

[Police, Public Works Codes - Administrative Penalties and Fines for Illegal Dumping]

Ordinance amending the Public Works Code to authorize the Public Works Director to impose administrative penalties and fines for illegal dumping, and to provide for additional enforcement remedies for illegal dumping; amending the Public Works Code **to expand the definition of illegal dumping to capture address electronic waste and hazardous waste, and to clarify that each act of illegal dumping constitutes a separate violation subject to abatement or enforcement actions;** amending the Police Code to **provide procedures for assessment and collection of administrative penalties for illegal dumping; and affirming the Planning Department's determination under the California Environmental Quality Act.**

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. Environmental Findings.

The Planning Department has determined that the actions contemplated in this ordinance comply with the California Environmental Quality Act (California Public Resources Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of Supervisors in File No. 191283 and is incorporated herein by reference. The Board affirms this determination.

1 Section 2. Article 26 of the Public Works Code is hereby amended by revising
2 Sections 1601, 1602, 1603, 1604, and 1605, and adding Section 1606, to read as follows:

3
4 **SEC. 1601. PURPOSE AND INTENT.**

5 The Board of Supervisors finds and declares that:

6 (a) Dumping on streets, sidewalks, public rights-of-way, and other public properties
7 within ~~the City and County of~~ San Francisco is detrimental to the health, safety, and welfare of
8 the community and is hereby declared to be a public nuisance. Dumping in public spaces
9 creates urban blight and not only impedes the paths of travel for pedestrian and vehicular
10 traffic and is detrimental to businesses and personal pursuits, but pollutes public spaces with
11 potentially harmful and toxic substances, degrades neighborhoods, and encourages others to
12 unlawfully dispose of other waste and debris, all fostering a disrespect of public property and
13 of the community.

14 (b) Cleaning up and abating unlawfully dumped material on public properties costs the
15 City ~~and County of San Francisco~~ tens of thousands of dollars a year. The City is rarely able to
16 recoup those costs from the individuals and entities who commit the illegal dumps.

17 (c) Because dumping on public properties and rights-of-way is hereby deemed a
18 nuisance, immediate and effective abatement against the parties responsible for the unlawful
19 dumping is essential to deter these illegal acts and may be accomplished through the
20 administrative enforcement and judicial procedures outlined herein.

21 (d) The City is enacting this legislation pursuant to and in accordance with California
22 Government Code Section~~s~~ 38771 and 53069.4, and California Civil Code Sections 3479 and
23 3480.

(e) Nothing in this Article 26 shall be construed to in any way limit the City's or any other government agency's rights to enforce any other provision of the Municipal Code or state law, or to create a duty or obligation on the part of the City to enforce this Article.

SEC. 1602. DEFINITIONS.

Unless the context requires otherwise, the following definitions shall govern the construction of this Article 26:

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

~~"Commercial Waste" means any amount of waste matter generated in the course of a trade, business, profession, or occupation, including but not limited to food scraps and waste materials or byproducts of production, manufacturing, and repair activities. Commercial Waste may include but is not limited to Debris and Waste Construction Material.~~

"Construction and Demolition Debris" has the same meaning as set forth in Environment Code Section 1401, as may be amended from time to time.

"Costs" means any expenses incurred by the City in abating or otherwise addressing Illegal Dumping and Illegal Dumping violations ~~including, but is not limited to, litigation costs, court costs, attorneys' fees, costs of abatement, removal, and disposal of illegally dumped waste matter (including the equivalent cost of disposal if the City is not charged), costs of investigating the incident, and enforcement costs, including, but not limited to time and expenses of the Department, the City Attorney's Office, the Police Department, and/or other City departments, incurred by the City in identifying and apprehending a Responsible Person.~~

~~(b) "Debris and Waste Construction Material" includes any wood, brick, plaster, glass, cement, roofing material, composite, sheet rock, sheet metal, wire, pipe, and other materials related to the remodeling, construction or repair of, or the partial or total demolition of, houses, buildings, or other structures.~~

1 "Department" means the Department of Public Works.

2 ~~(e)~~ "Director" means the Director of the Department of Public Works or ~~his or her~~ the
3 Director's designee.

4 "Electronic Waste" means computers, computer monitors, flat screen mobile devices,
5 televisions, audio equipment, mobile telephones, electronic gaming devices, and any other electronic
6 equipment that contains components that are required to be specially collected and managed
7 ~~disposed of pursuant to federal, state, or City law, including, but not limit to a Covered Electronic~~
8 ~~Device as defined in Section 42463 of the California Public Resources Code.~~

9 "Hazardous Waste" has the same meaning as set forth in California Health and Safety
10 Code Sections 25100 et seq., as may be amended from time to time.

11 "Illegal Dumping" means the activity, act, or actions performed by any Person to deposit,
12 leave, place, keep, maintain, or abandon Prohibited Materials on any Public Property, either in
13 violation of any City law or without the lawful and express written permission of the City.

14 ~~(d)~~ "Person" means and includes companies, corporations, limited liability companies,
15 estates, associations, partnerships, trusts, unincorporated associations and, one or more
16 ~~individual human beings~~ natural persons.

17 ~~(e)~~ "Prevailing Party" has the same meaning as set forth in California Code of Civil
18 Procedure Section 1032, or any successor provision. "Prevailing Party" includes the City in
19 actions where the City obtains an injunction and/or civil penalties or other monies under this
20 Article 26 or State law.

21 "Prohibited Materials" means Commercial Waste, Debris and Waste Construction
22 Materials and Demolition Debris, Electronic Waste, Hazardous Waste, Refuse industrial
23 ~~materials,~~ Powered Scooters (as defined in the Transportation Code) that are part of a Powered
24 Scooter Share Program, or bicycles that are part of a Stationless Bicycle Share Program (as defined in
25

1 the Transportation Code), or more than five pounds or more than one cubic foot of any other waste,
2 refuse, or debris, or material.

3 ~~(f)~~ "Public Property" includes any portion of a street, road, right-of-way, sidewalk, park,
4 lot, or public or other land owned, operated, leased, or maintained by the City ~~and County of~~
5 ~~San Francisco.~~

6 "Refuse" has the same meaning as set forth in Environment Code section 1902, as
7 may be amended from time to time.

8 ~~(g)~~ "Responsible Party" includes any Person who causes or allows or contributes to or
9 participates in actions which constitute a nuisance under this Article 26. By way of example but
10 not limitation, a Responsible Party may personally perform, or hire a Person to perform, an act of
11 Illegal Dumping.

13 **SEC. 1603. PROHIBITED DUMPING ACTIVITY.**

14 (a) Public Nuisance. ~~Illegal Dumping~~ shall be strictly prohibited. ~~for any Person commit to~~
15 ~~deposit, leave, place, keep, maintain, or abandon, Debris and Waste Construction Materials, industrial~~
16 ~~materials, or more than 100 pounds total of any other waste, refuse, or debris, Powered Scooters, as~~
17 ~~defined in the Transportation Code, that are part of a Powered Scooter Share Program, or bicycles~~
18 ~~that are part of a Stationless Bicycle Share Program, on any Public Property without the lawful and~~
19 ~~express written permission of the City and County of San Francisco.~~ (b) Any activity or action that
20 violates this Article 26 shall be, and is hereby declared, a public nuisance.

21 (b) Separate and Distinct Violations. Each act of Illegal Dumping, notwithstanding the
22 performance of such an act at the same location of another act of Illegal Dumping that takes place at
23 approximately the same time, shall constitute a separate violation that is subject to an abatement or
24 enforcement action under this Article 26. In exercising the Director's discretion to enforce this Article,
25 the Director may issue one notice of violation for each act of Illegal Dumping or a consolidated notice

1 of violations for more than one act of Illegal Dumping, and the Director may rely upon the methods
2 and presumptions below.

3 (1) Each individual piece of furniture or component of furniture that has been
4 separately placed on Public Property shall be presumed to have been placed on Public Property by an
5 individual act of Illegal Dumping and shall be considered a separate act of Illegal Dumping.

6 (2) An amount of Prohibited Materials of any or all types that exceeds three cubic
7 yards, or requires more than one pick-up truckload of greater than or equal to a half-ton payload
8 capacity to remove, may be cited for each increment of three cubic yards or each number of truckloads
9 required to remove the Prohibited Materials.

10 (c) Nothing in this Article 26 shall be construed to authorize or allow any Person to
11 deposit, leave, place, keep, maintain, or abandon, any other property or materials, in any
12 amount, on any Public Property without the lawful and express written permission of the City
13 ~~and County of San Francisco~~, other than to deposit trash in an appropriate designated
14 receptacle.

16 **SEC. 1604. ABATEMENT.**

17 (a) The Director may require or take any necessary abatement or enforcement action
18 to clean up, remove, or contain any Prohibited Materials or prohibited items dumped on
19 Public Property, including ordering the Responsible Party to remove and appropriately
20 dispose of the material or prohibited items. The Director may ask any other City department or
21 necessary state agency for assistance in abating any nuisance pursuant to this Article 26.

22 (b) Each Responsible Party shall be responsible for Any Costs or monies expended by
23 the Department of Public Works or any other department of the City and County of San Francisco
24 to abate a nuisance under this Article 26. Such Costs or monies may be recovered in a civil
25 action as described in Section 1605 or by other lawful means.

1 **SEC. 1605. ENFORCEMENT – INJUNCTIVE RELIEF, CIVIL PENALTIES, COSTS,**
2 **AND ATTORNEYS' FEES.**

3 (a) The City Attorney may enforce the provisions of this Article 26 through a civil
4 action in any court of competent jurisdiction.

5 (b) The City Attorney may apply to any court of competent jurisdiction for an order
6 seeking injunctive relief to abate or remove any nuisance described in this Article 26, to
7 restrain any Responsible Party from taking any action contrary to the provisions of this Article
8 or to require any Responsible Party to take action to comply with the provisions of this Article
9 or an order by the Director to remove and appropriately dispose of material illegally dumped
10 on Public Property.

11 (c) In any civil court action brought by the City Attorney to enforce this Article 26 in
12 which the City succeeds in obtaining any order from the ~~C~~court, the City shall be entitled to
13 recover from any and all Responsible Parties all of its ~~e~~Costs of investigation, enforcement,
14 abatement, and litigation.

15 (1) The City shall be entitled to recover civil penalties from each and every
16 Responsible Party in an amount that is not less than twice the amount ~~of it cost~~ the City's ~~to~~
17 ~~abatement Costs the nuisance.~~ The City's abatement Costs ~~to the City to abate the nuisance~~ shall
18 include any personnel, equipment, and other charges incurred by the City related to the
19 investigation, abatement, clean-up, removal, and/or containment of Prohibited Materials ~~Debris~~
20 ~~and Waste Construction Materials, industrial materials, or more than 100 pounds of any other waste,~~
21 ~~refuse, or debris, Powered Scooters, as defined in the Transportation Code, that are part of a Powered~~
22 ~~Scooter Share Program, or bicycles that are part of a Stationless Bicycle Share Program,~~ dumped on
23 Public Property. This civil penalties provision is designed to compensate the City for any
24 costs it incurred to investigate and abate the unlawful acts of any Responsible Party and for
25 the ancillary health hazards and inconveniences caused to the City and its residents, rights_of_

1 way blocked, traffic delays or detours, and any personal or business difficulties suffered from
2 the maintenance of illegally dumped materials on Public Property.

3 (2) The Prevailing Party in any court action to abate a nuisance pursuant to this
4 Article 26 shall be entitled to reasonable attorneys' fees.

5 ~~(2) The Prevailing Party in any court action to abate a nuisance pursuant to this Article~~
6 ~~shall be entitled to reasonable attorneys' fees.~~

7 (d) Nothing in this Article 26 shall be interpreted as restricting or otherwise limiting the
8 enforcement authority conferred upon other City employees, City agencies, or state agencies
9 by other provisions of the Municipal Code or state law.

10 (e) Nothing in this Article 26 shall be interpreted as restricting, precluding, or otherwise
11 limiting a separate or concurrent criminal prosecution or civil enforcement action under the
12 Municipal Code or state law. Jeopardy shall not attach as a result of any court action to abate
13 a nuisance pursuant to this Article.

14
15 **SEC. 1606. ENFORCEMENT – ADMINISTRATIVE FINES AND PENALTIES.**

16 Administrative Code Chapter 100 is incorporated by reference herein. In addition to the civil
17 penalties authorized by this Article 26, Department employees designated in Section 38 of the Police
18 Code may issue administrative citations imposing penalties or fines for each violation of this Article 26.
19 The administrative penalty or fines shall not exceed \$1,000 per day for each violation. Administrative
20 penalties shall be assessed, enforced, and collected in accordance with Section 39-1 of the Police Code
21 and administrative fines shall be assessed, enforced, and collected in accordance with Administrative
22 Code Chapter 100.

1 Section 3. Article 1 of the Police Code is hereby amended by revising Sections 39-1,
2 to read as follows:

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

6 (a) This Section 39-1 shall govern the imposition, assessment and collection of
7 administrative penalties imposed pursuant to Sections 37, 38 and 63 of the Police Code,
8 Sections 41.13, 283.1, 287, 288.1 and 600 of the Health Code, and Sections 170, 173, 174,
9 174.2, 724.5, 794, and ~~794~~ 1606 of the Public Works Code.

10 * * * *

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12 Section 4. Article 26 of the Public Works Code was originally designated Article 25,
13 Sections 1500 through 1505, when enacted by Ordinance No. 73-11. The article and its
14 constituent sections were renumbered by the publisher in order to avoid conflicting with
15 previously existing material. The Board of Supervisors hereby formally amends the
16 designations in Ordinance No. 73-11 to conform to the publisher's renumbering, that is, to be
17 Article 26 and Sections 1600-1605 respectively.

18
19 Section 5. Effective Date. This ordinance shall become effective 30 days after
20 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
21 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
22 of Supervisors overrides the Mayor's veto of the ordinance.

23
24 Section 6. Scope of Ordinance. Except as stated in Section 4, in enacting this
25 ordinance, the Board of Supervisors intends to amend only those words, phrases,

1 paragraphs, subsections, sections, articles, numbers, punctuation marks, charts, diagrams, or
2 any other constituent parts of the Municipal Code that are explicitly shown in this ordinance as
3 additions, deletions, Board amendment additions, and Board amendment deletions in
4 accordance with the "Note" that appears under the official title of the ordinance.

5
6 Section 7. Undertaking for the General Welfare. In enacting and implementing this
7 ordinance, the City is assuming an undertaking only to promote the general welfare. It is not
8 assuming, nor is it imposing on its officers and employees, an obligation for breach of which it
9 is liable in money damages to any person who claims that such breach proximately caused
10 injury.

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12 APPROVED AS TO FORM:

13 DENNIS J. HERRERA, City Attorney

14 By: /s/
15 CHRISTOPHER T. TOM
Deputy City Attorney

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