

1 [Ordinance amending and adding to Section 184.78 of the Public Works Code to ~~clarify the~~
2 ~~scope of banner regulations~~ make findings regarding banners, create four categories of
3 permitted banners, prohibit banners in residential districts, restrict banners in certain
4 neighborhood commercial and residential commercial districts, provide installer name and
5 service phone numbers on banners, provide for administrative and inspection fees for
6 banners, provide penalties for the violation of Section 184.78, and provide for the posting of
7 bonds by banner installers.]

8 **Ordinance amending and adding to Section 184.78 of the Public Works Code to ~~clarify~~**
9 **~~the scope of banner regulations that may be adopted by the Department of Public~~**
10 **~~Works~~ make findings as to the purposes served by banners, to create four categories**
11 **of permitted banners, to prohibit banners in residential districts, to restrict banners in**
12 **certain neighborhood commercial and residential commercial districts, to require**
13 **installer name and service phone numbers on all banners, to provide for processing**
14 **and inspection fees for banner permits, to provide appropriate penalties for violations**
15 **of Section 184.78, and to provide that bonds may be required to be posted prior to**
16 **receipt of a banner permit, and finding that the Ordinance is exempt/excluded from**
17 **environmental review.**

18 Note: Additions are *single-underline italics Times New Roman*;
19 deletions are *strikethrough italics Times New Roman*.
20 Board amendment additions are double underlined.
21 Board amendment deletions are ~~strikethrough normal~~.

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

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

25 Sec. 184.78. **BANNERS.**

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

1 (1) Banners placed on the upper portion of City-owned utility poles are an important
2 medium for providing notice to San Francisco residents, as well as those who work in and visit
3 San Francisco, about City-sponsored, City-funded, and City-wide special events and locations
4 of the City's diverse neighborhoods.

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

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

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

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

1 (c) Only the following banners may be posted on City-owned utility poles: City-
2 sponsored event banners, City-funded events, City-wide event banners, City neighborhood
3 banners.

4 (1) A “city-sponsored event banner” is a banner announcing an event or series of
5 related events conducted by the City or any of its departments, boards, commissions or
6 agencies.

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

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

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

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

18 (4) A “city neighborhood banner” is a banner demarking a neighborhood in San
19 Francisco, placed in that neighborhood and identifying the neighborhood’s name, such as, for
20 example: the Tenderloin, or Pacific Heights.

21 (5) For the purposes of this Section, an “event or series of related events of interest
22 to a significant portion of the residents of San Francisco” is any event or series of related
23 events that take place in the City and that reasonably expect an in-person attendance of 500
24 or more people for a single event or 1000 or more people for a series of events. Expected
25 attendance may be demonstrated by attendance at that same event or series of related

1 events in previous years, attendance at a similar event or series of related events in previous
2 years, by attendance projections for an event or series of events based on sales of tickets or
3 subscriptions to the event or series of related events or, for an event or series of events that is
4 being organized for the first time, by another reasonable measure of expected in-person
5 attendance to be determined by the Department of Public Works.

6 *If the Department enacts rules and regulations that are based upon the content of the*
7 *message in the banner, the Department must show that the rule or regulation is necessary to serve a*
8 *compelling governmental interest; is narrowly tailored to achieve that end; and is the least restrictive*
9 *means to further the articulated interest. If the Department enacts rules and regulations that are not*
10 *based on the content of the message in the banner, the Department must show that the rule or*
11 *regulation is narrowly tailored to serve a significant government interest and leaves open ample*
12 *alternative channels of communication.*

13 (d) Under the findings made in Section 184.58, no banner may be posted on the
14 historic and decorative lamp posts listed in Section 184.58.

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

23 (e~~f~~) Notwithstanding anything in this Code that may be to the contrary, the Director is
24 authorized to permit the posting of banners on the historic lamp posts lining Market Street, an
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1 area known as the "Path of Gold," and more fully described in Section 184.58, subject to the
2 following conditions:

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

6 (2) Banners shall not be posted for longer than 30 days prior to the event, nor
7 remain posted for longer than 10 days after the event.

8 (dg) No banners may be installed in R (residential) districts, as defined in the San Francisco
9 Planning Code, Article 2.

10 (h) Banners in NC-1 (Neighborhood Commercial Cluster), NC-2 (Small-Scale
11 Neighborhood Commercial Districts), and RC (Residential-Commercial Combined Districts)
12 districts as defined in San Francisco Planning Code, Article 2 and Article 7, shall be subject to
13 the following restrictions:

14 (1) Banners may only be installed within 50 feet of the intersection of two streets.

15 (2) No double-wide banners shall be permitted on sidewalks.

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

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

23 (fj) Each applicant for a banner permit shall pay to the Department of Public Works
24 a processing fee of \$100 for the first 20 banners sought to compensate the Department for the cost of
25 processing and administering the permit. An applicant shall pay a fee of \$100 for each 20 additional

1 banners sought per application. Processing fees for banner requests under 20 banners shall be
2 prorated.

3 (gk) Each applicant for a banner permit shall pay to the Department of Public Works
4 an inspection fee of \$100 for the first 20 banner approved to compensate the Department for the cost of
5 enforcing the banner permits. Applicants shall pay an inspection fee of \$100 for each 20 additional
6 banners approved, or fraction thereof, approved.

7 (hl) 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. Every violation determined to be an infraction is punishable by (1) a fine not exceeding
10 \$100 for a first violation; (2) a fine not exceeding \$200 for a second violation within one year; (3) a
11 fine not exceeding \$500 and revocation of the permittee's banner permits for a third violation within
12 one year.

13 (lm) In addition, ~~fin~~es may be imposed by a fee equal to the cost of the time and
14 materials expended by the Department of Public Works may be imposed by the Department of
15 Public Works for investigation of banners being maintained without or in violation of a valid permit.
16 ~~The Director of Public Works shall establish a schedule of such fees.~~ Payment of the fees shall
17 be directly to the Department of Public Works.

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

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

24 (in) At his or her discretion, the Director of the Department of Public Works may
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1 require that a performance bond, not to exceed \$25,000 be posted before a banner permit is granted to
2 any permittee who has violated this Section, or any of the regulations promulgated by the Department
3 of Public Works pursuant to this Section, more than three times within the year proceeding the banner
4 permit request.

5 Section 2. Severability

6 If any provision of this ordinance or the application thereof to any person or
7 circumstances is held invalid or unconstitutional, such invalidity or unconstitutionality shall not
8 affect other provisions or applications or this ordinance which can be given effect without the
9 invalid or unconstitutional provision or application. To this end, the provisions of this
10 ordinance shall be deemed severable.

11 Section 3. California Environmental Quality Act Findings

12 The Board of Supervisors finds that on February 12, 2003, the Board of Supervisors
13 received from San Francisco's Environmental Review Officer a Certification that this
14 Ordinance is exempt from environmental review under the California Environmental Quality
15 Act, General Rule Exclusion, State Guidelines, Section 15061(b)(3). The Certification was
16 based on the conclusion that should this proposed ordinance be adopted, there is no
17 possibility that the activity governed by the Ordinance might have a significant effect on the
18 environment. The Board further finds that there have been no substantial changes in the
19 ordinance, and no new information of substantial importance that would change the
20 conclusions set forth in the Certificate of Exemption/Exclusion from Environmental Review
21 finding that the proposed ordinance is exempt/excluded from environmental review.

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

24 By: _____
25 Sarah Ellen Owsowitz
Deputy City Attorney