.

9 (1) Any person, firm, or corporation occupying or having charge of any
10 commercial premises shall remove any such receptacle from the sidewalk, street, or other
11 dedicated public right-of-way immediately after the contents of said receptacle have been
12 collected or immediately upon opening said premises for business on the day of said
13 collection.

14 (2) Any person, firm, or corporation occupying or having charge of any
15 residential premises shall remove any such receptacles from the sidewalk, street, or other
16 dedicated public right-of-way within twenty-four (24) hours after placing said receptacles out
17 for collection and after the contents of the said receptacle have been collected.

18 (3) Said receptacles shall be returned to an enclosed area or other area that
19 blocks views of the receptacles from the public right-of-way. Under no circumstances are said
20 receptacles to be stored in plain sight of the public when viewed from any public right-of-way
21 unless said receptacles have been placed out for collection.

22 (4) In addition to the requirements set forth in this Section, the Director, after a
23 public hearing, may adopt such orders, policies, regulations, rules, or standard plans and
24 specifications as he or she deems necessary in order to preserve and maintain the public
25 health, safety, welfare, and convenience.

1 (b) The Director of Public Works, in issuing any written notice to abolish, abate and
2 remove a nuisance under *Section 174.1 of this Article 5.1 of the Public Works Code*, may direct
3 any person, firm or corporation occupying or having charge of any commercial premises, to
4 securely lock every can, container or receptacle placed for collection pursuant to Section
5 170(a) on any area open to the public, to prevent access to the contents thereof by any
6 person other than the licensed refuse collector. Any such written notice shall be issued as set
7 forth in Section 174.1.

8 (c) Each violation of Subsection (a) shall constitute an infraction and shall be
9 punishable by a fine of not less than \$80.00 nor more than \$100.00; for a second offense by a
10 fine not less than \$150.00 nor more than \$200.00; and for each additional offense by a fine
11 not less than \$250.00 nor more than \$500.00. In the alternative, an administrative penalty not
12 to exceed \$250.00 may be assessed for each violation. Such penalty shall be assessed,
13 enforced and collected in accordance with Section 39-1 of the Police Code.

14
15 **SEC. 174.1. ABATEMENT.**

16 (a) It shall be the duty of the Director of Public Works to cause any person, firm or
17 corporation, including but not limited to any department, board or commission of the City and
18 County, that permits the accumulation of materials mentioned in Section 174 to be notified in
19 writing to abolish, abate and remove such nuisances. *The Director of Public Works may abate*
20 *nuisances under this Section in accordance with the procedures set forth in the Community*
21 *Preservation and Blight Reduction Act, Chapter 80 of the San Francisco Administrative Code,*
22 *including, but not limited to, its provisions for notice, abatement, penalties, cost recovery, and debt*
23 *collection against the parcel or parcels of land fronting the nuisance upon the sidewalk, driveway, curb*
24 *or gutter.*

1 (b) Notice may be given to the owner of the abutting property by personal service or by mailing
2 such notice, either by letter or postal card, to the owner of the abutting property as the same appears
3 on the last assessment rolls of the City and County of San Francisco. Notice may be given to a business
4 occupant of the abutting property by personal service or by mailing such notice, either by letter or
5 postal card, to the business mailing address indicated on the most recent application for a registration
6 certificate for the business operating at that address. Immediately after mailing any such notice, the
7 Director of Public Works shall cause a copy of the notice, printed on a card of not less than eight
8 inches by ten inches, to be posted in a conspicuous place on said property.

9 (c) The notice shall direct the owner of the abutting property, and/or the business occupying the
10 abutting property to abolish, abate and remove the nuisance within seven days of the mailing of the
11 notice. It shall further advise that the Director of Public Works will cause the removal or abatement if
12 the work is not completed as required in the notice, and that the owner of the abutting property and/or
13 the business occupying the abutting property will incur fines, charges and other penalties as provided
14 in this Article. The notice shall state the name, address and telephone number of the Department of
15 Public Works employee who may be contacted regarding the property in question. The owner of the
16 abutting property and/or the business occupying the abutting property shall become indebted to the
17 City and County for the costs and charges incurred by the City and County by reason of abatement and
18 removal of such nuisances.

19 (d) If the nuisance is not removed and abated within said seven days, the Director of Public
20 Works shall cause its removal and abatement.

21
22 **~~SEC. 174.2. PENALTIES FOR VIOLATION.~~**

23 ~~Any owner of property or any business occupying property which abuts a public sidewalk,
24 stairway or other pedestrian right of way for public pedestrian travel, or both such owner and business
25 jointly and severally, who fail to comply with the Director of Public Works' notice to abate the nuisance~~

1 *as specified in Section 174.1 of this Code shall be subject to an administrative penalty of not more than*
2 *\$1,000, assessed, enforced and collected in accordance with Section 39-1 of the Police Code. Further,*
3 *a violation of any of the provisions of this Article shall constitute an infraction. Upon conviction*
4 *thereof, said owner of the abutting property and/or the business occupying the abutting property shall*
5 *be punished for the first offense by a fine of not less than \$30 or more than \$100 and for a second and*
6 *each additional offense by a fine of not less than \$100 or more than \$500. The provisions of this*
7 *Section shall not apply to any department, board or commission of the City and County.*

8
9 **~~SEC. 174.3. LIEN ON PROPERTY AND RESTRICTIONS ON ISSUANCE AND~~**
10 **~~RENEWAL OF REGISTRATION CERTIFICATES.~~**

11 *(a) The costs and charges incurred by the City and County of San Francisco by reason of a*
12 *failure of the owner of the abutting property to abate and remove such nuisance, in addition to any civil*
13 *penalties assessed under Section 174.2, shall be an obligation to the City and County owed by the*
14 *owner of the property, and the City and County shall have a lien on the property in all aspects as*
15 *though notice had been given.*

16 *(b) The costs and charges incurred by the City and County of San Francisco by reason of a*
17 *failure of the business occupying the abutting property to abate and remove such nuisance, in addition*
18 *to any civil penalties assessed under Section 174.2, shall be an obligation to the City and County owed*
19 *by a business occupying the abutting property and shall restrict the issuance and renewal of business*
20 *registration certificates to the business as set forth in Part III of the Municipal Code, Section 1007.*

21
22 **~~SEC. 174.4. NOTICE OF COST AND CLAIM OF LIEN OR OBLIGATION.~~**

23 *(a) Upon completion of the abatement and removal of the nuisance, the Director of Public*
24 *Works shall ascertain the cost thereof. The costs shall also include additional charges for*
25 *administrative expenses of \$91 and a rate of one percent per full month compounded monthly on all*

1 ~~fees and charges due from the date of recordation of the lien, or from the date a verified claim is~~
2 ~~transferred to the Tax Collector pursuant to Section 174.5(b). In addition, the owner of the abutting~~
3 ~~property and/or business occupying the abutting property shall be obligated to the City and County for~~
4 ~~any civil penalties assessed under Section 174.2.~~

5 ~~(b) The Director of Public Works shall cause a notice to be mailed to the owner of abutting the~~
6 ~~property in the manner provided for mailing notice to abate, which shall demand payment to the~~
7 ~~Director of Public Works and shall give notice of claim of such lien and of the recording of the lien, in~~
8 ~~the event such amount is not paid as set forth in Section 174.5. The notice shall further demand that the~~
9 ~~owner take all necessary steps to comply with the order to prevent further violations of this Article. In~~
10 ~~the event that the owner fails to comply with the order within 30 days of the mailing date of the notice~~
11 ~~of cost and claim of lien, the Director of Public Works shall cause the premises to be cleaned. The~~
12 ~~Director of Public Works shall ascertain the cost of cleaning the property and the owner shall~~
13 ~~thereupon be obligated to the City and County in the amount of such cost of cleaning the property;~~
14 ~~and/or~~

15 ~~(c) The Director of Public Works shall cause a notice to be mailed to the business occupying the~~
16 ~~abutting property, which shall give notice of restrictions on issuance and renewal of registration~~
17 ~~certificates in the event such amount is not paid as set forth in Section 174.5. The notice shall further~~
18 ~~demand that the business occupying the abutting property take all necessary steps to comply with the~~
19 ~~order to prevent further violations of this Article. In the event that the business fails to comply with the~~
20 ~~order within 30 days of the mailing date of the notice of cost and restrictions on issuance and renewal~~
21 ~~of registration certificates, the Director of Public Works shall cause the premises to be cleaned. The~~
22 ~~Director of Public Works shall ascertain the cost of cleaning the property and the business occupying~~
23 ~~the abutting property shall thereupon be obligated to the City and County in the amount of such cost of~~
24 ~~cleaning the property.~~

1 **~~SEC. 174.5. RECORDING OF LIEN AND RESTRICTIONS ON REGISTRATION~~**
2 **~~CERTIFICATE ISSUANCE AND RENEWAL.~~**

3 ~~(a) If the cost of removal and abatement is not paid to the Director of Public Works within 30~~
4 ~~days after mailing of the notice to the owner, the Director of Public Works shall file in the Office of the~~
5 ~~Recorder of the City and County a verified claim containing a particular description of the property~~
6 ~~subject to the lien, the place and general nature of the abatement and removal for which the lien is~~
7 ~~claimed, the date of posting of said property or delivery of notice to abate and remove the nuisance, the~~
8 ~~name of the owner of the property and the amount of the lien claimed, which shall include the cost of~~
9 ~~verification and filing; and/or~~

10 ~~(b) If the cost or removal and abatement is not paid to the Director of Public Works within 30~~
11 ~~days after the mailing of the notice to the business occupying the abutting property, the Director of~~
12 ~~Public Works shall transfer to the Office of the Tax Collector of the City and County a verified claim~~
13 ~~containing a particular description of the property subject to the restriction, the place and general~~
14 ~~nature of the abatement and removal, the date of posting of said property or delivery of the notice to~~
15 ~~abate and removed the nuisance, the name of the business occupying the abutting property and the~~
16 ~~amount of the obligation claimed, which shall include the cost of verification and filing.~~

17
18 **~~SEC. 174.6. COLLECTION BY BUREAU OF DELINQUENT REVENUE.~~**

19 ~~The Director of Public Works shall also transmit to the Bureau of Delinquent Revenue, on the~~
20 ~~expiration of such 30 day period, a statement of each such unpaid cost of removal and abatement,~~
21 ~~together with the cost of verification and filing of the claim. The Bureau shall endeavor diligently to~~
22 ~~collect the same on behalf of the City and County by foreclosure of the lien or otherwise. Any and all~~
23 ~~amounts paid or collected shall replenish the "Department of Public Works Nuisance Abatement and~~
24 ~~Removal Fund," as provided in San Francisco Administrative Code Section 10.117-53.~~

1 **~~SEC. 174.7. -- RELEASE OF LIEN.~~**

2 *On payment of any such claim of lien, the Director of Public Works shall provide a release.*

3
4 **~~SEC. 174.8. -- COLLECTION OF COSTS AS A SPECIAL ASSESSMENT.~~**

5 *The Director of Public Works may initiate proceedings to make unpaid expenses for removal*
6 *and abatement of nuisances a special assessment against the parcels of property from which said*
7 *nuisance was removed or abated by the Director of Public Works.*

8
9 **~~SEC. 174.9. -- REPORT OF DELINQUENCIES TRANSMITTED TO BOARD OF~~**
10 **~~SUPERVISORS.~~**

11 *A report of delinquent charges shall be transmitted to the Board of Supervisors by the Director*
12 *of Public Works as necessary, but in no event less often than once each year, commencing with the first*
13 *anniversary of the date of enactment of this ordinance. Upon receipt by the Board of Supervisors of the*
14 *report, it shall fix a time, date and place for hearing the report and any protests or objections thereto.*

15
16 **~~SEC. 174.10. -- NOTICE OF HEARING.~~**

17 *The Board of Supervisors shall cause notice of the hearing to be mailed to the owner of the real*
18 *property to which the service was rendered not less than 10 days prior to the date of hearing.*

19
20 **~~SEC. 174.11. -- HEARING.~~**

21 *At the time fixed for consideration of the report, the Board of Supervisors shall hear it with any*
22 *objections of the owners liable to be assessed for the cost of removal and abatement by the Director of*
23 *Public Works. The Board of Supervisors may make such revisions, corrections or modifications of the*
24 *report as it may deem just and, in the event that the Board of Supervisors is satisfied with the*
25 *correctness of the report (as submitted or as revised, corrected or modified), it shall be confirmed or*

1 *rejected by resolution. The decision of the Board of Supervisors on the report and on all protests or*
2 *objections thereto shall be final and conclusive.*

3
4 **~~SEC. 174.12. COLLECTION OF ASSESSMENT.~~**

5 *Upon confirmation of the report by the Board of Supervisors, the delinquent charges contained*
6 *therein shall constitute a special assessment against the property to which the services were rendered.*
7 *The assessment may be collected at the same time and in the same manner as ordinary municipal taxes*
8 *are collected and shall be subject to the same penalties and same procedure of sale as provided for*
9 *delinquent, ordinary municipal taxes.*

10 *The assessments shall be subordinate to all existing special assessment liens previously imposed*
11 *upon the property and paramount to all other liens except those for State, County and municipal taxes*
12 *with which it shall be on parity. Such assessment lien shall continue until the assessment and all*
13 *interest and penalties due and payable are paid. All laws applicable to the levy, collection and*
14 *enforcement of municipal taxes shall be applicable to said special assessments.*

15
16 **~~SEC. 174.13. SEVERABILITY.~~**

17 *If any part or provision of this ordinance or its application to any person or circumstance is*
18 *held invalid, the remainder of the ordinance, including the application of such part or provision to*
19 *other persons or circumstances, shall not be affected and shall continue in full force and effect. To this*
20 *end the provisions of this ordinance are severable.*

21
22 **~~SEC. 707.1706.9~~ ALTERNATE METHOD OF ENFORCEMENT AND COLLECTION**
23 **OF LIEN.**

24 *(a) As an alternative to the lien procedure The provisions of this Section are intended to provide*
25 *an alternate method for enforcement and collection of the lien described in Sections 706.4 through*

1 706.8 et seq. of this Article, the Director of Public Works may initiate special assessment lien
2 proceedings in accordance with Administrative Code Chapter 80, Section 80.8(d), whereby the City's
3 expense of repairing, constructing or replacing a sidewalk, driveway, curb or gutter, as confirmed by
4 the Board of Supervisors, shall constitute a special assessment against the parcel or parcels of land
5 fronting such sidewalk, driveway, curb or gutter. and are adopted in accordance with the terms and
6 conditions of California Government Code Section 38773.5 governing special assessment liens for
7 public nuisance abatement.

8 ~~(b) The Director of Public Works may file with the Clerk of the Board of Supervisors an~~
9 ~~itemized report of the work done and the expense thereof along with his recommendation that said~~
10 ~~expense be collected at the same time and in the same manner as ordinary City and County taxes. Said~~
11 ~~expense shall be the cost of the work plus 12 percent thereof to cover the cost of City administration.~~
12 ~~Upon the filing of said report and recommendation, the Clerk of the Board of Supervisors shall fix a~~
13 ~~date and time for hearing thereon which shall be endorsed upon a copy of said report and~~
14 ~~recommendation. At least 10 days before the date of the hearing, said endorsed copy shall be posted on~~
15 ~~the property subject to said lien and notice of the hearing shall be sent by certified mail to the property~~
16 ~~owner if the property owner's identify can be determined from the County Assessor's/Recorder's office~~
17 ~~records. The mailed notice shall specify that the property may be sold after three years by the Tax~~
18 ~~Collector for unpaid delinquent assessments.~~

19 ~~————(1) The costs referenced in this Section may include the costs incurred by any other City~~
20 ~~department, including the City Attorney's Office, expended in furtherance of the work done or related to~~
21 ~~any action, administrative proceeding, or special proceeding to abate the public nuisance as defined in~~
22 ~~Section 706.~~

23 ~~(2) In any action, administrative proceeding, or special proceeding to abate the public~~
24 ~~nuisance, the prevailing party may seek recovery of attorneys' fees; provided, however, that recovery of~~
25 ~~such fees is available only if the City, at the initiation of the individual action or proceeding, elects to~~

1 ~~seek recovery of its own attorney's fees. Further, in no action, administrative proceeding, or special~~
2 ~~proceeding shall an award of attorneys' fees to a prevailing party exceed the amount of reasonable~~
3 ~~attorneys' fees incurred by the City in the action or proceeding.~~

4 ~~(e) At the time fixed for hearing and considering said report and recommendation, the Board of~~
5 ~~Supervisors shall hear the same, together with any objections which may be raised by any property~~
6 ~~owner liable to be assessed for the expense described in said report and recommendation, and~~
7 ~~thereupon may make such modifications in the report and recommendation as the Board deems~~
8 ~~necessary, after which by motion or resolution said report and recommendation shall be confirmed.~~
9 ~~The expense of repairing, constructing or replacing sidewalk, driveway, curb or gutter, as confirmed by~~
10 ~~the Board of Supervisors, shall constitute a special assessment against the parcel or parcels of land~~
11 ~~fronting such sidewalk, driveway, curb or gutter, and shall constitute a lien of said property for the~~
12 ~~amount of the assessment. After confirmation of said report and recommendation, a copy thereof shall~~
13 ~~be transmitted to the Assessor and to the Tax Collector of the City and County, whereupon it shall be~~
14 ~~the duty of said officers to add the amount of said assessment to the next regular bill for taxes levied~~
15 ~~against said parcel or parcels of land for municipal purposes, and thereafter said amount shall be~~
16 ~~collected at the same time and in the same manner as ordinary City and County taxes are collected,~~
17 ~~and shall be subject to the same penalties and the same procedure under foreclosure and sale in case of~~
18 ~~delinquency as provided for ordinary taxes of the City and County of San Francisco. Notwithstanding~~
19 ~~the above, if any real property to which the cost of abatement relates has been transferred or conveyed~~
20 ~~to a bona fide purchaser for value, or if a lien of a bona fide encumbrancer for value has been created~~
21 ~~and attached thereon, prior to the date of which the first installment of the taxes would become~~
22 ~~delinquent, then the cost of abatement shall not result in a lien against the real property but instead~~
23 ~~shall be transferred to the unsecured roll for collection.~~

24 ~~(d) Notices or instruments relating to the abatement proceeding or special assessment shall be~~
25 ~~entitled to recordation.~~

1 ~~(e) All monies received in payment of said lien against the property shall be credited to the fund~~
2 ~~provided for in Section 706.8 of this Article after reimbursement to other City departments for their~~
3 ~~incurred costs related to the abatement.~~

4
5 **SEC. 727. DRIFTING OR BLOWING OF SAND OR DIRT DECLARED TO BE A**
6 **PUBLIC NUISANCE.**

7 Sand or dirt drifting or being blown upon the streets or sidewalks or upon the improved
8 private property of any community, neighborhood or a considerable portion thereof, within the
9 City and County, is hereby declared to be a menace to persons, property and/or vehicular
10 traffic and a public nuisance. The Director of Public Works may enforce and abate nuisances under
11 this Section in accordance with the procedures set forth in the Community Preservation and Blight
12 Reduction Act, Chapter 80 of the San Francisco Administrative Code, including, but not limited to, its
13 provisions for notice, abatement, penalties, cost recovery, and debt collection.

14
15 ~~**SEC. 728. REPORT TO SUPERVISORS RESOLUTION DECLARING NUISANCE.**~~

16 ~~Whenever sand or dirt is found to be drifting or blowing upon any street, sidewalk, or the~~
17 ~~improved private property of any community, neighborhood or considerable portion thereof, in the City~~
18 ~~and County of San Francisco, the Director of Public Works shall cause a survey to be made of~~
19 ~~surrounding property to determine the immediate source of such sand or dirt and what preventative~~
20 ~~measures should be taken and report the same to the Board of Supervisors. The Board of Supervisors~~
21 ~~may then, by resolution, declare such blowing or drifting sand or dirt to be a public nuisance and said~~
22 ~~resolution shall refer to the street by the name under which it is commonly known, and describe the~~
23 ~~property from which said sand or dirt is blowing or has blown or drifted by giving the lot and block~~
24 ~~number or numbers of the same according to the Assessor's block book, and no other description of~~

1 such property shall be required. Any number of streets, sidewalks or pieces of property may be
2 included in one and the same resolution.

3
4 **~~SEC. 729. NOTICE TO PLANT COVER CROPS OR TAKE OTHER MEASURES TO~~**
5 **~~EFFECTIVELY PREVENT SAND OR DIRT BLOWING OR DRIFTING FROM PRIVATE~~**
6 **~~PROPERTY POSTING MAILING FORM TIME.~~**

7 *After the passage of said resolution referred to in Section 728 hereof, the Director of Public*
8 *Works shall cause to be conspicuously posted in front of the lot or lots which are the source or sources*
9 *from which said sand or dirt is drifting, or has drifted, and at not more than one hundred feet apart,*
10 *notices entitled "Notice to Abate a Nuisance;" such title to be in words not less than one inch in height*
11 *and said notice to be in substantially the following form:*

12
13 **~~NOTICE TO ABATE A NUISANCE~~**

14 *Notice is hereby given that the Board of Supervisors has by Resolution No. _____*
15 *found and declared that sand and dirt was or is drifting upon _____ Street, between*
16 *_____ Street and _____ Street, and/or upon adjacent improved private property, in*
17 *the City and County of San Francisco, and that said sand and dirt is drifting or blowing from Lot No.*
18 *_____ in Block No. _____ as per Assessor's Map, and that the drifting and blowing of*
19 *said sand and dirt constitutes a public nuisance which must be abated by the planting of cover crops on*
20 *said property from which said sand or dirt is drifting or blowing or by such other means as shall*
21 *effectively prevent said sand or dirt from blowing or drifting from said lot or lots. If effective measures*
22 *to abate said nuisance are not taken within five days after the conclusion of the hearing provided for*
23 *and announced herein, the Director of Public Works shall take such steps as shall be necessary to*
24 *effectively abate said nuisance, in which case the costs thereof shall be assessed upon the lots and*
25

1 ~~lands upon which such measures are taken and said costs will constitute a lien upon such lots or land~~
2 ~~until paid. Reference is hereby made to said resolution for further particulars.~~

3 ~~All property owners having any objections to the proposed measures to abate said nuisance are~~
4 ~~hereby notified to attend a meeting of the Board of Supervisors of the said City and County of San~~
5 ~~Francisco to be held on the _____ day of _____ / _____ / _____,~~
6 ~~19_____, when their objections will be heard and given due consideration.~~

7 ~~Dated this _____ day of _____, 19_____~~

8
9 ~~DIRECTOR OF PUBLIC WORKS.~~

10
11 ~~By _____~~

12 ~~Secretary~~

13
14 ~~Said notice shall be posted at least five days prior to the time for hearing objections by the~~
15 ~~Board of Supervisors.~~

16 ~~In addition to said posting, the Secretary of the Department of Public Works shall cause to be~~
17 ~~mailed, at least five days prior to the hearing, postage prepaid, a copy of such order to each property~~
18 ~~owner whose name appears upon the assessment book of the City and County current at the time of the~~
19 ~~mailing of such order, and whose property is to be assessed for the proposed work. In case any lot,~~
20 ~~piece or parcel of land liable to be assessed for such work be assessed on such assessment book to~~
21 ~~"unknown owners," then no copy of such order need be mailed to the owner thereof.~~

22 ~~The mailing of such copy of such order shall be to the address as the same appears upon the~~
23 ~~said assessment book as indicating the address of the owner of the property to be assessed for such~~
24 ~~work and in case no such address appears upon said assessment book, then the mailing of such copy~~
25 ~~may be made either to an address designated in the last issue of the city directory having relation to a~~

1 *name corresponding to that of such owner, if such a name appear therein, or to an address obtainable*
2 *from any other probably reliable source of information that may be conveniently available to the*
3 *person performing such mailing, or such mailing to such owner may be made to the general delivery of*
4 *the post office at the City and County.*

5 *Such requirement for such mailing of the copies of the order of intention shall not be deemed*
6 *jurisdictional, and the failure of the said property owners, or any of them, to receive said copies of the*
7 *said order, or any error or omission in relation to the said mailing of the same, shall in nowise affect*
8 *the validity of the proceeding or prevent the Supervisors from acquiring jurisdiction to order the*
9 *proposed work. Knowledge of the making of such order of intention acquired by any such owner, prior*
10 *to the date of action thereon, in any manner other than by mailing to him a copy of such order, shall be*
11 *deemed the equivalent of such mailing for all purposes to be subserved thereby.*

12
13 **~~SEC. 730. HEARING OBJECTION DECISION.~~**

14 *At the time stated in the notices, the Board of Supervisors shall hear and consider all objections*
15 *or protests, if any, to the proposed measures to be taken to prevent sand or dirt blowing or drifting*
16 *from the named lots and lands, and may continue the hearing from time to time. Upon the conclusion of*
17 *said hearing, the Board of Supervisors, by resolution, shall allow or overrule any or all objections to*
18 *the proposed measures to abate said nuisance, whereupon the Board of Supervisors shall be deemed to*
19 *have acquired jurisdiction to proceed and perform the work of planting cover crops, or taking such*
20 *other measures as may be necessary to prevent sand or dirt from drifting or blowing from said property*
21 *or properties, and the decision of the said Board on the matter shall be deemed final and conclusive.*

22
23 **~~SEC. 731. RESOLUTION ORDERING ABATEMENT OWNERS MAY TAKE~~**
24 **~~NECESSARY ACTION TO ABATE.~~**

1 ~~After final action has been taken by the Board of Supervisors on the disposition of any protests~~
2 ~~or objections, or in case no protests or objections have been received, the Board of Supervisors of the~~
3 ~~City and County of San Francisco, by resolution, shall order the Director of Public Works to plant~~
4 ~~cover crops, or to take such other measures as he may deem necessary to abate said nuisance and said~~
5 ~~Director of Public Works is hereby expressly authorized to enter upon private property for that~~
6 ~~purpose.~~

7 ~~Any property owner whose property is posted as provided in Section 729 hereof shall have the~~
8 ~~right to take any action which will effectively prevent the blowing or drifting of said sand or dirt from~~
9 ~~his property; provided, that such measures must be taken within five days after the conclusion of the~~
10 ~~hearing provided for in Section 729 hereof. Such action must be approved by the Director of Public~~
11 ~~Works and performed in a diligent manner and shall be completed so as to effectively abate said~~
12 ~~nuisance within a reasonable time, and provided further that such measures shall be taken at the~~
13 ~~expense of said property owner. Failure of the owner of any such property to diligently prosecute the~~
14 ~~work necessary to abate said nuisance shall be authority for the Director of Public Works to take the~~
15 ~~action provided for in the first paragraph of this Section.~~

16
17 ~~**SEC. 732. COST REPORT TO SUPERVISORS NOTICE OF HEARING.**~~

18 ~~Upon the completion of the work of abating said nuisance by the Director of Public Works, he~~
19 ~~shall submit a detailed report of the cost thereof to the Board of Supervisors, apportioning the said cost~~
20 ~~among the respective lots or parcels of land on which said work was done. When said report has been~~
21 ~~submitted, the Clerk of the Board of Supervisors shall cause a copy thereof to be posted in a~~
22 ~~conspicuous place in the City Hall at least three days prior to the hearing on said report, and there~~
23 ~~shall be appended to said report, and posted therewith, a notice of the time and place of said hearing.~~

1 ~~SEC. 733. HEARING OF REPORT OBJECTIONS DECISION SPECIAL~~
2 ~~ASSESSMENT.~~

3 ~~At the time fixed for hearing on said report, or at any other time to which said hearing shall be~~
4 ~~continued, the Board of Supervisors shall hear said report, together with any objections made by any of~~
5 ~~the property owners liable to be assessed, for the work of abating said nuisance, and may confirm said~~
6 ~~report on making such modifications therein as the Board shall deem proper, and shall adopt said~~
7 ~~report either as submitted or as modified by said Board of Supervisors, and shall determine the fair and~~
8 ~~just amount of the cost of abating the said nuisance and apportion the same upon the various parcels of~~
9 ~~land mentioned in said report. When said report is confirmed by said Board of Supervisors, either as~~
10 ~~originally submitted or as modified by said Board, the amount of the cost of abating said nuisance as~~
11 ~~determined by the Board of Supervisors, and as apportioned among the respective lots of land covered~~
12 ~~by said report, shall constitute a lien and charge upon each particular parcel of land mentioned in said~~
13 ~~report. A copy of said report, as finally confirmed by the Board of Supervisors, shall be delivered to the~~
14 ~~Assessor and a copy also to the Tax Collector of the City and County of San Francisco, whereupon it~~
15 ~~shall be the duty of the Assessor to charge against each particular lot of land mentioned in said report~~
16 ~~the respective amount assessed against said lot, and it shall be the duty of the Tax Collector to collect~~
17 ~~said amount when collecting the first installment of City and County taxes levied against said lot. Any~~
18 ~~amount charged against any of said lots, if not paid with the first installment of City and County taxes,~~
19 ~~shall be subject to the same penalties as would the City and County taxes against said lot for~~
20 ~~nonpayment thereof. The amount assessed against each of said lots, as hereinbefore provided, shall~~
21 ~~continue to be a lien on said respective lots until the same is paid. Nothing herein contained shall~~
22 ~~prevent the Tax Collector or the Bureau of Delinquent Revenue from commencing and prosecuting an~~
23 ~~action in the proper court to recover the amount assessed against said lot and to foreclose the lien~~
24 ~~existing against said lot for the payment of said assessment. All moneys received in payment of said lien~~
25 ~~or charge against said lot shall be credited to the fund provided for in Section 734 of this Article.~~

1
2 ~~SEC. 734. FUND TO BE PROVIDED.~~

3 ~~A fund shall be provided to cover the cost of abatement of any such nuisance in the City and~~
4 ~~County of San Francisco, said fund to be a revolving fund and to be replenished from the moneys~~
5 ~~collected as the result of the special assessments provided for herein.~~

6
7 **SEC. 735. - BLIGHTED VACANT LOTS AS CONSTITUTING PUBLIC NUISANCE.**

8 (a) Definitions. For purposes of ~~this Section~~~~sections 735 through 735.4~~, each of the
9 following terms shall have the following meaning:

10 (1) "Blighted Vacant Lot" means property that:

11 (A) contains no buildings or structures that are occupied, inhabited, used
12 or secured so that the public may not gain entry without consent of the owner; and

13 (B) has any accumulation of filth, garbage, decaying animal or vegetable
14 matter, waste paper, weeds, vegetation overgrowth, dead or decaying trees, litter, trash,
15 unsanitary debris, waste material, animal or human excrement, toxic or otherwise hazardous
16 liquids, substances and/or material residue, residue from the burning of combustible materials
17 or discarded household, industrial or mechanical materials, or is otherwise not kept in a clean
18 and sanitary condition.

19 (2) "City" means the City and County of San Francisco.

20 (3) "Director" means the Director of Public Works or his or her designee.

21 (4) "Property Owner" means the owner of record of the property as set forth in
22 the most current records of the Tax Assessor, or the owner's authorized agent.

23 (b) Declaration of Nuisance. Blighted vacant lots are hereby declared a public
24 nuisance subject to abatement by the Director of Public Works in accordance with the procedures
25 set forth in the Community Preservation and Blight Reduction Act, Chapter 80 of the San Francisco

1 Administrative Code, including, but not limited to, its provisions for notice, abatement, penalties, cost
2 recovery, and debt collection. Sections 735.1—735.4.

3 (c) Prohibition. It shall be unlawful for a property owner to maintain a blighted vacant
4 lot in violation of this SectionArticle.

5
6 **SEC. 735.1. VIOLATIONS.**

7 ~~(a) Notice of Violation. Where the Director determines that any property constitutes a blighted~~
8 ~~vacant lot in violation of Section 735, the Director may issue a notice of violation to the property~~
9 ~~owner. At the time the notice of violation is issued, the Director shall take one or more photographs of~~
10 ~~the property showing the blighted conditions, and shall make copies of the photographs available to the~~
11 ~~property owner upon request. The photographs shall be dated and retained as apart of the file for the~~
12 ~~violation. The notice shall generally describe the violation, give the owner 15 calendar days from the~~
13 ~~date of the service of the notice to either abate the violation or request a hearing on the notice of~~
14 ~~violation, and shall set forth the procedure for requesting a hearing on the violation. The notice shall~~
15 ~~also inform the property owner of his or her right to request an extension of time pursuant to~~
16 ~~paragraph (b) of this Section in order to abate the violation, and further inform the owner that where~~
17 ~~the owner fails to either abate the violation or request a hearing within 15 calendar days (plus an~~
18 ~~extension if applicable) from the date of service of the notice, the Director may initiate proceedings in~~
19 ~~accordance with Section 735.3 to enter upon the owner's property and abate the violation at the~~
20 ~~owner's expense. In addition, the notice shall inform the owner that the minimum charge for abating~~
21 ~~the violation is the greater of \$500 or the actual cost to the City, (including overhead and~~
22 ~~administrative costs, as well as attorneys' fees where the Director has elected to seek recovery of~~
23 ~~attorneys' fees). The Director shall serve the notice of violation as follows:~~

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

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

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

4 ~~B. The owner of record.~~

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

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

8 ~~(b) Extension of time. A property owner may receive an extension of an additional 15 calendar~~
9 ~~days in which to abate the violation. The Director shall grant an extension if the Director receives such~~
10 ~~a request by telephone, in writing or by facsimile within the original response period of 15 calendar~~
11 ~~days set forth in subsection (a). The notice of violation issued under subsection (a) shall specify the~~
12 ~~address, telephone and facsimile numbers for requesting such an extension. An extension under this~~
13 ~~paragraph shall not affect the deadline for a property owner to request a hearing on a notice of~~
14 ~~violation.~~

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

20
21 **SEC. 735.2. REQUEST FOR HEARING; HEARING.**

22 ~~(a) Request for Hearing. A property owner may request a hearing in order to contest the notice~~
23 ~~of violation issued in accordance with Section 735.1 by filing with the Director within 15 calendar days~~
24 ~~from the date of the notice of violation, a request for hearing that specifies in detail the basis for~~
25 ~~contesting the notice of violation.~~

1 ~~(b) Notice for and Scheduling of Hearing. Whenever a hearing is requested pursuant to this~~
2 ~~Section, the Director shall, within seven calendar days of receipt of the request, notify the property~~
3 ~~owner of the date, time, and place of the administrative review hearing by certified mail. Such hearing~~
4 ~~shall be held no later than 45 calendar days after the Director receives the request, unless time is~~
5 ~~extended by mutual agreement of the affected parties.~~

6 ~~(c) Submittals for Hearing. At least five City business days prior to the hearing, the property~~
7 ~~owner and the City shall submit to the hearing officer and exchange with one another, written~~
8 ~~information including, but not limited to, the following: a statement of the issues to be determined by~~
9 ~~the hearing officer, a statement of the evidence to be offered at the hearing and the identity of any~~
10 ~~witnesses to appear at the hearing.~~

11 ~~(d) Hearing Procedure. The hearing shall be conducted by a neutral hearing officer from~~
12 ~~outside the Department of Public Works, appointed by the Director of Administrative Services. The~~
13 ~~burden of proof to establish that the property is a blighted vacant lot shall be on the City. The owner~~
14 ~~shall be entitled to present evidence and demonstrate that his or her property is not a blighted vacant~~
15 ~~lot. The property owner shall also be entitled to present evidence and demonstrate that requiring the~~
16 ~~owner to abate the violation would result in an unfair hardship. All testimony shall be under oath, and~~
17 ~~witnesses may be cross examined. The hearing officer shall ensure that a record of the proceedings is~~
18 ~~maintained. The determination of the hearing officer after the hearing shall be final and not~~
19 ~~appealable.~~

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

1 **~~SEC. 735.3. ABATEMENT BY DIRECTOR.~~**

2 ~~(a) Following the hearing if the City sustains its burden of proof, or if the property owner does~~
3 ~~not request a hearing and fails to remedy the violation within 15 calendar days (plus the extension~~
4 ~~under Section 735.1(b), if applicable), from the date of the notice of violation the Director may~~
5 ~~immediately order that the violation be abated. Unless the Director has obtained written consent from~~
6 ~~the property owner to enter the property and abate the violation, before such abatement may take~~
7 ~~place, the Director shall obtain a court order authorizing the Department of Public Works to enter~~
8 ~~upon the property and abate the violation, and give written notice of the abatement (Abatement Order)~~
9 ~~served in accordance with Section 735.1(a).~~

10 ~~(b) If the hearing officer determines that a hardship exists, the Director is authorized to abate~~
11 ~~the violation at no cost to the property owner, provided that the owner agrees to hold the City harmless~~
12 ~~from any liability arising from the abatement by providing the Director with a signed waiver of~~
13 ~~liability. The Director may develop forms for this purpose.~~

14 ~~(c) The following procedures shall apply to actions by the Director to abate and recover costs~~
15 ~~for abatement of violations of Section 735:~~

16 ~~—— (1) Abatement Action. After obtaining a court order, the Director shall implement the~~
17 ~~Abatement Order. The Director may enter upon the property and cause the removal or other abatement~~
18 ~~of the conditions causing the violation. Where the Director abates a violation of Section 735, the owner~~
19 ~~shall pay the greater of either \$500 or the actual cost (including overhead and administrative costs, as~~
20 ~~well as attorneys' fees where the Director has elected to seek recovery of attorneys' fees) of abating the~~
21 ~~violation. The Director shall provide an accounting to the owner of the costs of the abatement action~~
22 ~~(Abatement Accounting) on a full cost recovery basis not later than 30 days from the date the~~
23 ~~abatement action is completed. The Abatement Accounting shall include all administrative costs~~
24 ~~incurred by the City in abating the violation. The total amount set forth in the Abatement Accounting~~
25 ~~shall be due and payable by the owner within 30 days from the date of mailing of the Abatement~~

1 ~~Accounting. Property owners seeking to challenge the amount of the Abatement Accounting may do so~~
2 ~~at the hearing authorized under Chapter 10, Article XX of the Administrative Code.~~

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

8 ~~———— (3) Lien. If all or any portion of the amount set forth in the Abatement Accounting~~
9 ~~remains unpaid after 30 days of the mailing of the Abatement Accounting, such portion shall constitute~~
10 ~~a proposed lien on the property which was the subject matter of the Abatement Action. Except as~~
11 ~~otherwise specified in this subparagraph, such liens shall be imposed in accordance with Chapter 10,~~
12 ~~Article XX of the Administrative Code.~~

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

20 ~~———— (B) Any lien authorized by this Section shall specify the amount of the lien, the~~
21 ~~name of the department initiating the abatement proceeding, the date of the abatement order, the street~~
22 ~~address, legal description and assessor's parcel number of the parcel on which the lien is imposed, and~~
23 ~~the name and address of the recorded owner of the parcel.~~

24 ~~———— (C) Where a lien authorized by this Section is discharged, released or satisfied,~~
25 ~~either through payment or foreclosure, the Tax Collector shall record a notice of the discharge~~

1 ~~containing the information specified in subparagraph (B). Any such notice of discharge shall be subject~~
2 ~~to the Release of Lien Fee imposed pursuant to Section 10.237 of the San Francisco Administrative~~
3 ~~Code.~~

4 (4)

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

22
23 **~~SEC. 735.4. LIMITATION OF LIABILITY.~~**

24 ~~By adopting this ordinance, the City is assuming an undertaking only to promote the general~~
25 ~~welfare. It is not assuming, nor is it imposing on its officers and employees, an obligation for breach of~~

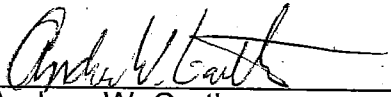
1 ~~which it is liable in money damages to any person who claims that such breach proximately caused~~
2 ~~injury.~~

3
4 Section 5. This section is uncodified.

5 In enacting this Ordinance, the Board intends to amend only those words, phrases,
6 paragraphs, subsections, sections, articles, numbers, punctuation, charts, diagrams or any
7 other constituent part of the Planning Code that are explicitly shown in this legislation as
8 additions, deletions, Board amendment additions, and Board amendment deletions in
9 accordance with the "Note" that appears under the official title of the legislation. This
10 Ordinance shall not be construed to effectuate any unintended amendments. Any additions or
11 deletions not explicitly shown as described above, omissions, or other technical and non-
12 substantive differences between this Ordinance and the municipal code that are contained in
13 this legislation are purely accidental and shall not effectuate an amendment to such code.
14 The Board hereby authorizes the City Attorney, in consultation with the Clerk and other
15 affected City departments, to make those necessary adjustments to the published municipal
16 code, including non-substantive changes such as renumbering or relettering, to ensure that
17 the published version of the municipal is consistent with the laws that this Board enacts.

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

20 By:


21 Andrew W. Garth
22 Deputy City Attorney
23
24
25

LEGISLATIVE DIGEST

[Amending Public Works Code, Administrative Code, and Health Code to Consolidate Existing DPW Nuisance Enforcement, Abatement, and Cost Collection Processes]

Ordinance amending portions of the Public Works Code, Administrative Code, and Health Code to consolidate and streamline Department of Public Works enforcement, abatement, and cost collection processes for public nuisances, including amendments to Administrative Code Chapter 80, Sections 80.3 and 80.8, Public Works Code Sections 170, 174.1, 707.1, 727, 735, and Health Code Article 6, Section 291.2; repealing Public Works Code Sections 174.2 through 174.13, 728 through 734, and 735.1 through 735.4; renumbering Public Works Code Section 707.1 as 706.9, and making environmental and other required findings.

Existing Law

The San Francisco Department of Public Works ("Department") enforces public nuisance and anti-blight regulations located throughout the San Francisco municipal code, including provisions of the Public Works Code, the Police Code, the Health Code, and the Administrative Code (collectively, the "Code"). The Department employs enforcement officers that respond to complaints of nuisances in the public right-of-way, perform inspections, and issue notices of violation and abatement orders. Under existing law, the public nuisance provisions in the Code may vary with regard to procedural requirements including, for example, the processes for issuing administrative citations and associated cost collection mechanisms. DPW inspectors utilize Police Code Article 1, Section 39-1 ("Police Code 39-1"), for the majority of notices of violation relating to public nuisances. Some Code provisions, however, specify the use of Administrative Code Ch. 100 for administrative citations (see, for example, Health Code Section 291.1 and Administrative Code Ch. 80). In addition, certain nuisance Code provisions contain redundant enforcement and abatement processes due to the gradual amendment of the Code over time to address different nuisance conditions.

Amendments to Current Law

Amendments to the current law would consolidate and clarify existing Department procedures for enforcement and abatement of nuisances in the public right-of-way, including the following amendments:

- Administrative Code Chapter 80: Section 80.3 would be amended to enable administrative citations under Police Code 39-1 in addition to the existing Administrative Code Ch. 100 citation procedures and to clarify the definition of "property owner"; Section 80.8 would be amended to provide additional detail regarding the Department's authority to utilize special assessment cost collection processes for the costs of abating nuisances.

- Health Code, Article 6, Section 291.2 would be amended to enable administrative citations under Police Code 39-1 in addition to the existing Administrative Code Ch. 100 citation procedures.
- The following sections of the Public Works Code would be amended to incorporate the enforcement and abatement processes set forth in the Administrative Code Ch. 80, including but not limited to cost and debt collection: Section 170; Sections 174.1 through 174.13; Section 706.9; Section 727 through 734; and Section 735 through 735.4

Background Information

The City adopted the Community Preservation and Blight Enforcement ("Blight Ordinance"), Chapter 80 of the Administrative Code, in November 2008 (Ordinance No. 256-08). The Blight Ordinance established procedures for uniform enforcement and abatement of nuisances throughout the City. The Blight Ordinance, however, left parallel Code enforcement mechanisms in place and unaffected. By incorporating Blight Ordinance processes directly into Code provisions for nuisance enforcement, this ordinance will consolidate Department enforcement procedures and eliminate unnecessary redundancies.

BOARD of SUPERVISORS



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

April 20, 2011

File No. 110281

Bill Wycko
Environmental Review Officer
Planning Department
1650 Mission Street, 4th Floor
San Francisco, CA 94103

Dear Mr. Wycko:

On March 8, 2011, Supervisor Mirkarimi introduced the following proposed legislation:

File No. 110281

Ordinance amending portions of the San Francisco Public Works Code, Administrative Code, and Health Code to: 1) consolidate and streamline Department of Public Works' enforcement, abatement, and cost collection processes for public nuisances, including amendments to Administrative Code Chapter 80, Sections 80.3 and 80.8, Public Works Code Sections 170, 174.1, 707.1, 727, 735, and Health Code Article 6, Section 291.2; 2) repealing Public Works Code Sections 174.2 through 174.13, 728 through 734, and 735.1 through 735.4; 3) renumbering Public Works Code Section 707.1 as 706.9; and 4) to make environmental and other required findings.

The legislation is being transmitted to you for environmental review, pursuant to Planning Code Section 306.7(c).

Angela Calvillo, Clerk of the Board

Alisa Somera for

By: Gail Johnson, Committee Clerk
City Operations and Neighborhood Services Committee

Attachment

c: Nannie Turrell, Major Environmental Analysis
Brett Bollinger, Major Environmental Analysis

*Not a project. Per CEQA
Guidelines Sections
15060 (c)(3) and 15378.
Nannie L. Turrell
April 20, 2011*