

1 [Zoning – Repeat Violations of General Advertising Sign Requirements.]

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3 **Ordinance amending the San Francisco Planning Code by amending Section 610 to**
4 **add subsection (f), which addresses repeat violations of general advertising sign**
5 **requirements by a single entity on the same property; adopting findings, including**
6 **environmental findings and findings required by Section 302 and Section 101.1 of the**
7 **Planning Code.**

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

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

13 Section 1. The San Francisco Planning Code is hereby amended by adding Section
14 610(e), to read as follows:

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

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

24 (1) Notice of Violation.
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1 (A) Upon the Planning Department's determination pursuant to Section 176 of this
2 Code that a general advertising sign has been erected, installed, expanded, intensified,
3 relocated, or otherwise operated in violation of the requirements of this Code or has been
4 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. The notice of violation shall describe the violation(s), state that the Responsible Party
7 has forty-five days from the date postmarked on the notice or from the date of hand-delivery of
8 the notice to: (i) file an application for a permit to remove the general advertising sign; (ii)
9 correct the violation(s) pursuant to Subsection (c); or (iii) request reconsideration pursuant to
10 Subsection (d).

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

20 (2) Penalties.

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

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

- 16 (i) 100 square feet or less--\$100.00 per day per violation;
- 17 (ii) 101--300 square feet--\$1,000.00 per day per violation;
- 18 (iii) 301--500 square feet--\$1,750.00 per day per violation; and
- 19 (iv) Over 500 square feet--\$2,500.00 per day per violation.

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

23 (C) Collection. The Director may request that the Tax Collector pursue collection of
24 any penalty, from the Responsible Party including imposition of a special assessment lien in
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1 accordance with the requirements of Article XX of Chapter 10 of the San Francisco
2 Administrative Code (commencing with Section 10.230). The Director may also request that
3 the City Attorney pursue collection of the penalty against the Responsible Party in a civil
4 action to enforce the provisions of this Code.

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

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

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

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

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

22 (1) Reconsideration Hearing.

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

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

22 (C) If the Planning Department rescinds the notice of violation or penalties prior to the
23 reconsideration hearing, the case shall be considered abated and all accrued penalties shall
24 be rescinded. If penalties or the reconsideration hearing fee set forth in Subsection (d)(2),
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1 below, have been paid, the Planning Department shall refund in a timely matter any unused
2 portions of the penalties or fee.

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

6 If the Responsible Party withdraws its request for reconsideration of notice of violation
7 or penalties prior to the reconsideration hearing and cures the violation(s) by filing for a
8 building permit under subsection(c), any accrued penalties shall apply in addition to a
9 mandatory ten-day fixed penalty based upon the daily rate outlined in Subsection (b)(2)(B). If
10 the request for reconsideration is withdrawn within less than 10 days from the date it was
11 timely made, the Responsible Party may apply to the Director for a reduction in the fixed
12 penalty amount based upon the number of days less than 10 that the reconsideration request
13 was withdrawn. Any such reduction shall be granted or denied at the sole discretion of the
14 Director and is not appealable.

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

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

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

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

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

22 (B) Verified travel outside of San Francisco scheduled before the receipt of notice of
23 the hearing; or,
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1 (C) Any other reason which makes it impractical to appear on the scheduled date due
2 to unforeseen circumstances or verified pre-arranged plans that cannot be changed. Mere
3 inconvenience in appearing shall not constitute "good cause."

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

7 (f) Repeat Violations.

8 (1) The Director of Planning may use the provisions of this subsection (f) to abate and
9 discourage repeated violations of this Section 610.

10 (2) For the purposes of this subsection, a repeat violation shall mean any violation of the
11 general advertising provisions of this Article which (1) occurs on a property that was the subject of a
12 notice of violation under Article 6 during the previous five years and (2) is owned by the same entity
13 which owned the property upon which the general advertising was located at the time of the earlier
14 violation. A repeat violation shall not include one based upon a notice of violation that was overturned
15 by an administrative law judge or rescinded by the Planning Department under subsection (d)(1)(C).

16 (3) Violations under this subsection (f) shall be treated like other violations of Section 610
17 except that (i) the 45-day period identified throughout subsection (b) shall be reduced to three business
18 days, (ii) the penalties set forth in subsection (b) shall begin to accrue on the fourth day, and (iii) the
19 general advertising sign and any sign structure must be completely removed from the site within the
20 three-day period. A Responsible Party may seek reconsideration under subsection (d), provided that

1 the request for reconsideration is filed and all general advertising copy is removed prior to expiration
2 of the three-day period.

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

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6 By: _____
7 JUDITH A. BOYAJIAN
8 Deputy City Attorney

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