

LEGISLATIVE DIGEST

[Planning Code - Signs - Exemptions and General Advertising Sign Penalties]

Ordinance amending the Planning Code to clarify that all noncommercial Signs are exempt from regulation pursuant to Planning Code, Article 6; increase penalties for repeat violations for the display of illegal General Advertising Signs; shorten the time before penalties for General Advertising Sign violations begin to accrue; allow property liens for such penalties that go unpaid; affirming the Planning Department's determination under the California Environmental Quality Act; and making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1, and a finding of public necessity, convenience, and welfare under Planning Code, Section 302.

Existing Law

Planning Code Section 602.10 defines an identifying sign as a sign that “serves to tell only the name, address, and lawful use of the premises upon which the sign is located, or to which it is affixed,” including certain mall signs and “[a] bulletin board of a public, charitable or religious institution, used to display announcements relative to meetings to be held on the premises.”

Planning Code Section 603 exempts numerous categories of signs from regulation under Article 6 of the Planning Code (Signs), including, among other things, official public notices, traffic control signs, political flags, religious symbols attached to buildings, temporary signs in connection with political campaigns and with civic noncommercial health, safety, and welfare campaigns, commemorative and informational plaques, identifying signs directing patrons of establishments to open space and parking resources, and non-illuminated murals in certain districts.

Planning Code Section 610 sets forth penalties for violations of regulations governing general advertising signs. Responsible parties for the violation include both the property owner on which a sign is placed and the sign company that owns or operates the sign. In general, a Responsible Party has 30 days from issuance of a notice of violation to abate the violation. For repeat violations, the Responsible Party has 3 days from issuance of a notice of violation to abate the violation.

Amendments to Current Law

The ordinance would amend Planning Code Section 602.10 to remove “[a] bulletin board of a public, charitable or religious institution, used to display announcements relative to meetings to be held on the premises” from the definition of an identifying sign.

It would also amend Planning Code Section 603 to clarify that all noncommercial signs are exempt from regulation by Article 6 of the Planning Code.

In addition, the ordinance would amend Planning Code Section 610 to enhance the penalties for general advertising sign violations. Specifically, the ordinance would shorten the time within which a Responsible Party must respond to a notice of violation from 30 days to three days (or five days if the notice of violation is sent by mail), after which time penalties begin to accrue. In addition, repeat violations of general advertising sign regulations would be subject to enhanced daily penalties, which would range from a multiple of 2 to 5 times the base penalties for the violation.

For a repeat violation, Responsible Parties would be able opt for an alternative penalty calculation, consisting of the income earned by the Responsible Parties for the display of the illegal general advertising sign, including but not limited to revenue earned by the sign owner or operator from advertisers or advertisement placement firms and revenue earned by the property owner or lessee from the lease or sublease of the property to the sign owner or operator for the duration of the violation, plus an additional 20 percent of that total income amount.

Section 610 would also provide that in a reconsideration hearing, an administrative law judge must make a rebuttable presumption that the penalties imposed are reasonable, but may consider the nature and egregiousness of the violation, the financial resources of the Responsible Party, the need to deter illegal conduct, and the Responsible Party's culpability, to determine whether the penalty is excessive.

In addition, Section 610 would provide that the Director of the Planning Department may make all penalties due and all additional authorized costs and charges, including attorneys' fees, a lien on the property on which the illegal sign is located.

Background Information

In *City and County of San Francisco v. Eller Outdoor Advertising* (1987) 192 Cal.App.3d 643, the California Court of Appeal held that in order to avoid constitutional infirmity under the First Amendment, Section 603 must be interpreted to exempt all categories of noncommercial signs from regulation by Article 6 of the Planning Code. This ordinance would amend Section 603 to make it consistent with that decision.

In 2007, the in Ordinance No. 52-07, the City adopted the current penalty scheme for illegal general advertising signs. Since then, according to Planning Department records, roughly 200 additional general advertising signs have been illegally installed in the City, despite the City's ban on new general advertising signs (Proposition G, adopted in March 2002).