

1 [Public Works Police-Code - Bicycle Chop Shops]

2

3 Ordinance amending the Public Works Police-Code to prohibit the assembly,

4 disassembly, sale, offer of sale, distribution, ~~or offer of distribution,~~ or storage on

5 ~~public property or public rights-of-way~~ of bicycles and bicycle parts on the public right-

6 of-ways, under certain conditions and with certain exceptions; authorize Police

7 Department (SFPD) to seize Public Works to remove and seize bicycles and bicycle

8 parts following issuance of a notice of violations of this prohibition; and allow either

9 the recipient of the notice or any other person who can demonstrate lawful ownership

10 to retrieve seized items from Public Works after 30 days require SFPD to return seized

11 items to their rightful owners without charging any fees, except that SFPD may charge

12 an impound fee if the rightful owner consented to or participated in the acts that led to

13 the seizure.

14

15 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.

16 **Additions to Codes** are in *single-underline italics Times New Roman font*.

17 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.

18 **Board amendment additions** are in double-underlined Arial font.

19 **Board amendment deletions** are in ~~Arial font~~.

20 **Asterisks (* * * *)** indicate the omission of unchanged Code

21 subsections or parts of tables.

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

23 Section 1. The Public Works Police-Code is hereby amended by adding Article 5120,

24 entitled "Prohibited Bicycle Actions and Transactions," and including Sections 512000,

25 512001, 512002, and 512003, to read as follows:

ARTICLE 5120: PROHIBITED BICYCLE ACTIONS AND TRANSACTIONS

1 **SEC. 542000. PURPOSE AND FINDINGS.**

2 ~~Countless bicycles and bicycle parts appear at~~ are stolen in San Francisco every year, at
3 great cost to local residents, and taken to open-air “chop shops” on City streets in San
4 Francisco where they are disassembled, stripped of identifying information, and/or sold. Prohibiting
5 such activity~~the operation of chop shops, and allowing~~ Public Works to remove the Police
6 Department (SFPD) to seize any bicycles or bicycle parts from the public right-of-ways, from
7 persons who operate chop shops, will help SFPD hold chop shop operators accountable
8 and will help restore stolen bicycles to their rightful owners. Prohibiting chop shops will also
9 will help clear the public rights-of-ways, prevent unauthorized commercial activity on City
10 streets, and improve the quality of life for City residents, and if any items are lost or stolen
11 restore such items to their lawful owners.

12
13 **SEC. 542001. PROHIBITION ON SALE OF BICYCLES AND BICYCLE PARTS.**

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

- 17 _____ (1) five or more bicycles;
18 _____ (2) a bicycle frame with the gear cables or brake cables cut;
19 _____ (3) three or more bicycles with missing parts (the term “parts” shall mean handlebars,
20 wheels, forks, pedals, cranks, seats, or chains);

- 21 _____ (4) five or more bicycle parts;
22 (b) This prohibition shall not apply in any of the following situations:
23 _____ (1) The person is operating under a valid business license or permit.
24 _____ (2) The owner of a bicycle or bicycle part is present during the repair of his or her
25 single bicycle or bicycle part.

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

4 ~~_____ (3)(4) The items are being used in connection with an event held by an organization~~
5 ~~with tax exempt status under 26 United States Code Section 501(c)(3) or 501(c)(4)a~~
6 ~~registered non-profit.~~

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

9
10 **SEC. 512002. ENFORCEMENT AND APPEALS.**

11 (a) Under Section 836.5 of the Penal Code, Public Works employees designated in
12 Administrative Code Section 38 are hereby authorized to SFPD may issue a written notice of
13 violation an administrative citation to any person who is in violation of Section 512001, and may
14 delegate responsibilities to staff as appropriate to implement the removal of items taken in the
15 enforcement of this Article. Upon issuance of such notice citation, Public Works may remove and
16 seize any items that are being unlawfully assembled, disassembled, sold, distributed, offered for sale or
17 distribution, or stored. If the person to whom the notice is issued does not allow Public Works
18 to remove and seize the items, Public Works shall take no further action, but may seek
19 assistance from the Police Department (SFPD) as necessary to complete the removal and
20 seizure. Following the removal and seizure, the items may be recovered from Public Works
21 either by contesting the grounds for the notice of violation under subsection (c), or by
22 retrieving the items after 30 days under subsection (d).

23 (b) The notice of violation administrative citation shall include a reference to this Article
24 5120; a description of the violation; the date and location of the violation(s) observed; a description of
25 all seized items; a description of the process the person in possession of the items may pursue

1 to recover the items by contesting the grounds for the notice under subsection (c); a
2 description of the process to recover the items after 30 days under subsection (d); a
3 description of the process to recover the seized items and to obtain waiver of the impound
4 fees, as set forth in subsections (b) and (c); a description of the process for appealing the
5 citation or assessment of impound fees, including the deadline for filing such an appeal, as set
6 forth in subsection (d); and the name and signature of the citing officer Public Works employee
7 who issued the notice and, if applicable, the SFPD officer who provided assistance.

8 (c) A person who has received a notice of violation may contest the grounds for the
9 notice by submitting a written request to Public Works within 30 days after the date of the
10 notice. Upon receipt of a timely request, Public Works shall assign the matter to a hearing
11 officer, who shall be someone other than the person(s) who issued the notice or who
12 witnessed the events giving rise to the notice, or the direct supervisor of such person(s). The
13 hearing officer shall fix a date, time, and place for the hearing, which shall occur within three
14 calendar days of the receipt of the hearing request unless extended in writing by mutual
15 agreement of the parties. Public Works shall have the burden in such hearing to prove by
16 clear and convincing evidence that the violation described in the notice occurred. At the
17 hearing, the reviewing officer will not be bound by the formal rules of evidence and may
18 accept information from both parties, including, but not limited to, the notice, which shall be
19 prima facie evidence of the violation. The hearing officer shall make findings based on the
20 record of the hearing and shall issue a decision as soon as possible thereafter, and no later
21 than two business days after the close of the hearing. If the hearing officer concludes that the
22 City failed to prove by clear and convincing evidence that the violation of Section 542001
23 described in the notice occurred, Public Works shall immediately rescind the notice and return
24 any seized items at no charge. If the hearing officer finds by clear and convincing evidence
25 that the violation of Section 542001 described in the notice did occur, Public Works shall

1 retain the items for at least 30 days after the date of the notice, in accordance with subsection
2 (d). The decision of the hearing officer in either case shall be the City's final action. Following
3 the decision of the hearing officer, an appeal may be filed with the superior court pursuant to
4 California Government Code Section 53069.4. Failure of any person to request a hearing in
5 accordance with the provisions of this Section 512002 or to appear at the noticed hearing
6 shall constitute a failure to exhaust administrative remedies.

7 (d) A person who has received a notice of violation may retrieve the seized items 30
8 days after the date of the notice, upon payment of an impound fee equal to the actual cost to
9 Public Works of removal and storage. After 30 days have elapsed, if the recipient of the
10 notice has not yet requested to retrieve the items, and another person requests the items on
11 the basis of their lawful ownership of the items and provides Public Works reliable supporting
12 evidence for their claim of ownership (including, but not limited to, video or photographic
13 evidence, a bill of sale, the correct serial number) that Public Works finds accurate, then
14 Public Works shall return the items to that person at no charge. If Public Works receives
15 conflicting requests from multiple persons for the same item, or if Public Works after
16 consultation with SFPD concludes that there is reasonable cause to believe that the items
17 were not in the lawful possession of the recipient of the notice at the time of seizure or that a
18 person claiming ownership has submitted a false claim, then Public Works shall refer the
19 matter to SFPD for investigation, and on SFPD's request shall deliver the items to SFPD. If
20 SFPD declines to request the items from Public Works within 30 days of the date of referral,
21 Public Works shall return the items to the recipient of the notice, or if such person has not
22 requested the items, then to the person claiming lawful ownership.

23 (e) Any unclaimed items remaining in Public Works custody 60 days after the date of
24 the notice of violation shall be deemed abandoned and may be discarded or destroyed.

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

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

13 ~~(d) A person who receives an administrative citation under subsection (a), or who is~~
14 ~~required to pay an impound fee pursuant to subsection (c), may file an appeal to challenge the~~
15 ~~citation or impound fee. The appeal must be filed within 15 days of the date that the person~~
16 ~~received the administrative citation or written findings requiring payment of a fee, whichever is~~
17 ~~later. The appeal must be in writing and must specify the basis for the appeal in detail, and~~
18 ~~must be filed with the SFPD as indicated in the administrative citation.~~

19 ~~(e) As soon as practicable after receiving the written appeal, the SFPD shall select~~
20 ~~an officer to review the appeal. The reviewing officer shall be someone other than the~~
21 ~~officer(s) who issued the administrative citation or who witnessed the events giving rise to the~~
22 ~~citation, or the direct supervisor of such officer(s). The reviewing officer shall fix a date, time,~~
23 ~~and place for the hearing on the appeal and provide written notice of the hearing at least 10~~
24 ~~days prior to the hearing date. If the notice is served by mail, it shall be by first-class mail,~~
25 ~~and service shall be effective on the date of mailing. The hearing date shall be no later than~~

1 30 days after service of the notice of hearing, unless that time is extended by mutual
2 agreement of the parties. SFPD shall have the burden of proof in such hearing. At the
3 hearing, the reviewing officer will not be bound by the formal rules of evidence and may
4 accept information from both parties, including, but not limited to, the administrative citation,
5 which if valid shall be prima facie evidence of the violation; oral testimony; testimony by
6 declaration under penalty of perjury; and documentary information.

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

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

19
20 **SEC. 512003. SEVERABILITY.**

21 *If any section, subsection, sentence, clause, phrase, or word of this Article 5120, or any*
22 *application thereof to any person or circumstance, is held to be invalid or unconstitutional by a*
23 *decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining*
24 *portions or applications of the Article. The Board of Supervisors hereby declares that it would have*
25 *passed the Article and each and every section, subsection, sentence, clause, phrase, and word not*

1 declared invalid or unconstitutional without regard to whether any other portion of the Article or
2 application thereof would be subsequently declared invalid or unconstitutional.

3
4 Section 2. Effective Date. This ordinance shall become effective 30 days after
5 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
6 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
7 of Supervisors overrides the Mayor's veto of the ordinance.

8
9 APPROVED AS TO FORM:
10 DENNIS J. HERRERA, City Attorney

11
12 By: _____
13 MANU PRADHAN
14 Deputy City Attorney

15
16
17
18
19
20
21
22
23
24
25
n:\legana\as2017\1600467\01211741.docx