

BOARD of SUPERVISORS



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MEMORANDUM

TO: Regina Dick-Endrizzi, Director
Small Business Commission, City Hall, Room 448

FROM: *ll*
fn Alisa Somera, Legislative Deputy Director
Land Use and Transportation Committee

DATE: March 7, 2017

SUBJECT: REFERRAL FROM BOARD OF SUPERVISORS
Land Use and Transportation Committee

The Board of Supervisors' Land Use and Transportation Committee has received the following legislation, which is being referred to the Small Business Commission for comment and recommendation. The Commission may provide any response it deems appropriate within 12 days from the date of this referral.

File No. 170209

Ordinance amending the Police Code to prohibit the assembly, disassembly, sale, offer of sale, distribution, or offer of distribution on public property or public rights-of-way of bicycles and bicycle parts, under certain conditions and with certain exceptions; authorize the Police Department (SFPD) to seize bicycles and bicycle parts following violations of this prohibition; and require SFPD to return seized items to their rightful owners without charging any fees, except that SFPD may charge an impound fee if the rightful owner consented to or participated in the acts that led to the seizure.

Please return this cover sheet with the Commission's response to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

RESPONSE FROM SMALL BUSINESS COMMISSION - Date: _____

No Comment

Recommendation Attached

Chairperson, Small Business Commission

c: Menaka Mahajan, Small Business Commission

1 [Police Code - Bicycle Chop Shops]

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3 **Ordinance amending the Police Code to prohibit the assembly, disassembly, sale, offer**
4 **of sale, distribution, or offer of distribution on public property or public rights-of-way of**
5 **bicycles and bicycle parts, under certain conditions and with certain exceptions;**
6 **authorize the Police Department (SFPD) to seize bicycles and bicycle parts following**
7 **violations of this prohibition; and require SFPD to return seized items to their rightful**
8 **owners without charging any fees, except that SFPD may charge an impound fee if the**
9 **rightful owner consented to or participated in the acts that led to the seizure.**

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

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

19 Section 1. The Police Code is hereby amended by adding Article 51, entitled
20 "Prohibited Bicycle Actions and Transactions," and including Sections 5100, 5101, 5102, and
21 5103, to read as follows:

22 **ARTICLE 51: PROHIBITED BICYCLE ACTIONS AND TRANSACTIONS**

23 **SEC. 5100. PURPOSE AND FINDINGS.**

24 *Countless bicycles are stolen in San Francisco every year, at great cost to local residents, and*
25 *taken to open-air "chop shops" in San Francisco where they are disassembled, stripped of identifying*
information, and/or sold. Prohibiting the operation of chop shops, and allowing the Police Department

1 (SFPD) to seize any bicycles or bicycle parts from persons who operate chop shops, will help SFPD
2 hold chop shop operators accountable and will help restore stolen bicycles to their rightful owners.
3 Prohibiting chop shops will also clear the public rights-of-way and improve the quality of life for City
4 residents.

5 **SEC. 5101. PROHIBITION ON SALE OF BICYCLES AND BICYCLE PARTS.**

6 (a) No person shall assemble, disassemble, sell, offer to sell, distribute, or offer to distribute
7 the following items on any street, sidewalk, passageway, or other right-of-way, or on public property:

8 _____ (1) five or more bicycles;

9 _____ (2) a bicycle frame with the gear cables or brake cables cut;

10 _____ (3) three or more bicycles with missing parts (the term "parts" shall mean handlebars,
11 wheels, forks, pedals, cranks, seats, or chains);

12 _____ (4) five or more bicycle parts;

13 (b) This prohibition shall not apply in any of the following situations:

14 _____ (1) The person is operating under a valid business license.

15 _____ (2) The owner of a bicycle or bicycle part is present during the repair of his or her
16 single bicycle or bicycle part.

17 _____ (3) The items are being offered for sale by their owner, along with other goods, at a
18 one- or two-day location outside the owner's dwelling unit, such as at events commonly known as
19 "garage sales," "yard sales," "moving sales," or "estate sales."

20 _____ (4) The items are being used in connection with an event held by a registered non-
21 profit.

22 _____ (5) Application of this Section 5101 would interfere with or inhibit the exercise of the
23 constitutionally protected right of freedom of speech or assembly.

1 **SEC. 5102. ENFORCEMENT AND APPEALS.**

2 (a) SFPD may issue an administrative citation to a person who is in violation of Section 5101,
3 and upon issuance of such citation, may remove and seize any items that are being unlawfully
4 assembled, disassembled, sold, distributed, or offered for sale or distribution. The administrative
5 citation shall include a reference to this Article 51; a description of the violation; the date and location
6 of the violation(s) observed; a description of all seized items; a description of the process to recover the
7 seized items and to obtain waiver of the impound fees, as set forth in subsections (b) and (c); a
8 description of the process for appealing the citation or assessment of impound fees, including the
9 deadline for filing such an appeal, as set forth in subsection (d); and the name and signature of the
10 citing officer.

11 (b) SFPD shall return any seized items to their rightful owner upon the rightful owner's
12 written request. A person shall be deemed the "rightful owner" if the person can demonstrate with
13 sufficient reliability that he or she is the lawful owner of the seized item, for example, by providing
14 video or photographic evidence indicating ownership of the seized item, by producing a bill of sale, by
15 correctly stating the serial number, or by signing a sworn affidavit in person at an SFPD location to be
16 determined by SFPD.

17 (c) SFPD shall not assess monetary penalties for violations of this Article 51. SFPD may
18 condition the return of a seized bicycle or bicycle part on the payment of an impound fee equal to the
19 actual cost to SFPD of transporting and storing the seized item; provided, however, that SFPD shall
20 return any seized item to its rightful owner without requiring payment of an impound fee provided that
21 the owner did not consent to or participate in the violation of Section 5101 that led to the seizure.

22 (d) A person who receives an administrative citation under subsection (a), or who is required
23 to pay an impound fee pursuant to subsection (c), may file an appeal to challenge the citation or
24 impound fee. The appeal must be filed within 15 days of the date that the person received the
25 administrative citation or written findings requiring payment of a fee, whichever is later. The appeal

1 must be in writing and must specify the basis for the appeal in detail, and must be filed with the SFPD
2 as indicated in the administrative citation.

3 (e) As soon as practicable after receiving the written appeal, the SFPD shall select an officer
4 to review the appeal. The reviewing officer shall be someone other than the officer(s) who issued the
5 administrative citation or who witnessed the events giving rise to the citation, or the direct supervisor
6 of such officer(s). The reviewing officer shall fix a date, time, and place for the hearing on the appeal
7 and provide written notice of the hearing at least 10 days prior to the hearing date. If the notice is
8 served by mail, it shall be by first-class mail, and service shall be effective on the date of mailing. The
9 hearing date shall be no later than 30 days after service of the notice of hearing, unless that time is
10 extended by mutual agreement of the parties. SFPD shall have the burden of proof in such hearing. At
11 the hearing, the reviewing officer will not be bound by the formal rules of evidence and may accept
12 information from both parties, including, but not limited to, the administrative citation, which if valid
13 shall be prima facie evidence of the violation; oral testimony; testimony by declaration under penalty of
14 perjury; and documentary information.

15 (f) The reviewing officer shall make findings based on the record of the hearing and shall
16 issue a written decision based on such findings within 15 days of the conclusion of the hearing, and
17 shall give the appellant written notice of that decision. If the reviewing officer concludes that the
18 citation was unwarranted or that SFPD should not have conditioned the return of the seized items on
19 the payment of an impound fee, SFPD shall immediately withdraw the citation and return the seized
20 items and refund the impound fees as appropriate. The decision of the reviewing officer shall be final.
21 Following the decision of the reviewing officer, the appellant may file an appeal with the superior court
22 pursuant to California Government Code Section 53069.4.

23 (g) Failure of any person to file an administrative appeal in accordance with the provisions
24 of this Section 5102 or to appear at the noticed hearing shall constitute a failure to exhaust
25 administrative remedies.

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SEC. 5103. SEVERABILITY.

If any section, subsection, sentence, clause, phrase, or word of this Article 51, or any application thereof to any person or circumstance, is held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or applications of the Article. The Board of Supervisors hereby declares that it would have passed the Article and each and every section, subsection, sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to whether any other portion of the Article or application thereof would be subsequently declared invalid or unconstitutional.

Section 2. Effective Date. This ordinance shall become effective 30 days after enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the Mayor's veto of the ordinance.

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

By: 
MANU PRADHAN
Deputy City Attorney

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LEGISLATIVE DIGEST

[Police Code - Bicycle Chop Shops]

Ordinance amending the Police Code to prohibit the assembly, disassembly, sale, offer of sale, distribution, or offer of distribution on public property or public rights-of-way of bicycles and bicycle parts, under certain conditions and with certain exceptions; authorize the Police Department (SFPD) to seize bicycles and bicycle parts following violations of this prohibition; and require SFPD to return seized items to their rightful owners without charging any fees, except that SFPD may charge an impound fee if the rightful owner consented to or participated in the acts that led to the seizure.

Existing Law

Local law does not currently prohibit the assembly, disassembly, sale, distribution, or offer of sale or distribution of bicycles and bicycle parts on the public rights-of-way or public property.

Amendments to Current Law

The ordinance would prohibit any person from assembling, disassembling, selling, offering to sell, distributing, or offering to distribute on public property or in any public right-of-way (1) five or more bicycles; (2) a bicycle frame with the gear cables or brake cables cut; (3) three or more bicycles with missing bicycle "parts" (defined to mean handlebars, wheels, forks, pedals, cranks, seats, or chains); or (4) five or more bicycle parts. The prohibition would not apply to persons operating under a valid business license, instances where the owner is present during the repair of his or her single bicycle or bicycle part, bona-fide yard sales, events held by registered non-profits, or First Amendment activity.

The San Francisco Police Department (SFPD) would enforce the ordinance by issuing administrative citations and seizing items found to be in violation. SFPD would hold the items and return them to their owners upon written request. A person would be able to demonstrate ownership through a bill of sale, photographic evidence, a signed affidavit, or other reliable information. Items would be returned to their owners free of charge. But, if the person claiming ownership had consented to or participated in the violation, then SFPD would be able to condition the return of the seized items on the owner's payment of an impound fee equal to SFPD's actual cost of transporting and storing the items.

The ordinance would also create an administrative procedure for persons to challenge seizures and the imposition of impound fees.

Background Information

Many bicycles are stolen in San Francisco every year, at great cost to local residents, and taken to open-air "chop shops" where they are disassembled, stripped of identifying

information, and/or sold. The ordinance is intended to prohibit the operation of chop shops on public property and on the public rights-of-way, allow the SFPD to seize bicycles or bicycle parts from persons who operate chop shops, and restore those items to their rightful owners.

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