

1 [Ordinance amending and adding to Section 184.78 of the Public Works Code make findings  
2 regarding banners, create five categories of permitted banners, generally prohibit banners in  
3 residential districts, restrict banners in certain neighborhood commercial and residential  
4 commercial districts, provide installer name and service phone numbers on banners, provide  
for administrative and inspection fees for banners indexed beginning in fiscal year 2005-2006  
to the Consumer Price Index, provide penalties for the violation of Section 184.78, and  
provide for the posting of bonds by banner installers.]

5  
6 **Ordinance amending and adding to Section 184.78 of the Public Works Code make**  
7 **findings as to the purposes served by banners, to create five categories of permitted**  
8 **banners, to generally prohibit banners in residential districts, to restrict banners in**  
9 **certain neighborhood commercial and residential commercial districts, to require**  
10 **installer name and service phone numbers on all banners, to provide for processing**  
11 **and inspection fees for banner permits, to index those fees, beginning in fiscal year**  
12 **2005-2006, to the Consumer Price Index, to provide appropriate penalties for violations**  
13 **of Section 184.78, and to provide that bonds may be required to be posted prior to**  
14 **receipt of a banner permit.**

15 Note: Additions are *single-underline italics Times New Roman*;  
16 deletions are ~~strikethrough italics Times New Roman~~.  
17 Board amendment additions are double underlined.  
Board amendment deletions are ~~strikethrough normal~~.

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

19 Section 1. The San Francisco Public Works Code is hereby amended by amending  
20 Section 184.78, to read as follows:

21 Sec. 184.78. **BANNERS.**

22 (a) *Findings: The Board of Supervisors hereby finds that:*

23 (1) *Banners placed on the upper portion of City-owned utility poles are an important*  
24 *medium for providing notice to San Francisco residents, as well as those who work in and visit San*

1       Francisco, about City-sponsored, City-funded, and City-wide special events, City convention facility  
2       events, and the locations of the City's diverse neighborhoods.

3           (2)    Because of the significant economic benefits that the City gains from tourism, San  
4       Francisco has a strong interest in fostering tourism by promoting City-sponsored, City-funded and  
5       City-wide special events, and in providing notice of the locations of the City's varied and distinct  
6       neighborhoods.

7           (3)    Because of the significant economic benefits that the City gains from the events held at  
8       the City's convention facilities, San Francisco has a strong interest in fostering, promoting and  
9       identifying those events conducted at the City's convention facilities.

10          (4)    Increasing awareness of City-sponsored City-funded and City-wide special events, and  
11       San Francisco's diverse neighborhoods also fosters civic pride.

12          (5)    By adopting this section the Board does not intend to create a public forum on the upper  
13       portion of City-owned utility poles, it has decided to make the upper portion of City-owned utility poles  
14       available for the installation of banners that announce City-sponsored events, City-funded events, City-  
15       wide special events, City convention facility events, or City neighborhoods in order to achieve its goals  
16       of promoting tourism and civic pride, and providing public notice.

17          (6)    Subject to the conditions and limitations imposed by this Section, the  
18       Department is authorized to adopt rules and regulations governing the posting of banners  
19       consistent with the terms of this Article. In enacting such regulations, the Department shall  
20       consider the need to protect the safety of pedestrians, vehicles and other property and the  
21       need to promote aesthetics on the City's streets and sidewalks. With respect to City-wide  
22       special event banners or City convention facility banners, the Department of Public Works shall not  
23       discriminate on the basis of the viewpoint in a banner in its administration and interpretation of this  
24       Section and any rules or regulations adopted under this Section.

(c) Only the following banners may be posted on City-owned utility poles: City-sponsored banners, City-funded event banners, City-wide event banners, City convention facility banners, and City neighborhood banners.

(1) A "city-sponsored banner" is a banner announcing an event or series of related events conducted by the City or any of its departments, boards, commissions or agencies, or announcing a facility operated by the City or any of its departments, boards, commissions.

(2) A “city-funded event banner” is a banner announcing an event or series of related events which event or series of events have received funding of \$5,000 or more from the City or any of its departments, boards, commissions or agencies.

(3) *A “city-wide special event banner” is a banner announcing an event or series of related events of interest to a significant portion of the residents of San Francisco and/or tourists, which is not a purely commercial enterprise, and where*

(a) the proceeds, if any, will directly benefit either a federal, state, or local government agency or a charitable non-profit organization that maintains tax-exempt status under to Internal Revenue Code Section 501(c)(3) or

(b) the event or series of events will take place on City-owned property and further a public purpose.

(4) A "city convention facility banner" is a banner installed on any City-owned utility pole located on streets proximate to the City's convention center facilities that announces an event currently being held at a City-owned convention center facility. Those streets are: Third Street between Folsom and Mission (west side only), Folsom Street between Third and Fourth (north side only), Howard Street between Third and Fifth (both sides), Mission Street between Third and Fourth (south side only), Fourth Street between Mission and Howard (both sides), Fourth Street between Howard and Folsom (east side only), and Grove Street between Polk and Larkin (both sides). A "city convention facility banner" may only be installed proximate to the City-owned convention center facility at which the

1 event the banner announces is currently being held. A "city convention facility banner" may only be  
2 installed 10 days prior an event, and may not remain posted for more than 10 days after an event. The  
3 Department shall give requests for a "city convention facility banner" priority over other requests for  
4 banners on City-owned utility poles directly adjacent to any part of the City's convention center  
5 facilities.

6 (5) A "city neighborhood banner" is a banner demarking a neighborhood in San Francisco,  
7 placed in that neighborhood, and identifying the neighborhood's name, such as, for example: the  
8 Tenderloin, or Pacific Heights.

9 (6) For the purposes of this Section, an "event or series of related events of interest to a  
10 significant portion of the residents of San Francisco" is any event or series of related events that take  
11 place in the City and that reasonably expect an in-person attendance of 500 or more people for a single  
12 event or 1000 or more people for a series of events. Expected attendance may be demonstrated by  
13 attendance at that same event or series of related events in previous years, attendance at a similar  
14 event or series of related events in previous years, by attendance projections for an event or series of  
15 events based on sales of tickets or subscriptions to the event or series of related events or, for an event  
16 or series of events that is being organized for the first time, by another reasonable measure of expected  
17 in-person attendance to be determined by the Department of Public Works.

18 ~~If the Department enacts rules and regulations that are based upon the content of the~~  
19 ~~message in the banner, the Department must show that the rule or regulation is necessary to serve a~~  
20 ~~compelling governmental interest; is narrowly tailored to achieve that end; and is the least restrictive~~  
21 ~~means to further the articulated interest. If the Department enacts rules and regulations that are not~~  
22 ~~based on the content of the message in the banner, the Department must show that the rule or~~  
23 ~~regulation is narrowly tailored to serve a significant government interest and leaves open ample~~  
24 ~~alternative channels of communication.~~

1                   (d) Under the findings made in Section 184.58, no banner may be posted on the historic and  
2 decorative lamp posts listed in Section 184.58, with the exception of those historic and decorative lamp  
3 posts in the "Mission Street Corridor" located on Mission Street between Sixteenth and Twenty-Fourth  
4 Streets, where banners may be posted.

5                   (b) No banner shall be affixed to more than one structure so that it spans the area  
6 between two or more structures or spans a street unless and until the party responsible for the  
7 posting of such banner first obtains a permit from the Department for the purpose of enabling  
8 that Department to ensure that the banner is posted in a safe manner and that the party has  
9 obtained adequate insurance coverage for any risk posed by such posting, according to  
10 guidelines established by the Director; and provided that, if any part of the banner is to be  
11 attached to non-City property, upon filing the permit application, the party shall be notified that  
12 the consent of the private owner should be obtained before posting the banner.

13                   (c) Notwithstanding anything in this Code that may be to the contrary, the Director is  
14 authorized to permit the posting of banners on the historic lamp posts lining Market Street, an  
15 area known as the "Path of Gold," and more fully described in Section 184.58, subject to the  
16 following conditions:

17                   (1) The Director may issue a permit only for a single an-event: (A) that results in the  
18 closure of all or a portion of Market Street's Path of Gold and (B) for which the event sponsor  
19 has already obtained the necessary City approvals for such closure; and

20                   (2) Banners shall not be posted for longer than 30 days prior to an event, nor  
21 remain posted for longer than 10 days after an event.

22                   (g) The following shall apply to all Banners:

23                   (1) Banners identifying the name of a commercial sponsor must limit that  
24 identification to a logo or business name only, located in the top or bottom portion of the banner, and  
25 comprising no more than 15% of the total area of the banner.

1                   (2) Banners shall not be installed for longer than 30 days prior to the event or series of  
2 events, nor remain posted for longer than 10 days after the event or series of events.

3                   (3) Banners shall be limited in size to 36 inches in width by 72 inches in length.

4                   (4) An application for a banner permit may be submitted to the Department no  
5 earlier than 90 days prior to the first day for which the banner permit is sought.

6                   (h) No banners may be installed in R (residential) districts, excepting RM-4 (residential-  
7 mixed high density) districts as defined in the San Francisco Planning Code, Article 2.

8                   (i) No double-wide banners shall be permitted on sidewalks except in P (public use )  
9 districts as defined in the San Francisco Planning Code, Article 2.

10                   (j) Banners in NC-1 (Neighborhood Commercial Cluster), NC-2 (Small-Scale  
11 Neighborhood Commercial Districts), NC-3 (Moderate-Scale Neighborhood Commercial Districts),  
12 Neighborhood Commercial Individual Area Districts, and RC (Residential-Commercial Combined  
13 Districts) as defined in San Francisco Planning Code, Article 2 and Article 7, may only be installed  
14 within 50 feet of the intersection of two streets.

15                   (k) All banners shall bear the name of the installer of the banner and a local or toll-free  
16 phone number, labeled "Service Number," where citizens may contact or leave word for the installer of  
17 the banner regarding maintenance or repair problems with any banner bearing the installer's service  
18 phone number. This required text shall be imprinted and maintained on the face or edge of the banner  
19 and shall be a minimum of 2 inches in height.

20                   (l) Each applicant for a banner permit shall pay to the Department of Public Works  
21 a processing fee of \$65 for the first 20 banners sought to compensate the Department for the cost of  
22 processing and administering the permit. An applicant shall pay a fee of \$65 for each 20 additional  
23 banners sought per application. Processing fees for banner requests under 20 banners shall be  
24 prorated.

25                   (m) Each applicant for a banner permit shall pay to the Department of Public Works

1       an inspection fee of \$130 for the first 20 banners approved to compensate the Department for the cost  
2       of enforcing the banner permits. Applicants shall pay an inspection fee of \$130 for each 20 additional  
3       banners, or fraction thereof, approved.

4           (n)      The procedures to review and adjust the fees specified in Section 184.78(k) and Section  
5       184.78(l) shall be the procedures for fee review and adjustment set forth in Section 2.1.2 of the Public  
6       Works Code.

7           (o)      Any person violating the provisions of this Section or any regulations  
8       promulgated by the Department of Public Works pursuant to this Section, shall be guilty of an  
9       infraction. Each banner determined to be an infraction is punishable by (1) a fine of \$100 for a first  
10       violation; (2) a fine not exceeding \$200 for a second violation within one year; (3) a fine not exceeding  
11       \$500 and revocation of the permittee's banner permits for a third violation within one year.

12           (p)      In addition, a fee equal to the cost of the time and materials expended by the Department  
13       of Public Works may be imposed by the Department of Public Works for investigation of banners being  
14       maintained without or in violation of a valid permit Payment of the fees shall be directly to the  
15       Department of Public Works.

16           (1)      The person responsible for payment of the fee may appeal the amount of the  
17       investigation fee to the Board of Appeals, subject to its filing fees and rules.

18           (2)      The nonpayment of such fee or fine, or the continued existence of a condition in  
19       violation of this Section, shall be grounds for the Director of Public Works to deny a permit for a  
20       banner to the responsible owner or applicant until such penalty has been paid and the condition  
21       corrected.

22           (q)      At his or her discretion, the Director of the Department of Public Works may  
23       require that a performance bond, not to exceed \$25,000 be posted before a banner permit is granted to  
24       any permittee who has violated this Section, or any of the regulations promulgated by the Department

1        of Public Works pursuant to this Section, more than three times within the year proceeding the banner  
2        permit request.

3

4        Section 2. Severability

5        If any provision of this ordinance or the application thereof to any person or  
6        circumstances is held invalid or unconstitutional, such invalidity or unconstitutionality shall not  
7        affect other provisions or applications of this ordinance which can be given effect without the  
8        invalid or unconstitutional provision or application. To this end, the provisions of this  
9        ordinance shall be deemed severable. If any category of exemptions for banners set forth in  
10       subsections (c)(1), (c)(2), (c)(3) or (c)(4) is declared invalid on the grounds that the City  
11       should provide an expanded right of expression, the Board's intent is that the category be  
12       eliminated entirely and that only remaining valid exceptions, if any, remain in effect.

13

14       Section 3. The Planning Department concluded environmental review of this ordinance  
15       pursuant to the California Environmental Quality Act. Documentation of that review is on file  
16       with the Clerk of the Board of Supervisors in File No. 041350.

17

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

19

20       By: Sarah Ellen Owsowitz  
Deputy City Attorney