

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, defining “Responsible Party”, amending the penalty accrual,**
6 **amount and collection provisions, requiring building permits for compliance work,**
7 **providing for reconsideration hearings before an administrative law judge, and**
8 **establishing a hearing fee; and making environmental findings and findings of**
9 **consistency with the priority policies of Planning Code Section 101.1 and the General**
10 **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:

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

18 (a) General Plan and Planning Code Findings.

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

1 amendments contained in this ordinance are consistent with the City's General Plan and with
2 Planning Code Section 101.1(b) for the 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 reasons set forth in
5 Planning Commission Resolution No. _____, which reasons are incorporated
6 herein by reference as though fully set forth.

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

12

13 Section 2. The San Francisco Planning Code is hereby amended by amending Section
14 610, to read as follows:

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

16 (a) General. The penalties and methods of enforcement set forth in this Section
17 610 are in addition to those set forth in Section 176 of this Code and ~~in addition to~~ any other
18 penalties or methods of enforcement authorized by law. In light of the findings of Proposition G,
19 approved by the voters in March of 2002, a violation of the Code's general advertising sign
20 requirements is deemed to be a public nuisance.

21 (b) Administrative Penalties. The Director of Planning may impose administrative
22 penalties for violations of the regulations governing general advertising signs set forth in this
23 Article, in accordance with the following procedure_s:

24 (1) Notice of Violation.

25

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

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

25

1 (2) ~~Amount of Penalties.~~

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

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

19 (i) ~~Whether there have been any previous violations within the past five years;~~

20 (ii) ~~The nature of the violation and its impact on the public;~~

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

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

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

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

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

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

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

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

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

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

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

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

20 ~~(5)(C) Collection. The Director shall notify the Responsible Party or Parties in writing of the~~
21 ~~amount of the penalty and fees and declare that such costs are due and payable to the Treasurer of the~~
22 ~~City and County of San Francisco within 30 days of the date of the notice. If the penalty and fee are~~
23 ~~not paid within 30 days of the notice, the The Director shall may request that the Tax Collector~~
24 ~~pursue collection of the any penalty and fee against the property owner, up to and from the~~

1 Responsible Party including imposition of a special assessment lien in accordance with the
2 requirements of Article XX of Chapter 10 of the San Francisco Administrative Code
3 (commencing with Section 10.230). The Director ~~shall~~ may also request that the City Attorney
4 pursue collection of the penalty ~~and fee~~ against the ~~sign company~~ Responsible Party in a civil
5 action to enforce the provisions of this Code.

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

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

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

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

21 ~~(2) The Responsible Party has thirty days from the filing of any required building permit~~
22 ~~application to either: (i) obtain a Final Inspection Approval or Certificate of Final Completion from~~
23 ~~the Department of Building Inspection (DBI); or (ii) remove all advertising copy from the general~~
24 ~~advertising sign until the required DBI approval is obtained. If the Final Inspection Approval or~~

25

1 Certificate of Final Completion has not been obtained or the advertising copy has not been removed
2 within this time period, penalties shall accrue at the daily rate outlined in Subsection (b)(2)(B) until the
3 advertising copy is removed or the required DBI approval is obtained.

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

5 (1) Reconsideration Hearing.

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

15 (B) The administrative law judge shall hold a hearing to reconsider the director's notice of
16 violation or administrative penalty. The administrative law judge's decision for a reconsideration of
17 the notice of violation shall be based upon the Planning Code, any final Zoning Administrator
18 Interpretations, the Building Code, building permits issued by the City, and any final decisions of the
19 Board of Appeals. The administrative law judge's determination of a request for reconsideration of any
20 administrative penalty shall take into account the validity of accrual dates, accuracy of assessment
21 based upon sign size and whether the Responsible Party was accurately identified. Within 30 days of
22 the hearing, the administrative law judge shall issue a final written decision, which shall be mailed to
23 the Responsible Party. The final written decision shall not be appealable to the Board of Appeals. All

1 final written decisions shall inform the Responsible Party of its right to seek judicial review pursuant to
2 the timelines set forth in Section 1094.6 of the California Code of Civil Procedure.

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

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

10 If the Responsible Party withdraws its request for reconsideration of notice of violation or
11 penalties prior to the reconsideration hearing and cures the violation(s) by filing for a building permit,
12 any accrued penalties shall apply in addition to a mandatory fifteen-day fixed penalty based upon the
13 daily rate outlined in Subsection (b)(2)(B). The procedures and requirements outlined in Subsection (c)
14 for building permits shall apply.

15 If the administrative law judge upholds the notice of violation or penalties, the Responsible
16 Party shall cure the violation(s) by filing for a building permit pursuant to the procedures and
17 requirements of Subsection (c) within fifteen days of the date the decision is mailed to the Responsible
18 Party. The Responsible Party shall be subject to any accrued penalties, plus a mandatory thirty-day
19 fixed penalty based upon the daily rate outlined in Subsection (b)(2)(B). If the Responsible Party does
20 not file for a building permit within the fifteen-day period, additional penalties shall accrue at the daily
21 rate outlined in Subsection (b)(2)(B) and the Director shall refer the case to the City Attorney for
22 further action.

23 (2) Reconsideration Hearing Fee. At the time the Responsible Party requests
24 reconsideration, the Responsible Party shall pay an initial hearing fee of \$3,400.00 to the Planning
25

1 Department; the Responsible Party shall also be liable for time and materials as set forth in
2 Section 350(c). The Planning Department shall increase this fee on an annual basis at a rate equal to
3 that of the Consumer Price Index (CPI). The fee shall be waived if the Responsible Party would qualify
4 for a waiver of court fees and costs pursuant to California Government Code Section 68511.3, as
5 amended from time to time. Additionally, if the Responsible Party withdraws its request for
6 reconsideration, any portion of the fee not expended to process the hearing shall be refunded.

7 (3) Postponement. The administrative law judge may grant a postponement of a hearing for
8 Good Cause. Requests for postponement of a hearing shall be made in writing at the earliest date
9 possible, with supporting documentation attached. The party requesting the postponement shall notify
10 any other parties of the request and provide them with copies of the complete request and the
11 supporting documentation.

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

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

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

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

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

1 Section 3.
2 Review of Effectiveness. One year after enactment and implementation of the
3 provisions of Section 610 as amended, the Planning Commission shall review performance
4 and effectiveness of the general advertising sign enforcement program and shall recommend
5 any further revisions to improve performance and effectiveness. Additionally, the Planning
6 Commission shall review penalty rates every five years and adjust as necessary.

7
8 APPROVED AS TO FORM:
9 DENNIS J. HERRERA, City Attorney

10 By: _____
11 Marlena G. Byrne
12 Deputy City Attorney

13
14
15
16
17
18
19
20
21
22
23
24
25