File No. 110280 Committee Item No. 3
Board Item No.

COMMITTEE/BOARD OF SUPERVISORS

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Committee: Land Use and Economic Development **Date** April 18, 2011

Board of Supervisors Meeting **Date**

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Completed by: Alisa Somera **Date** April 15, 2011
Completed by: **Date**

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

FILE NO. 110280 ORDINANCE NO.

[Public Works Code, Police Code - Posting of Signs on City Property, Increasing Penalty, and Enforcement]

Ordinance amending the San Francisco Public Works Code by amending Sections 184.62, 184.63, and 184.65 thereof, to: 1) increase the minimum criminal penalty for violations of Article 5.6 of the Public Works Code from $50 to $100; 2) amend the procedures for administrative enforcement of Article 5.6 of the Public Works Code and specify the amounts of administrative penalties; 3) provide that in any civil action or administrative proceeding to enforce Article 5.6 the City shall have the burden of proof; 4) provide that where an unlawfully posted sign proposes a commercial transaction, the fact that the sign identifies a person or entity may give rise to an inference that person or entity posted or caused the posting of the sign; and 5) amending the Police Code by amending Section 39-1 thereof, to provide that Section shall not apply to administrative citations issued under Public Works Code Section 184.63.

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

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

Section 1. The San Francisco Public Works Code is hereby amended by amending Section 184.62, to read as follows:

SEC. 184.62. - CRIMINAL PENALTY.

Any Person who violates any of the provisions of this Article shall be guilty of an infraction, and, upon conviction thereof, shall be punished by a fine of not less than ~~*$50.00*~~ *$100.00* or more than $500.00 or by community service in lieu of the fine.

Section 2. The San Francisco Public Works Code is hereby amended by amending Section 184.63, to read as follows:

SEC. 184.63. - CIVIL *AND ADMINISTRATIVE* PENALT*IES*~~Y~~.

(a) Any Person in violation of any provision of this Article and of failing to pay the amount billed such Person for such violation shall be liable for payment of a civil penalty in an amount equal to (1) the costs incurred by the City occasioned by the failure to remove Signs and by damaged property occasioned by their posting or removal, and (2) the costs to the City incurred in obtaining imposition of such civil penalties through litigation, including the cost of paying City employees or other persons to engage in the litigation, and (3) an additional amount equal to 50 percent of the total of (1) and (2) of this Subsection. ~~*As an alternative, the civil penalty authorized by this Section may be assessed by an administrative citation issued by Department of Public Works officials designated in Section 38 of the Police Code.*~~

(b) In addition to any other remedies that may be available, a violation of this Article may be punishable by an administrative fine, which may be assessed by an administrative citation issued by Department of Public Works officials designated in Section 38 of the Police Code. Administrative Code Chapter 100, "Procedures Governing the Imposition of Administrative Fines," as may be amended from time to time, is hereby incorporated and shall govern the procedure for the imposition, enforcement, collection, and administrative review of administrative citations issued to enforce this Article, except that the amount of the administrative fine shall be $100 for a first violation of any section of this Article, $200 for a second violation of such section within one year of the first violation, and $500 for each additional violation of such section within one year of the first violation.

~~*Such administrative penalties shall be assessed, enforced and collected in accordance with Section 39-1 of the Police Code., and shall include the costs to the City incurred in obtaining the imposition of the penalty, including the cost of paying City employees to engage in the administrative process.*~~

~~(b)~~

(c) All monies received by the City in payment ~~to~~ *of* civil penalties *or administrative fines* for violation of this Article shall be deposited to the credit of the Bureau of Street Environmental Services of the Department of Public Works in a special fund, to be entitled "Sign Removal Fund." Revenue from such fund shall be used exclusively for the costs related to the removal of illegally posted Signs and repair of City property damaged by such posting. Balances remaining in the fund at the close of any fiscal year shall have been deemed to have been provided for a specific purpose within the meaning of Section 9.113 of the Charter, and shall be carried forward and accumulated in said fund for the purposes recited herein. The monies received into this fund are hereby appropriated exclusively for the purposes set forth herein.

Section 3. The San Francisco Public Works Code is hereby amended by amending Section 184.65, to read as follows:

SEC. 184.65. - IDENTIFICATION OF PERSONS RESPONSIBLE FOR POSTING OF SIGNS.

In any civil action seeking recovery of a civil penalty and/or costs of removal of a Sign for violation of any of the provisions of this Article, *and in the issuance and administrative review of administrative citation(s) issued for the posting of a Sign in violation of any of the provisions of this Article, the City at all times shall have the burden of proving that the Person against whom such civil action is brought, or to whom such administrative citation(s) is or are issued, posted or caused the posting of the Sign. In any such civil action, and in the issuance and/or administrative review of any such administrative citation(s), where the Sign at issue does no more than propose a commercial transaction,* proof that the Sign posted contains the name of or in any other manner identifies a Person ~~shall~~ *may be used as evidence to show, and may , depending on all relevant circumstances as*

evaluated by the trier of fact, enable the trier of fact to infer, ~~*give rise to a rebuttable presumption*~~ that the Person caused such Signs to be posted or to remain posted.

Section 4. The San Francisco Police Code is hereby amended by amending Section 39-1, to read as follows:

SEC. 39-1. - PROCEDURE FOR ASSESSMENT AND COLLECTION OF ADMINISTRATIVE PENALTIES FOR SPECIFIED LITTERING AND NUISANCE VIOLATIONS.

(a) This Section shall govern the imposition, assessment and collection of administrative penalties imposed pursuant to Sections 37, 38 and 63 of the Police Code, Sections 41.13, 283.1, 287, 288.1 and 600 of the Health Code, and Sections 170, 173, 174, 174.2, ~~*184.63*~~ and 724.5 of the Public Works Code.

(b) The Board of Supervisors finds:

(1) That it is in the best interest of the City and its citizens to provide an alternative, administrative penalty mechanism for enforcement of the littering and nuisance violations covered by this section in addition to the existing enforcement mechanisms authorized under the California Penal Code; and

(2) That the administrative penalty scheme established by this section is not intended to be punitive in nature, but is instead intended to compensate the public for the injury and damage caused by the prohibited conduct. The administrative penalties authorized under this section are intended to be reasonable and not disproportionate to the damage or injury to the City and the public caused by the prohibited conduct.

(c) Administrative Citation. Where an officer or employee designated in Section 38 determines that there has been a violation of a local litter or nuisance law that authorizes imposition of an administrative penalty, the officer or employee may issue an administrative citation to the person and/or entity responsible for the violation. For purposes of this Section,

an entity is responsible if an officer, employee or agent of the entity commits the violation. The citation shall inform the person or entity responsible of the date, time, place and nature of the violation and the amount of the proposed penalty, and shall state that the penalty is due and payable to the City Treasurer within 15 City business days from the date of the notice, if not contested within the time period specified. The citation shall also state that the person or entity responsible has the right, pursuant to Subsection (d), to request administrative review of the citing officer or employee's determination as to the violation and assessment of penalties, and shall set forth the procedure for requesting administrative review. The Director shall serve the administrative citation as follows:

1. Where there is a nexus between the violator and a specific property:

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

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

(i) The person, if any, in real or apparent charge and control of the premises or property involved;

(ii) The owner of record.

Service required by subparagraph (B) may be made by personal service or by certified mail.

2. Where the issuing officer or employee is unable to ascertain a nexus between the violation and property within the City, a completed copy of the administrative citation may be served on the individual who has committed the violation by personal service or by certified mail.

3. For purposes of this Section, there is a nexus where activity on the property has caused, contributed to, or been a substantial factor in causing, the violation.

(d) Request for Hearing; Hearing.

(1) A person or entity that has been issued an administrative citation may request administrative review in order to contest the citation issued in accordance with this section. Administrative review shall be initiated by filing a request for administrative review with the Director of Public Works within 15 City business days from the date of the citation. Failure to request a hearing within the time specified in the citation shall be deemed an admission that the cited person or entity committed the violation identified in the administrative citation.

(2) Whenever administrative review is requested pursuant to this Section, the Director of Public Works shall, within five City business days of receipt of the request, notify the requestor of the date, time, and place of the administrative review hearing by certified mail. Such hearing shall be held no later than thirty (30) calendar days after the Director receives the request, unless time is extended by mutual agreement of the affected parties.

(3) The administrative review hearing shall be conducted by a neutral hearing of officer from outside the Department of Public Works and the department whose employee issued the citation, assigned by the Director of Administrative Services. The Director of Administrative Services may issue rules as needed to implement this requirement. The parties may present evidence and testimony to the hearing officer. All testimony shall be under oath. The hearing officer shall ensure that a record of the proceedings is maintained. The burden of proof to uphold the violation shall be on the City, but the administrative citation shall be prima facie evidence of the violation.

(4) The hearing officer shall issue a decision including a summary of the issues and the evidence presented, and findings and conclusions, within ten (10) calendar days of the conclusion of the hearing. The hearing officer may uphold the penalty imposed by the citation, reduce the penalty, or dismiss the citation. A copy of the decision shall be served by certified mail upon the person or entity contesting the violation. The decision shall be a final

administrative determination. An aggrieved party may seek judicial review of the decision pursuant to California Code of Civil Procedure Sections 1094.5 and 1094.6.

(e) Payment and Collection of Penalty.

(1) Where a person or entity has not made a timely request for administrative review, the penalty shall be due and payable to the City Treasurer on or before 15 City business days from the date of issuance.

(2) Where a person or entity has made a timely request for administrative review, and the penalty has been upheld in whole or in part upon review, any administrative penalty imposed by the hearing officer shall be due and payable not later than ten City business days from the date of the notice of decision issued under subparagraph (d)(4).

(3) If a penalty due and payable under paragraphs (1) or (2) remains unpaid after the specified due date, the Director of Public Works shall send the violator written notice that the penalty is overdue. Penalties that remain unpaid 30 days after the due date shall be subject to a late payment penalty of ten percent (10%) plus interest at the rate of one percent (1%) per month on the outstanding balance, which shall be added to the penalty amounts from the date that payment is due. Persons and entities against whom administrative penalties are imposed shall also be liable for the costs and attorney's fees incurred by the City and County in bringing any civil action to enforce the provisions of this section, including obtaining a judgment for the amount of the administrative penalty and other costs and charges.

(4) Where there is a nexus between the violation and property in the City owned by the violator, the Director shall further inform the violator that if the amount due is not paid within 30 days from the date of the notice, the Director shall initiate proceedings to make the amount due and all additional authorized costs and charges, including attorneys fees, a lien on the property. Such liens shall be imposed in accordance with Chapter 10, Article XX of the Administrative Code.

(f) The revenues generated by penalties from an administrative citation issued pursuant to this Section may be expended only by the department that is responsible for issuing the administrative citation, except that each department other than Public Works that issues administrative citations pursuant to this Section shall reimburse the Department of Public Works for the costs incurred by the Department of Public Works in administering review of those citations issued by the other department. The revenues from administrative citations issued by Class 8280 Environmental Control Officers and 8282 Senior Environmental Control Officers may be expended exclusively by the Department of Public Works for the purpose of funding litter enforcement and abatement except where the use or expenditure of those revenues is specifically directed by law to another program within the Department of Public Works.

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

By: _____
WAYNE SNODGRASS
Deputy City Attorney

FILE NO. 110280

LEGISLATIVE DIGEST

[Public Works Code, Police Code - Posting of Signs on City Property, Increasing Penalty, and Enforcement]

Ordinance amending the Public Works Code by amending Sections 184.62, 184.63, and 184.65 thereof, to (1) increase the minimum criminal penalty for violations of Article 5.6 of the Public Works Code from $50 to $100; (2) amend the procedures for administrative enforcement of Article 5.6 of the Public Works Code and specify the amounts of administrative penalties; (3) provide that in any civil action or administrative proceeding to enforce Article 5.6 the City shall have the burden of proof; and (4) provide that where an unlawfully posted sign proposes a commercial transaction, the fact that the sign identifies a person or entity may give rise to an inference that that person or entity posted or caused the posting of the sign; and amending the Police Code by amending Section 39-1 thereof, to provide that that Section shall not apply to administrative citations issued under Public Works Code Section 184.63.

Existing Law

Under current law, any person found to have violated the prohibitions against posting signs on City-owned property contained in Public Works Code Article 5.6 may receive a criminal fine of not less than $50. Current law also states that the Department of Public Works may recover its costs resulting from illegal signposting and related property damage, and certain penalties, through administrative citations, which are issued and administratively reviewed pursuant to Section 39-1 of the Police Code, but does not specify any standardized amount for administrative fines. Current law also states that in any civil action brought by the City to recover its sign removal costs or civil penalties, the fact that an illegally posted sign names or identifies a person or entity shall give rise to a rebuttable presumption that that person or entity caused the sign to be illegally posted.

Amendments to Current Law

This ordinance would amend the Public Works Code to provide that the minimum criminal fine for a violation of Article 5.6 of that Code is $100, and that such violations may be punished by administrative fines of $100 for a first violation, $200 for a second violation, and $500 for each subsequent violation within one year. This ordinance also would amend the Public Works Code and the Police Code to provide that the issuance and review of administrative citations for violations of Article 5.6 of the Public Works Code are governed by Chapter 100 of the Administrative Code, not by Police Code Section 39-1. This ordinance would also amend the Public Works Code to state that in administrative enforcement of Article 5.6 of that Code, where an illegally posted sign does no more than propose a commercial transaction, the fact

that the sign names a person or entity may be used as evidence to show that that person or entity caused the sign to be posted, and may, depending on the relevant circumstances, allow the trier of fact to infer that that person or entity caused the sign to be posted. It also would amend the Public Works Code to state that when the City brings a civil action or uses administrative enforcement to enforce Article 5.6 of that Code, the City at all times shall bear the burden of proving that the person named in the civil action, or to whom an administrative citation was issued, posted or caused the posting of the sign at issue.

Background Information

Public Works Code Section 184.65 currently provides that in any civil action seeking civil penalties or the costs of removing an unlawfully posted sign, the fact that the sign names or identifies a person or entity shall give rise to a rebuttable presumption that that person or entity posted or caused the posting of the sign. In 2009, the California Court of Appeal held that the Department of Public Works may not issue or enforce administrative citations in reliance on the current Section 184.65, because that ordinance does not refer to administrative enforcement. (*Act Now to Stop War and End Racism Coalition – San Francisco v. City and County of San Francisco*, No. A118134.)