

[Park, Police, Public Works Codes - Graffiti Prevention and Abatement]

Ordinance amending the Park and Police Codes to ban convicted graffiti offenders from bringing graffiti and etching tools, etching cream, and slap tags into parks or on Municipal Transportation Agency vehicles; amending the Public Works Code to extend the administrative process and potential administrative remedies to graffiti offenses committed on public property; amending the Public Works Code to permit the City to pursue civil remedies, including injunctive relief, civil penalties, attorney's fees, and repayment of abatement costs, against graffiti offenders; and making uncodified findings.

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

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

Section 1. The Board of Supervisors of the City and County of San Francisco hereby finds and determines that:

(a) Graffiti constitutes blight and visual litter. Graffiti mars private property and scars public spaces resulting in disorder and crime. As discussed in the well known 1982 article written by James Q. Wilson and George L. Kelling entitled *Broken Windows*, "at the community level, disorder and crime are usually inextricably linked, in a kind of developmental sequence...one unrepaired broken window is a signal that no one cares, and so breaking more windows costs nothing."

1 (b) Graffiti offenders create this disorder, damaging the property of others for their
2 own mischief, imposing visual blight for all in the vicinity to see, and leaving communities
3 feeling disrupted, disrespected, and disregarded. These offenders should be held
4 accountable to the City and County of San Francisco for the damage they cause to private
5 property and public spaces.

6 (c) The City and County of San Francisco spends more than 20 million dollars per
7 year abating graffiti throughout the City. Despite this major expense, graffiti continues to
8 plague the City.

9 (d) Given the expense and blight caused by graffiti and how destabilizing its
10 proliferation can be to communities, the City and County of San Francisco, especially through
11 such departments as the District Attorney's Office, Municipal Transportation Agency,
12 Department of Public Works, Recreation and Parks Department, Public Utilities Commission,
13 Police Department, and City Attorney's Office should make every effort to collaborate on the
14 documentation, reporting, and analyses of graffiti offenses, and to pursue any and all
15 avenues of remediation against graffiti offenders, including without limitation administrative,
16 civil, and criminal proceedings.

17
18 Section 2. The Park Code is hereby amended by revising Sections 4.01, 4.12, and
19 10.01 to read as follows:

20 **SEC. 4.01. DISORDERLY CONDUCT.**

21 No person shall, in any park without permission of the Recreation and Park
22 Department:

23 (a) Throw or propel objects of a potentially dangerous nature, including, but not
24 limited to, stones, bottles, glass, cans or crockery;

1 (b) Fire or carry firearms of any size or description, or possess any instrument,
2 appliance or substance designed, made or adopted for use primarily as a weapon, including,
3 but not limited to, slingshots, clubs, swords, razors, billies, explosives, dirk knives, bowie
4 knives or similar knives, except that this subsection shall not apply to a police or other peace
5 officer;

6 (c) Fire or carry any firecracker, rocket, torpedo or other fireworks of any description
7 (this subsection shall not be deemed to contradict any provisions contained in Chapter VIII
8 (Police Code) of the San Francisco Municipal Code);

9 (d) Carry or use a model airplane which is powered by liquid fuel or designed to be
10 used with such fuel;

11 (e) Make, kindle, maintain or in any way use a fire except at places provided,
12 designated and maintained by the Recreation and Park Department for such use;

13 (f) Climb or lie upon any tree, shrub, monument, wall, fence, shelter, fountain,
14 statute, building, construction or structure;

15 (g) Emit, eject, or cause to be deposited any excreta of the human body, except in
16 proper receptacles designated for such purposes;

17 (h) Expose his or her genitals, public hair, buttocks, perineum, anal region or public
18 hair region or any portion of the female breast at or below the areola thereof, except that this
19 section shall not apply to children under the age of five years;

20 (i) Enter a restroom or toilet set apart for use of the opposite sex, except children
21 under the age of five years accompanied by a parent or guardian and duly authorized
22 personnel for the purpose of inspection, maintenance or repair;

23 (j) Gain or attempt admittance to facilities in any park where a charge is made,
24 without paying that charge;

1 (k) Play any percussion instrument, including drums, at any time or location
2 prohibited by resolution of the Recreation and Park Commission when a sign has been posted
3 in the area affected to give notice of this prohibition, provided that such resolution does not
4 unreasonably curtail the playing of such instruments in any area of the city;

5 (l) Enter into, or attempt to enter into, any animal enclosure or habitat at the San
6 Francisco Zoological Gardens, or at the bison paddock in Golden Gate Park, without specific
7 authorization by Zoo staff;

8 (m) Fail to follow all rules of the San Francisco Zoological Gardens, or any directions
9 or instructions given by Zoo staff; and

10 (n) Possess, carry, use or keep graffiti or etching tools, etching cream, or slap tags. For
11 purposes of this subsection (n):

12 (1) "Graffiti or etching tools" means a masonry or glass drill bit, a glass cutter, a
13 grinding stone, an awl, a chisel, a carbide scribe, an aerosol paint container, or any permanent marker
14 with a nib (marking tip) one-half inch or more at its largest dimension and that is capable of defacing
15 property with permanent, indelible, or waterproof ink, paint or other liquid.

16 (2) "Etching cream" means any caustic cream, gel, liquid, or solution capable, by
17 means of chemical action, of defacing, damaging, or destroying hard surfaces in a manner similar to
18 acid.

19 (3) "Slap tag" means any material including but not limited to, decals, stickers, posters,
20 or labels which may be affixed upon any structural component of any building, structure, post, pole, or
21 other facility, which contains a substance commonly known as adhesive glue.

22
23 **SEC. 4.12. PERSONS MAY BE EXCLUDED UNDER CERTAIN CIRCUMSTANCES.**

24 Members of the San Francisco Police Department and Recreation and Park
25 Department employees, including members of the Park Patrol, are authorized to order any

1 person to stay out of or to leave any park, or any facility, building or structure therein, when
2 such officers or employees have reasonable cause to conclude that the person:

- 3 (a) Is consuming alcoholic beverages in violation of Section 4.10 of this Code;
4 (b) Is using any drug or controlled substance, as defined above, or any combination
5 of any intoxicating liquor, drug, or controlled substance; ~~or~~
6 (c) Is doing any act injurious to any park or any building, structure or facility therein;
7 (d) While using any athletic facility or area, disobeys any rule or regulation
8 governing such area or facility after being warned not to do so by a Recreation and Park
9 Department employee, including members of the Park Patrol, when the employee has
10 reasonable cause to conclude that such behavior damages or risks damage to park property
11 or interferes with the use and enjoyment of such area or facility by other persons; ~~or~~
12 (e) Behaves in so noisy, boisterous or rowdy a manner as to disturb spectators or
13 participants at an athletic event; or
14 (f) Is taking any action in violation of Section 4.01 of this Code.

15
16 **SEC. 10.01. PENALTIES.**

17 (a) Unless otherwise specified in this Code, any person violating any section of this
18 Code shall be deemed guilty of a misdemeanor or an infraction. The complaint charging such
19 violation shall specify whether the violation is a misdemeanor or infraction, which decision
20 shall be that of the District Attorney; provided, however, that whenever a person has been
21 arrested and incarcerated based solely on the violation or violations of this Code, he or she
22 shall retain the right at the time of arraignment or plea to object to the offense being made an
23 infraction, in which event the complaint shall be amended to charge the misdemeanor and the
24 case shall proceed on the misdemeanor complaint.

1 **(b)** Upon conviction of a violation charged as an infraction, the person so convicted
2 shall be punished for the first offense by a fine of not more than \$100, and for a second
3 offense within one year by a fine of not more than \$200, and for each additional offense within
4 one year by a fine of not more than \$500.

5 **(c)** Upon conviction of a violation charged as a misdemeanor, the person so convicted
6 shall be punished by a fine of not more than \$1000 or by imprisonment in the County Jail for a
7 period of not more than six months, or by both such fine and imprisonment.

8 **(d) Any person convicted of a crime involving the vandalism, defacement or destruction of any**
9 **portion of any park, grounds, roadways, avenues, squares, recreation facilities, or other property**
10 **placed under the control, management and direction of the Recreation and Park Commission,**
11 **including violations of this Code or California Penal Code Sections 594, 640.5, or 640.6 shall be liable**
12 **to the City for any and all costs associated with fixing, altering, removing, or abating violations as well**
13 **as any labor expended to otherwise abate and/or restore the area affected. Any costs sought pursuant**
14 **to this Section 10.01 shall be recoverable as restitution and may be ordered by a court of competent**
15 **jurisdiction in any related criminal prosecution. The remedies in this subsection (d) are in addition to**
16 **any other remedies available at law or equity.**
17

18 Section 3. The Police Code is hereby amended by adding Section 606, to read as
19 follows:

20 **SEC. 606. PERSONS IN POSSESSION OF GRAFFITI OR ETCHING TOOLS, ETCHING**
21 **CREAM OR SLAP TAGS ON VEHICLES OPERATED BY THE SAN FRANCISCO MUNICIPAL**
22 **TRANSPORTATION AGENCY.**

23 **It shall be unlawful for any person to be in possession of graffiti or etching tools, etching cream**
24 **or slap tags on any revenue transit operated by the San Francisco Municipal Transportation Agency if**
25 **the person has been convicted of or pled guilty or no contest to a crime involving the vandalism,**

defacement or destruction of property including a violation of California Penal Code Sections 594, 640.5, or 640.6 within the last ten years. For purposes of this Section 606:

(a) "Graffiti or etching tools" is defined as a masonry or glass drill bit, a glass cutter, a grinding stone, an awl, a chisel, a carbide scribe, an aerosol paint container, or any permanent marker with a nib (marking tip) one-half inch or more at its largest dimension and that is capable of defacing property with permanent, indelible, or waterproof ink, paint or other liquid.

(b) "Etching cream" means any caustic cream, gel, liquid, or solution capable, by means of chemical action, of defacing, damaging, or destroying hard surfaces in a manner similar to acid.

(c) "Slap tag" means any material including but not limited to, decals, stickers, posters, or labels which may be affixed upon any structural component of any building, structure, post, pole, or other facility, which contains a substance commonly known as adhesive glue.

Section 4. The Public Works Code is hereby amended by revising Sections 1302, 1303, 1304, 1305, 1306, and adding 1307.5 to read as follows:

SEC. 1302. DEFINITIONS.

~~(a)~~ **City.** "City" means the City and County of San Francisco.

~~(b)~~ **Director.** "Director" means the Director of the Department of Public Works or his or her designee.

~~(c)~~ **Graffiti.** "Graffiti" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including by way of example only and without limitation, signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and which is visible from the public right-of-way. "Graffiti" shall not include:

(1) any sign or banner that is authorized by, and in compliance with, the applicable

1 requirements of this Code, the San Francisco Planning Code or the San Francisco Building
2 Code; or (2) any mural or other painting or marking on the property that is protected as a work
3 of fine art under the California Art Preservation Act (California Civil Code Sections 987 et
4 seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C.
5 §§ 101 et seq.).

6 **Offending Party/ies.** "Offending Party/ies" shall mean any person or persons who defaces,
7 damages or destroys public or private property with graffiti or other inscribed material. "Offending
8 Party/ies" shall include any person who assists, enables, or permits another to deface, damage or
9 destroy public or private property with graffiti or other inscribed material.

10 ~~(d)~~ **Owner.** "Owner" shall mean the owner of record of the property as set forth in
11 the most current records of the Tax Assessor, or the owner's authorized agent.

12 **SEC. 1303. PROHIBITION.**

13 (a) It shall be unlawful for the owner of any real property within the City and County
14 bearing graffiti to allow the graffiti to remain on the property in violation of this Article.

15 (b) It shall be unlawful for any Offending Party/ies to deface, damage or destroy public or
16 private property with graffiti or other inscribed material.

17 **SEC. 1304. VIOLATIONS**

18 (a) Notice of Violation. Where the Director determines that any property contains
19 graffiti in violation of Section 1303, the Director may issue a notice of violation to the property
20 owner and/or any Offending Party/ies. At the time the notice of violation is issued, the Director
21 shall take one or more photographs of the alleged graffiti, and shall make copies of the
22 photographs available to the property owner and/or any Offending Party/ies upon request. The
23 photographs shall be dated and retained as a part of the file for the violation. The notice shall
24 give the owner and/or any Offending Party/ies thirty (30) calendar days from the date of the
25 notice to either remove the graffiti or request a hearing on the notice of violation, and shall set

1 forth the procedure for requesting the hearing. The notice shall also inform the owner and/or
2 any Offending Party/ies that where the owner and/or any Offending Party/ies fails to either remove
3 the graffiti or request a hearing within thirty (30) calendar days from the date of the notice, the
4 Director may initiate proceedings in accordance with this Article to enter upon the ~~owner's~~
5 property and abate the graffiti ~~at the owner's expense~~. The notice shall inform the owner and/or any
6 Offending Party/ies that should the Director need to abate the graffiti, that the owner and/or any
7 Offending Party/ies shall be liable for all costs of enforcement and abatement. The notice shall
8 further inform the owner and/or Offending Party/ies that the minimum charge for removing
9 graffiti is the greater of either \$500 or the actual cost to the City, (including overhead and
10 administrative costs, as well as attorneys' fees where the Director has elected to seek
11 recovery of attorneys' fees). The Director shall serve the notice of violation as follows:

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

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

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

17 (B) The owner of record;and

18 (C) Any Offending Party/ies.

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

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

23 (b) Where property defaced by graffiti is owned by a public entity other than the City
24 and County, the Director shall cause removal of the graffiti only after securing the consent of
25 an authorized representative of the public entity that has jurisdiction over the property. The

Director shall use all reasonable efforts to minimize graffiti on City-owned property but City-owned property shall not otherwise be subject to the requirements of this Article except as provided for in Section 1307.5.

SEC. 1305. REQUEST FOR HEARING; HEARING.

(a) **Request for Hearing.** A property owner and/or Offending Party/ies may request a hearing in order to contest the notice of violation issued in accordance with Section 1304 by filing with the Director within thirty (30) calendar days from the date of the notice of violation, a request for hearing that specifies in detail the basis for contesting the notice of violation.

(b) **Notice of Hearing.** Whenever a hearing is requested pursuant to this Section, the Director shall, within seven (7) calendar days of receipt of the request, notify the property owner and/or Offending Party/ies of the date, time, and place of the administrative review hearing by certified mail. Such hearing shall be held no later than forty-five (45) calendar days after the Director receives the request, unless time is extended by mutual agreement of the affected parties.

(c) **Submittals for the Hearing.** At least five (5) City business days prior to the hearing, the property owner and/or Offending Party/ies and the City shall submit to the hearing officer and exchange with one another, written information including, but not limited to, the following: a statement of the issues to be determined by the hearing officer, a statement of the evidence to be offered at the hearing and the identity of any witnesses to appear at the hearing.

(d) **Hearing Procedure.** The hearing shall be conducted by a neutral hearing officer from a City office or department outside the Department of Public Works, appointed by the Director of Administrative Services.

(1) Hearing Request By An Owner: The burden of proof to establish that the property contains graffiti shall be on the City. The owner shall be entitled to present evidence

1 and demonstrate that his or her property does not contain graffiti. The property owner shall
2 also be entitled to present evidence and demonstrate that his or her property is burdened with
3 a disproportionate share of graffiti vandalism, based on factors such as the frequency or
4 extent of the graffiti, such that requiring the owner to remove the graffiti would result in an
5 unfair hardship. All testimony shall be under oath, and witnesses maybe cross-examined. The
6 hearing officer shall ensure that a record of the proceedings is maintained. The determination
7 of the hearing officer after the hearing shall be final and not appealable.

8 (2) Hearing Request By An Offending Party/ies: The burden of proof to establish
9 that the property contains graffiti and that the Offending Party/ies defaced, damaged or destroyed
10 private property with graffiti or other inscribed material or assisted another to deface, damage or
11 destroy private property shall be on the City. The Offending Party/ies shall be entitled to present
12 relevant evidence. All testimony shall be under oath, and witnesses may be cross-examined. The
13 hearing officer shall ensure that a record of the proceedings is maintained. The determination of the
14 hearing officer after the hearing shall be final and not appealable.

15 (e) **Decision.** The hearing officer shall issue a decision including a summary of the
16 issues and the evidence presented, and findings and conclusions, within ten (10) calendar
17 days of the conclusion of the hearing. A copy of the decision shall be served upon the
18 property owner and/or Offending Party/ies by certified mail. The decision shall be the City's final
19 administrative determination. An aggrieved party may seek judicial review of the decision
20 pursuant to California Code of Civil Procedure Sections 1094.5 and 1094.6.

21 **SEC. 1306. ABATEMENT BY DIRECTOR.**

22 (a) Following the hearing if the City sustains its burden of proof, or if the property
23 owner and/or Offending Party/ies does not request a hearing and fails to remove the graffiti within
24 thirty (30) calendar days from the date of the notice of violation, the Director may immediately
25 order that the graffiti be abated. Unless the Director has obtained written consent from the

1 property owner to enter the property and remove the graffiti, before initiating abatement the
2 Director shall obtain a court order authorizing the Department of Public Works to enter upon
3 the property and remove the graffiti and give written notice of the abatement (Abatement
4 Order) served in accordance with Section 1304(a). The Director may not order a graffiti
5 abatement action that may violate the California Art Preservation Act (California Civil Code
6 Sections 987 et seq.) or the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 et
7 seq.) without first consulting with the City Attorney.

8 (b) Alternatively, the Director may provide paint for graffiti removal to a property
9 owner at no charge. In return, the property owner shall agree in writing to paint over the graffiti
10 giving rise to the violation within 10 City business days from receiving the paint. A property
11 owner's failure to paint over the graffiti within that time shall be ground for the Director to issue
12 a new notice of violation under Section 1304.

13 (c) If the hearing officer determines that a hardship exists, the Director is authorized
14 to remove the graffiti at no cost to the property owner, provided that the owner releases the
15 City from liability by providing the Director with a signed waiver of liability. The Director may
16 develop forms for this purpose.

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

19 (1) **Abatement Action.** After obtaining a court order, the Director shall implement
20 the Abatement Order. The Director may enter upon the property and cause the removal,
21 painting over or other eradication of the graffiti as the Director deems appropriate. The
22 Director shall not authorize or undertake to provide for the painting or repair of any more
23 extensive area than that where the graffiti is located, except where the Director determines in
24 a written notice to the owner that a more extensive area is required to be repainted or repaired
25 in order to avoid an aesthetic disfigurement to the neighborhood or community. Where the

1 Director removes graffiti in accordance with the requirements of this Article, the owner and/or
2 Offending Party/ies shall pay the greater of either \$500 or the actual cost (including overhead
3 and administrative costs, as well as attorneys' fees where the Director has elected to seek
4 recovery of attorneys' fees) of removing the graffiti. The Director shall provide an accounting
5 to the owner and/or Offending Party/ies of the costs of the abatement action (Abatement
6 Accounting) on a full cost recovery basis not later than 10 days from the date the abatement
7 action is completed. The Abatement Accounting shall include all administrative costs incurred
8 by the City in abating graffiti on the property. The total amount set forth in the Abatement
9 Accounting shall be due and payable by the owner and/or Offending Party/ies within 30 days
10 from the date of mailing of the Abatement Accounting.

11 (2) **Recovery of Attorneys' Fees.** At the time the abatement action is filed, the
12 Director may elect to seek recovery of attorneys' fees incurred in a graffiti abatement action
13 under this Article. In a case where the Director makes this election, the prevailing party shall
14 be entitled to recover attorneys' fees. In no event shall the award of attorneys' fees to a
15 prevailing party exceed the amount of reasonable attorneys' fees incurred by the City in the
16 action.

17 (3) **Lien.** If all or any portion of the amount set forth in the Abatement Accounting
18 remains unpaid after 30 days of the mailing of the Abatement Accounting, such portion shall
19 constitute a proposed lien on the property which was the subject matter of the Abatement
20 Action. Except as otherwise specified in this subparagraph, such liens shall be imposed in
21 accordance with Chapter 10, Article XX of the Administrative Code. Property owners seeking
22 to challenge the amount of the Abatement Accounting may do so at the hearing authorized
23 under Chapter 10, Article XX of the Administrative Code.

24 (A) In addition to the requirements imposed under Section 10.232 of the ~~San~~
25 ~~Francisco~~ Administrative Code, the notice to the property owner of the hearing on the

1 proposed lien shall be served in the same manner as a summons in a civil action in
2 accordance with Article 3 (commencing with Section 415.10) of Chapter 4 of Title 5 of Part 2
3 of the California Code of Civil Procedure. Where, after diligent search, the owner of record
4 cannot be found, the notice may be served by posting a copy in a conspicuous place upon the
5 property for a period of ten (10) days and publication thereof in a newspaper of general
6 circulation.

7 (B) Any lien authorized by this Section shall specify the amount of the lien, the name
8 of the department initiating the abatement proceeding, the date of the abatement order, the
9 street address, legal description and assessor's parcel number of the parcel on which the lien
10 is imposed, and the name and address of the recorded owner of the parcel.

11 (C) Where a lien authorized by this Section is discharged, released or satisfied,
12 either through payment or foreclosure, the Tax Collector shall record a notice of the discharge
13 containing the information specified in subparagraph (B). Any such notice of discharge shall
14 be subject to the Release of Lien Fee imposed pursuant to Section 10.237 of the ~~San~~
15 ~~Francisco~~ Administrative Code.

16 (4) **Special Assessment.** Notwithstanding anything to the contrary in Article XX of
17 Chapter 10, pursuant to Section 38773.5 of the California Government Code, the Board of
18 Supervisors may order that the amount of the lien be specially assessed against the parcel.
19 Upon such an order, the entire unpaid balance of the costs, including any penalty and interest
20 payments on the unpaid balance to the date that the Director reports to the Board shall be
21 included in the special assessment lien against the property. The Director shall report charges
22 against delinquent accounts to the Board of Supervisors at least once each year. At the time
23 the special assessment is imposed, the Director shall give notice to the property owner by
24 certified mail, and shall inform the property owner that the property may be sold by the Tax
25 Collector for unpaid delinquent assessments after three years. The assessment may be

1 collected at the same time and in the same manner as ordinary municipal taxes are collected,
2 and shall be subject to the same penalties and procedure and sale in case of delinquency as
3 provided for ordinary municipal taxes. All tax laws applicable to the levy, collection and
4 enforcement of ordinary municipal taxes shall be applicable to the special assessment.
5 However, if any real property to which a cost of abatement relates has been transferred or
6 conveyed to a bona fide purchaser for value, or if a lien of a bona fide encumbrancer for value
7 has been created and attaches thereon, prior to the date on which the first installment of taxes
8 would become delinquent, then the cost of abatement shall not result in a lien against the real
9 property but instead shall be transferred to the unsecured roll for collection.

10 **SEC. 1307.5 CIVIL ACTIONS AGAINST OFFENDING PARTY/IES.**

11 The following procedures shall apply to actions by the City and County of San Francisco
12 against Offending Party/ies to enjoin, abate, and recover costs for abatement of graffiti committed in
13 violation of Section 1303:

14 (a) **Graffiti on Public Property.** In addition to any other remedies available at law or
15 equity, the City Attorney is authorized to initiate a civil action for injunctive relief, civil penalties, costs,
16 and fees as set forth below. In an action for graffiti violations on public property, Offending Party/ies
17 may be enjoined, shall be liable for civil penalties of up to \$1000 per graffiti incident or other
18 equivalent equitable or injunctive relief in the form of community or civic service, and shall be liable
19 for any and all investigation, abatement and litigation costs. Attorneys' fees shall be awarded to the
20 prevailing party in any litigation brought pursuant to this Section 1307.5(a).

21 (b) **Graffiti on Private Property.** If the City Attorney brings a civil action under Section
22 1307.5(a) above, the City Attorney may also, where appropriate, offer evidence that the Offending
23 Party/ies committed additional graffiti incidents on private property. In such a case, the City Attorney
24 may seek additional civil penalties of up to \$1000 per private property graffiti incident or other
25 equivalent equitable or injunctive relief in the form of community or civic service, any and all

1 associated investigation, abatement and litigation costs, as well as any restitution to any affected
2 private property owners for out of pocket expenses associated with the abatement.

3 (c) The remedies in this Section 1307.5 are in addition to any other remedies provided by
4 law. No provision in this Article shall preclude prosecution of actions for civil and criminal penalties
5 concurrently, sequentially or individually

6
7 Section 5. Uncodified Provisions.

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

12 (b) Undertaking for the General Welfare. In enacting and implementing this
13 ordinance, the City is assuming an undertaking only to promote the general welfare. It is not
14 assuming, nor is it imposing on its officers and employees, an obligation for breach of which it
15 would be liable in money damages to any person who claims that such breach proximately
16 caused injury.

17 (c) No Conflict with State or Federal Law. Nothing in this ordinance shall be
18 interpreted or applied so as to create any requirement, power, or duty in conflict with any
19 State or federal law.

20 (d) Severability. If any of section, subsection, sentence, clause, phrase or word of
21 this ordinance is for any reason held to be invalid or unconstitutional by a decision of any
22 court of competent jurisdiction, such decision shall not affect the validity of the remaining
23 portions of the ordinance. The Board of Supervisors hereby declares that it would have
24 passed this ordinance and each and every section, subsection, sentence, clause, phrase, and
25

1 word not declared invalid or unconstitutional without regard to whether any other portion of
2 this ordinance would be subsequently declared invalid or unconstitutional.

3 (e) Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
4 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
5 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
6 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
7 additions, and Board amendment deletions in accordance with the "Note" that appears under
8 the official title of the ordinance.

9
10 APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

11 By:

12 YVONNE R. MERÉ
Deputy City Attorney

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