

Amendment of the Whole
February 12, 2007

FILE NO. 051844

ORDINANCE NO.

1 [Planning Code—General Advertising Signs Enforcement Provisions.]

2

3 **Ordinance amending the San Francisco Planning Code by amending Section 610**
4 **regarding the enforcement provisions for general advertising sign violations, by,**
5 **among other things, deeming violations of this section a public nuisance, defining**
6 **“Responsible Party”, amending the penalty accrual, amount and collection provisions,**
7 **requiring building permits for compliance work, providing for reconsideration hearings**
8 **before an administrative law judge, and establishing a hearing fee; and making**
9 **environmental findings and findings of consistency with the priority policies of**
10 **Planning Code Section 101.1 and the General Plan.**

11 Note: Additions are *single-underline italics Times New Roman*;
12 deletions are *strikethrough italics Times New Roman*.
13 Board amendment additions are double underlined.
14 Board amendment deletions are ~~strikethrough normal~~.

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

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

19 (a) General Plan and Planning Code Findings.

20 (1) On January 11, 2007 at a duly noticed public hearing, the Planning Commission in
21 Resolution No. 17356 found that the proposed Planning Code amendments contained in this
22 ordinance were consistent with the City’s General Plan and with Planning Code Section
23 101.1(b). In addition, the Planning Commission recommended that the Board of Supervisors
24 adopt the proposed Planning Code amendments. A copy of said Resolution is on file with the
25 Clerk of the Board of Supervisors in File No. 051844 and is incorporated herein by reference.
The Board finds that the proposed Planning Code amendments contained in this ordinance

1 are consistent with the City's General Plan and with Planning Code Section 101.1(b) for the
2 reasons set forth in said Resolution.

3 (2) Pursuant to Planning Code Section 302, the Board finds that the proposed
4 ordinance will serve the public necessity, convenience and welfare for the
5 reasons set forth in Planning Commission Resolution No. 17356, which reasons
6 are incorporated herein by reference as though fully set forth.

7 b) Environmental Findings. The Planning Department has determined that the actions
8 contemplated in this Ordinance are in compliance with the California Environmental
9 Quality Act (California Public Resources Code section 21000 et seq.). Said
10 determination is on file with the Clerk of the Board of Supervisors in File No. 051844
11 and is incorporated herein by reference.

12 (c) Intent. The intent of Planning Code Section 610 is to provide methods for the
13 Planning Department to successfully eliminate illegal general advertising signs identified
14 throughout San Francisco, to discourage violation of the Planning Code regarding illegal
15 general advertising signs, and to accomplish these objectives without taxpayer expense.

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17 Section 2. The San Francisco Planning Code is hereby amended by amending Section
18 610, to read as follows:

19 **SEC. 610. VIOLATION OF GENERAL ADVERTISING SIGN REQUIREMENTS.**

20 (a) General. The penalties and methods of enforcement set forth in this Section
21 610 are in addition to those set forth in Section 176 of this Code and ~~in addition to~~ any other
22 penalties or methods of enforcement authorized by law. In light of the findings of Proposition G,
23 approved by the voters in March of 2002, a violation of the Code's general advertising sign
24 requirements is deemed to be a public nuisance.

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1 (b) Administrative Penalties. The Director of Planning may impose administrative
2 penalties for violations of the regulations governing general advertising signs set forth in this
3 Article, in accordance with the following procedure~~s~~:

4 (1) Notice of Violation.

5 (A) Upon the Planning Department's determination pursuant to Section 176 of this
6 Code that a general advertising sign has been erected, ~~or otherwise~~ installed, expanded,
7 *intensified, relocated, or otherwise operated* in violation of the requirements of this Article Code or
8 *has been denied an in-lieu identifying number pursuant to Section 604.1(c) of this Code,* the Director
9 shall send a written notice *of violation to the Responsible Party;* by first class mail or hand-
10 delivery, ~~to both the owner or owners of the property, as listed in the Assessor's records, and the~~
11 ~~company that erected or installed the sign, if different from the owner or owners (together, the~~
12 ~~"Responsible Parties").~~ The notice *of violation* shall describe the violation(s), state that the
13 Responsible Parties ~~have up to~~ *has forty-five business days from the date postmarked on the notice*
14 *or from the date of hand-delivery of the notice to: (i) file an application for a permit to remove the*
15 *general advertising sign; (ii) correct the violation(s) pursuant to Subsection (c); or (iii) request*
16 *reconsideration pursuant to Subsection (d).* ~~or be subject to the imposition of administrative penalties~~
17 ~~and abatement action, state the amount of the administrative penalty and fees to be imposed, and notify~~
18 ~~the Responsible Parties that they have the right to request the Director's reconsideration by filing such~~
19 ~~a request within 15 business days of the date of the notice. If the identity of the company that installed~~
20 ~~the sign is unknown, the notice to the company shall be sent as soon as its identity is determined.~~

21 (B) Responsible Party. For the purposes of this Section 610, "Responsible Party" shall
22 mean the owner(s) of the real property on which the general advertising sign is located, as listed in the
23 Assessor's record, and the current leaseholder(s) or owner(s) of the general advertising sign, if
24 different from the owner(s) of the real property. If the identity of the person or business entity that
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1 installed or operates the general advertising sign is unknown, the notice of violation shall be posted as
2 close as practicable to the location of the sign; once the identity of the person or business entity is
3 known, notice of violation shall be sent to such person or business entity without any such delay
4 affecting the time limits, fees, or penalties imposed by this Section 610.

5 (2) Amount of Penalties.

6 (A) Accrual of Penalties. If a Responsible Party fails to respond to the notice of violation as
7 outlined in Subsection (b)(1)(A), penalties shall accrue under this Section 610 at the daily rate set forth
8 in Subsection (b)(2)(B) beginning on the forty-sixth day and the Director shall refer the matter to the
9 City Attorney for further action. If the Responsible Party responds after forty-five days, but before the
10 Director has referred the matter to the City Attorney, the Responsible Party shall be assessed a penalty
11 based on the number of days that have passed between the end of the forty-five day period and the date
12 the Responsible Party responded. Once the matter has been referred to the City Attorney for further
13 proceedings, it shall be within the discretion of the City Attorney, in consultation with the Director,
14 whether to allow the Responsible Party to request a reconsideration of the notice of violation or to
15 proceed with other legal action. If the Responsible Party is allowed to request reconsideration, the
16 Responsible Party shall pay a penalty based on the amount accrued between the end of the forty-five
17 day period and the date the Responsible Party responded. The Responsible Party shall pay this penalty
18 within five (5) business days of notice that the Responsible Party will be allowed to request
19 reconsideration.

20 The administrative penalties assessed against the Responsible Parties by the Director shall be
21 at least \$1,000.00 but shall not exceed \$2,500.00 per day per violation per Responsible Party. In
22 determining the amount of the penalty, the Director shall take into account:

- 23 (i) Whether there have been any previous violations within the past five years;
24 (ii) The nature of the violation and its impact on the public;

1 ~~(iii) — The Responsible Party or Parties' efforts, if any, to correct the violation;~~

2 ~~(iv) — The speed of compliance with the City's enforcement action;~~

3 ~~(v) — Whether the Responsible Party knew or should reasonably have known that there was a~~
4 ~~violation; and~~

5 ~~(vi) — Such additional factors as the Director may determine are appropriate.~~

6 ~~(3) — Additional Fees. In addition to the administrative penalty assessed pursuant to~~
7 ~~Subsection (2) above, the Director may assess additional fees to cover the costs incurred in enforcing~~
8 ~~the administrative penalty or abating the violations, including the costs of other City agencies.~~

9 ~~(4) — Duration of Penalties. Penalties and fees assessed under this Section shall continue to~~
10 ~~accrue against the Responsible Parties until the violations of Article 6 have been abated or otherwise~~
11 ~~remedied in the sole judgment of the Director. However, penalties and fees shall not accrue for 15 days~~
12 ~~after the date of the notice required in Subsection (b)(1) above and during the pendency of any request~~
13 ~~for reconsideration filed pursuant to Subsection (7) below and for a five day period after the Director's~~
14 ~~final decision has been mailed or hand delivered to the Responsible Party or Parties.~~

15 ~~(B) Amount of Penalties. The administrative penalties that the Director or administrative~~
16 ~~law judge assesses against the Responsible Parties shall be related to the square footage of the general~~
17 ~~advertising sign found to be in violation of the Planning Code, as shown below:~~

18 ~~(i) 100 square feet or less -- \$100 per day per violation;~~

19 ~~(ii) 101 – 300 square feet -- \$1,000 per day per violation;~~

20 ~~(iii) 301 – 500 square feet -- \$1,750 per day per violation; and~~

21 ~~(iv) Over 500 square feet -- \$2,500 per day per violation.~~

22 ~~If the violation for which the administrative penalty is assessed has increased the size of the~~
23 ~~general advertising sign, the penalty shall be based on the actual size of the general advertising sign.~~

1 ~~(5)(C)~~ Collection. ~~The Director shall notify the Responsible Party or Parties in writing of the~~
2 ~~amount of the penalty and fees and declare that such costs are due and payable to the Treasurer of the~~
3 ~~City and County of San Francisco within 30 days of the date of the notice. If the penalty and fee are~~
4 ~~not paid within 30 days of the notice, the~~ The Director ~~shall~~ may request that the Tax Collector
5 pursue collection of ~~the any~~ any penalty ~~and fee against the property owner, up to and from the~~
6 Responsible Party including imposition of a special assessment lien in accordance with the
7 requirements of Article XX of Chapter 10 of the San Francisco Administrative Code
8 (commending with Section 10.230). The Director ~~shall~~ may also request that the City Attorney
9 pursue collection of the penalty ~~and fee~~ against the ~~sign company~~ Responsible Party in a civil
10 action to enforce the provisions of this Code.

11 ~~(6)(D)~~ Planning Code Enforcement Fund. Fees and penalties collected pursuant to
12 this Section 610 shall be deposited in the Planning Code Enforcement Fund established in
13 Administrative Code Section 10.100-166.

14 ~~(7)~~ ~~Review of Imposition of Penalty.~~ Any person designated as a Responsible Party may
15 ~~seek the Director's reconsideration of that designation or of the assessment and amount of the penalty~~
16 ~~or fee imposed by requesting a hearing on the matter. Reconsideration is initiated by filing a request~~
17 ~~for reconsideration and hearing with the Director that specifies in detail the basis for the request. The~~
18 ~~request shall be filed within 15 business days of the date of notice of the imposition of the penalty or~~
19 ~~fee. Within 10 days of the receipt of the request for reconsideration, unless extended by mutual~~
20 ~~agreement of the affected parties, the Director or his or her designee shall reconsider the matter and~~
21 ~~render a final decision, which shall not be appealable.~~

22 (c) Building Permit. A building permit shall be required to remove or modify any general
23 advertising sign when such removal or modification is required pursuant to this Section 610.

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1 (1) Additional time and material costs ~~may~~ shall be added to the Building Permit fee
2 pursuant to Section 350(c).

3 (2) The Responsible Party has thirty days from the filing of any required building permit
4 application to remove or modify the general advertising sign to either: (i) obtain a Final
5 Inspection Approval or Certificate of Final Completion from the Department of Building Inspection
6 (DBI); or (ii) remove all advertising copy from the general advertising sign until the required DBI
7 approval is obtained. If the Final Inspection Approval or Certificate of Final Completion has not been
8 obtained or the advertising copy has not been removed within this time period, penalties shall accrue at
9 the daily rate outlined in Subsection (b)(2)(B) until the advertising copy is removed or the required DBI
10 approval is obtained.

11 (d) Reconsideration of Notice of Violation or Administrative Penalty.

12 (1) Reconsideration Hearing.

13 (A) A Responsible Party may seek reconsideration of the issuance of the notice of violation
14 or any administrative penalty. Any request for reconsideration shall be accompanied by written
15 evidence that demonstrates why the notice of violation was issued in error or why the administrative
16 penalties were assessed in error. Upon receipt of a request for reconsideration within the time limits
17 established by Subsection (b)(1)(A) or when allowed under Subsection (b)(2)(A), the Planning
18 Department shall schedule a reconsideration hearing before an administrative law judge. Such
19 hearing shall be scheduled for a date no later than 60 days after the request, ~~unless the parties~~
20 ~~otherwise agree.~~ At least 10 days before the scheduled hearing, the Planning Department shall notify
21 the Responsible Party by mail in writing of the hearing date, time, and location.

22 (B) The administrative law judge shall hold a hearing to reconsider the director's notice of
23 violation or administrative penalty. The administrative law judge's decision for a reconsideration of
24 the notice of violation shall be based upon, but not limited to, the Planning Code, any final Zoning
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1 Administrator Interpretations, the Building Code, building permits issued by the City, and any final
2 decisions of the Board of Appeals regarding the subject property. The administrative law judge's
3 determination of a request for reconsideration of any administrative penalty shall take into account the
4 validity of accrual dates, accuracy of assessment based upon sign size and whether the Responsible
5 Party was accurately identified. Within 30 days of the hearing, the administrative law judge shall issue
6 a final written decision, which shall be mailed to the Responsible Party. The final written decision
7 shall not be appealable to the Board of Appeals. All final written decisions shall inform the
8 Responsible Party of its right to seek judicial review pursuant to the timelines set forth in Section
9 1094.6 of the California Code of Civil Procedure.

10 (C) If the Planning Department rescinds the notice of violation or penalties prior to the
11 reconsideration hearing, the case shall be considered abated and all accrued penalties shall be
12 rescinded. If penalties or the reconsideration hearing fee set forth in Subsection (d)(2), below, have
13 been paid, the Planning Department shall refund any unused portions of the penalties or fee.

14 If the administrative law judge overturns the notice of violation or penalties, the case shall be
15 abated and all accrued penalties shall be rescinded. If penalties have been paid, the Planning
16 Department shall refund the penalties.

17 If the Responsible Party withdraws its request for reconsideration of notice of violation or
18 penalties prior to the reconsideration hearing and cures the violation(s) by filing for a building permit
19 under subsection(c), any accrued penalties shall apply in addition to a mandatory ~~fifteen~~ ten-day
20 fixed penalty based upon the daily rate outlined in Subsection (b)(2)(B). ~~The procedures and~~
21 requirements outlined in Subsection (c) for building permits shall apply. ~~If the request for~~
22 reconsideration is withdrawn within less than 10 days from the date it was timely made, the
23 Responsible Party may apply to the Director for a reduction in the fixed penalty amount based
24 upon the number of days less than 10 that the reconsideration request was withdrawn. Any
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1 such reduction shall be granted or denied at the sole discretion of the Director and is not
2 appealable.

3 *If the administrative law judge upholds the notice of violation or penalties, the Responsible*
4 *Party shall cure the violation(s) by filing for a building permit pursuant to the procedures and*
5 *requirements of Subsection (c) within fifteen days of the date the decision is mailed to the Responsible*
6 *Party. The Responsible Party shall be subject to any accrued penalties, plus a mandatory ~~thirty~~*
7 *twenty-day fixed penalty based upon the daily rate outlined in Subsection (b)(2)(B). If the*
8 *reconsideration hearing is held within less than 20 days from the date it was timely requested,*
9 *the Responsible Party may apply to the Director for a reduction in the fixed penalty amount*
10 *based upon the number of days less than 20 that the reconsideration hearing was held. Any*
11 *such reduction shall be granted at the sole discretion of the Director and is not appealable. If*
12 *the Responsible Party does not file for a building permit within the fifteen-day period, additional*
13 *penalties shall accrue at the daily rate outlined in Subsection (b)(2)(B) and the Director shall refer the*
14 *case to the City Attorney for further action.*

15 *(2) Reconsideration Hearing Fee. At the time the Responsible Party requests*
16 *reconsideration, the Responsible Party shall pay an initial hearing fee of \$3,400.00 to the Planning*
17 *Department; the Responsible Party shall also be liable for time and materials as set forth in*
18 *Section 350(c). The Planning Department shall increase this fee on an annual basis at a rate equal to*
19 *that of the Consumer Price Index (CPI). The fee shall be waived if the Responsible Party would qualify*
20 *for a waiver of court fees and costs pursuant to California Government Code Section 68511.3, as*
21 *amended from time to time. Additionally, if the Responsible Party withdraws its request for*
22 *reconsideration, any portion of the fee not expended to process the hearing shall be refunded.*

23 *(3) Postponement. The administrative law judge may grant a postponement of a hearing for*
24 *Good Cause. Requests for postponement of a hearing shall be made in writing at the earliest date*

1 possible, with supporting documentation attached. The party requesting the postponement shall notify
2 any other parties of the request and provide them with copies of the complete request and the
3 supporting documentation.

4 For the purposes of this Section 610, "Good Cause" includes, but is not limited, to the
5 following:

6 (A) The illness of a party, an attorney or other authorized representative of a party, or a
7 material witness of a party;

8 (B) Verified travel outside of San Francisco scheduled before the receipt of notice of the
9 hearing; or,

10 (C) Any other reason which makes it impractical to appear on the scheduled date due to
11 unforeseen circumstances or verified pre-arranged plans that cannot be changed. Mere inconvenience
12 in appearing shall not constitute "good cause."

13 (e) Failure of the City, including the Director, the Planning Department, or the
14 administrative law judge, to act within any of the timeframes set forth in this Section 610 shall not be
15 considered approval of any general advertising sign.

16

17 Section 3.

18 Review of Effectiveness. One year after enactment and implementation of the
19 provisions of Section 610 as amended, the Planning Commission shall review performance
20 and effectiveness of the general advertising sign enforcement program and shall recommend
21 any further revisions to improve performance and effectiveness. Additionally, the Planning
22 Commission shall review penalty rates every five years and adjust as necessary.

23 The Planning Commission, upon receiving the Planning Department's report that all
24 signs in the General Advertising Sign Inventory have been verified pursuant to the reporting
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1 requirements of Section 604.2(h), shall consider proposing modifications to the enforcement
2 process contained in this Section 610 to include the assessment of mandatory fixed penalties
3 upon issuance of a Notice of Violation.

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

7 By: _____
8 Marlena G. Byrne
9 Deputy City Attorney

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