[Public Works Code - Clarifying Graffiti Prohibition and Establishing Administrative Penalties]

Ordinance amending the Public Works Code to clarify that prohibited graffiti extends to all public property, including all City assets, establish expedited notice and hearing procedures, create administrative penalties for an offending party, and renumber code sections; 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. Findings.

(a) Guerrilla marketing involving sidewalk graffiti unlawfully exploits San Francisco's walkable neighborhoods, heavy foot traffic, and robust tourism for commercial or non-commercial benefit. It gives wrongdoers an unfair competitive advantage over law-abiding companies that pay to market their identities and products through lawful means, and regrettably creates powerful market incentives for competing companies and products to similarly deface San Francisco sidewalks for their own advertising purposes. In addition, graffiti marketing creates visual distractions that pose risks to pedestrians on busy public right-of-ways, and irresponsibly tells the public that lawlessness and contempt for public property, particularly by corporate interests, are condoned and encouraged by its beneficiaries.
(b) During the past decade, the Department of Public Works, the City Attorney's Office, and other City departments have aggressively pursued and attempted to eradicate such guerilla marketing tactics by corporate bad actors, including IBM, NBC Universal, Turner Broadcasting, and Zynga, as well as prolific graffiti taggers. Nevertheless, these forms of graffiti continue, as evidenced by guerilla marketing advertisements recently spray painted on San Francisco sidewalks to promote recording artist Justin Bieber. Proliferation of this public nuisance continues, in part, due to limited enforcement capabilities.

c) This ordinance would clarify that prohibited graffiti extends to all public property, including sidewalks and other components of the public right-of-way, as well as to City-owned property, and to other assets under City jurisdiction, including buses and trolleys. The ordinance would allow for expedited graffiti enforcement procedures against offending parties and would establish administrative penalties as an additional tool beyond conventional criminal and civil actions to combat graffiti.

Section 2. 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. 160103 and is incorporated herein by reference. The Board affirms this determination.

Section 3. The Public Works Code is hereby amended by revising Sections 1301, 1302, 1303, and 1304; renumbering Sections 1300-1309 to be Sections 2300-2309; and adding Section 2307.6, to read as follows:

SEC. 23001300. TITLE.
SEC. 23011301. PURPOSE AND INTENT.

The Board of Supervisors hereby finds and declares that:

(a) Graffiti is detrimental to the health, safety, and welfare of the community in that it promotes a perception in the community that the laws protecting public and private property can be disregarded with impunity. This perception fosters a sense of disrespect for the law that results in an increase in crime; degrades the community and leads to urban blight; is detrimental to property values, business opportunities, and the enjoyment of life; is inconsistent with the City's property maintenance goals and aesthetic standards; and results in additional graffiti and in other properties becoming the target of graffiti unless it is quickly removed from public and private property.

(b) Graffiti results in visual pollution and is hereby deemed a public nuisance. Graffiti must be abated as quickly as possible to avoid detrimental impacts on the City and County and its residents, and to prevent the further spread of graffiti.

(c) Graffiti is increasingly used by gangs to frighten residents of neighborhoods and instigate and escalate disputes with opposing gangs. Therefore, gang graffiti, in particular, exacerbates the degradation of San Francisco's quality of life. In order to alleviate this fear caused by gang graffiti, and to assist the partnership between the City and County and the neighborhoods in their mutual efforts to make streets safe, gang graffiti must be abated as quickly as possible.

(d) Graffiti also is used in guerilla marketing campaigns to promote or publicize, for commercial or non-commercial purposes, goods, products, and services in lieu of or to supplement conventional advertising techniques. This type of graffiti must be abated as quickly as possible to avoid detrimental impacts on the City and its residents, and to prevent the further spread of graffiti.
(e) It is the purpose of this Article 23 to provide a program for the removal of graffiti from walls, pavement, structures, and other improvements on both public and private property, including the public right-of-way.

SEC. 23021302. DEFINITIONS.

For purposes of this Article 23, the following definitions shall apply:

City. "City" means the City and County of San Francisco.

Director. "Director" means the Director of the Department of Public Works or his or her designee.

Graffiti. "Graffiti" means any inscription, word, figure, marking, or design that is affixed, applied, marked, etched, scratched, drawn, or painted on any building, structure, Public Property, 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 or located on, in, above, or under the public right-of-way. "Graffiti" shall not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of this Code, the San Francisco Planning Code, or the San Francisco Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (California Civil Code Sections 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 et seq.); (3) any painting or marking that a City department makes in the course of its official duties or as part of a public education campaign; or (4) any painting or marking required for compliance with any local, State, or federal law.

Offending Party. "Offending Party" shall mean any person or persons-entity who defaces, damages, or destroys Public Property or private property with graffiti. "Offending
Party/ies" also shall include any person or entity who assists, enables, or permits another to
deface, damage, or destroy Public Property or private property with graffiti.

Owner. "Owner" shall mean the owner of record of the property as set forth in the most
current records of the Tax Assessor, or the owner's authorized agent.

Public Property. "Public Property" shall mean those areas on, in, above, or under the public
right-of-way, including, but not limited to, sidewalks, streets, and plazas and City-owned or other
public entity-owned property, buildings, and assets or public assets otherwise subject to City
jurisdiction, including, but not limited to, artwork, buses and trolleys, encroachments, lampposts,
manhole covers, parking meters, poles, signs and banners, street furniture, traffic control devices and
boxes, transit stations, and street trees.

SEC. 23031303. PROHIBITION.

(a) It shall be unlawful for the owner of any real property within the City and County
bearing graffiti to allow the graffiti to remain on the property in violation of this Article 23.

(b) It shall be unlawful for any Offending Party/ies to deface, damage, or destroy
Public Property or private property with graffiti.

SEC. 23041304. VIOLATIONS.

(a) Notice of Violation. Where the Director determines that any property contains
graffiti in violation of Section 23031303, the Director may issue a notice of violation to the
property owner and/or any Offending Party/ies. At the time the notice of violation is issued, the
Director shall take one or more photographs of the alleged graffiti, and shall make copies of
the photographs available to the property owner and/or any Offending Party/ies upon request.
The photographs shall be dated and retained as a part of the file for the violation. The notice
shall give the owner and/or any Offending Party/ies thirty (30) calendar days from the date of
the notice to either remove the graffiti or request a hearing on the notice of violation, and shall
set forth the procedure for requesting the hearing. The notice shall also inform the owner
and/or any Offending Party/ies that where the owner and/or any Offending Party/ies fail to
either remove the graffiti or request a hearing within thirty (30) calendar days from the date of
the notice, the Director may initiate proceedings in accordance with this Article 23 to enter
upon the property and abate the graffiti. The notice shall inform the owner and/or any
Offending Party/ies that should the Director need to abate the graffiti, that the owner and/or
any Offending Party/ies shall be liable for all costs of enforcement and abatement. The notice
shall further inform the owner and/or any Offending Party/ies that the minimum charge for
removing graffiti is the greater of either $500 or the actual cost to the City, (including overhead
and administrative costs, as well as attorneys' fees where the Director has elected to seek
recovery of attorneys' fees). The Director shall serve the notice of violation as follows:

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

(2) One copy of the Notice shall be served upon each of the following:
(A) The person, if known, in real or apparent charge and control of the
premises or property involved;
(B) The owner of record; and
(C) Any Offending Party/ies.

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

Service required by paragraphs subsections (a)(2) and (3) may be made by
personal service or by certified mail.

(b) Where property defaced by graffiti is owned by a public entity other than the City
and County, the Director shall cause removal of the graffiti only after securing the consent of
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 23 except as provided for in Section 1307.5 if it is associated with an Offending Party.

(c) Notwithstanding the time periods for noticing, hearings, and abatement specified in Sections 2304, 2305, and 2306, the Director, in his or her discretion, may modify such time periods if the graffiti is associated with an Offending Party to expedite such procedures, including, but not limited to, requiring the immediate abatement of graffiti, if the amount, frequency, level, type, or scope of graffiti warrants such action.

SEC. 2305. REQUEST FOR HEARING; HEARING.

(a) Request for Hearing. A property owner and/or any Offending Party/ies may request a hearing in order to contest the notice of violation issued in accordance with Section 2304 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 any 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 any 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 and demonstrate that his or her property does not contain graffiti. The property owner shall also be entitled to present evidence and demonstrate that his or her property is burdened with a disproportionate share of graffiti vandalism, based on factors such as the frequency or extent of the graffiti, such that requiring the owner to remove the graffiti would result in an unfair hardship. All testimony shall be under oath, and witnesses may be cross-examined. The hearing officer shall ensure that a record of the proceedings is maintained. The determination of the hearing officer after the hearing shall be final and not appealable.

(2) Hearing Request by an Offending Party. The burden of proof to establish that the property contains graffiti and that the Offending Party defaced, damaged, or destroyed private property with graffiti or assisted another to deface, damage, or destroy private property shall be on the City. The Offending Party shall be entitled to present relevant evidence. All testimony shall be under oath, and witnesses may be cross-examined. The hearing officer shall ensure that a record of the proceedings is maintained. The determination of the hearing officer after the hearing shall be final and not appealable.

(e) Decision. 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. A copy of the decision shall be served upon the property owner and/or any Offending Party by certified mail. The decision shall be the City's 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.

SEC. 23061306. ABATEMENT BY DIRECTOR.
(a) Following the hearing if the City sustains its burden of proof, or if the property owner and/or any Offending Party does not request a hearing and fails to remove the graffiti within thirty (30) calendar days from the date of the notice of violation, the Director may immediately order that the graffiti be abated. Unless the Director has obtained written consent from the property owner to enter the property and remove the graffiti, before initiating abatement the Director shall obtain a court order authorizing the Department of Public Works to enter upon the property and remove the graffiti and give written notice of the abatement (Abatement Order) served in accordance with Section 23044.04(a). The Director may not order a graffiti abatement action that may violate the California Art Preservation Act (California Civil Code Sections 987 et seq.) or the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 et seq.) without first consulting with the City Attorney.

(b) Alternatively, the Director may provide paint for graffiti removal to a property owner at no charge. In return, the property owner shall agree in writing to paint over the graffiti giving rise to the violation within 10 City business days from receiving the paint. A property owner's failure to paint over the graffiti within that time shall be ground for the Director to issue a new notice of violation under Section 23044.04.

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

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

(1) Abatement Action. After obtaining a court order, the Director shall implement the Abatement Order. The Director may enter upon the property and cause the removal, painting over, or other eradication of the graffiti as the Director deems appropriate. The
Director shall not authorize or undertake to provide for the painting or repair of any more
extensive area than that where the graffiti is located, except where the Director determines in
a written notice to the owner that a more extensive area is required to be repainted or repaired
in order to avoid an aesthetic disfigurement to the neighborhood or community. Where the
Director removes graffiti in accordance with the requirements of this Article 23, the owner
and/or any Offending Party/ies shall pay the greater of either $500 or the actual cost (including
overhead and administrative costs, as well as attorneys' fees where the Director has elected
to seek recovery of attorneys' fees) of removing the graffiti. The Director shall provide an
accounting to the owner and/or any Offending Party/ies of the costs of the abatement action
(Abatement Accounting) on a full cost recovery basis not later than 10 days from the date the
abatement action is completed. The Abatement Accounting shall include all administrative
costs incurred by the City in abating graffiti on the property. The total amount set forth in the
Abatement Accounting shall be due and payable by the owner and/or any Offending Party/ies
within 30 days from the date of mailing of the Abatement Accounting.

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SEC. 2307.307. STAY OF PROCEEDINGS DURING CRIMINAL PROSECUTION.

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SEC. 2307.51307.5. CIVIL ACTIONS AGAINST OFFENDING PARTY/IES.

The following procedures shall apply to actions by the City and County of San
Francisco against any Offending Party/ies to enjoin, abate, and recover costs for abatement of
graffiti committed in violation of Section 23031303: 

(a) Graffiti on Public Property. In addition to any other remedies available at law or
equity, the City Attorney is authorized to initiate a civil action for injunctive relief, civil
penalties, costs, and fees as set forth below. In an action for graffiti violations on public
property, any Offending Party/ies may be enjoined, shall be liable for civil penalties of up to
$1,000 per graffiti incident or other equivalent equitable or injunctive relief in the form of community or civic service, and shall be liable for any and all investigation, abatement, and litigation costs. Attorneys' fees shall be awarded to the prevailing party in any litigation brought pursuant to this Section 2307.51307.5(a).

(b) Graffiti on Private Property. If the City Attorney brings a civil action under Section 2307.51307.5(a) above, the City Attorney may also, where appropriate, offer evidence that the Offending Party/ies committed additional graffiti incidents on private property. In such a case, the City Attorney may seek additional civil penalties of up to $1,000 per private property graffiti incident or other equivalent equitable or injunctive relief in the form of community or civic service, any and all associated investigation, abatement, and litigation costs, as well as any restitution to any affected private property owners for out of pocket expenses associated with the abatement.

(c) The remedies in this Section 2307.51307.5 are in addition to any other remedies provided by law. No provision in this Article 23 shall preclude prosecution of actions for civil and criminal penalties concurrently, sequentially, or individually.

SEC. 2307.6. ADMINISTRATIVE PENALTIES.

(a) In addition to any other remedies that may be available, a violation of this Article 23 may be punishable by an administrative fine, which may be assessed by an administrative citation issued by Public Works officials or employees 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 up to $1,000 per violation per day during the term of the violation.
(b) All monies received by the City in payment of administrative fines for violation of this Article 23 shall be deposited to the credit of Public Works to be used for the graffiti removal, abatement, education, and enforcement activities of the Department and other City departments, including the City Attorney's Office. Balances remaining from the fine collection 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 for the purposes recited in this subsection (b). The monies received through payment of such fines are hereby appropriated exclusively for those purposes.

SEC. 23081308. LIMITATION OF LIABILITY.

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SEC. 23091309. SEVERABILITY.

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Section 4. 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.

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

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

By: John D. Malamut
Deputy City Attorney
Ordinance amending the Public Works Code to clarify that prohibited graffiti extends to all public property, including all City assets; establish expedited notice and hearing procedures, create administrative penalties for an offending party, and renumber code sections; and affirming the Planning Department's determination under the California Environmental Quality Act.

March 10, 2016 Government Audit and Oversight Committee - RECOMMENDED

March 22, 2016 Board of Supervisors - AMENDED, AN AMENDMENT OF THE WHOLE BEARING SAME TITLE
   Ayes: 10 - Avalos, Breed, Campos, Cohen, Kim, Mar, Peskin, Tang, Wiener and Yee
   Excused: 1 - Farrell

March 22, 2016 Board of Supervisors - PASSED ON FIRST READING AS AMENDED
   Ayes: 10 - Avalos, Breed, Campos, Cohen, Kim, Mar, Peskin, Tang, Wiener and Yee
   Excused: 1 - Farrell

April 05, 2016 Board of Supervisors - FINALLY PASSED
   Ayes: 10 - Avalos, Breed, Campos, Cohen, Farrell, Kim, Peskin, Tang, Wiener and Yee
   Absent: 1 - Mar

File No. 160103

I hereby certify that the foregoing Ordinance was FINALLY PASSED on 4/5/2016 by the Board of Supervisors of the City and County of San Francisco.

Angela Calvillo
Clerk of the Board

4/8/2016
Date Approved