

1 [Regulating the Distribution of Handbills.]

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3 **Ordinance amending Article 5.7 of the Public Works Code by repealing section 184.71,**
 4 **which required persons distributing Handbills to register and pay fees, amending**
 5 **section 184.74 to permit the City to recover costs incurred in cleaning up Handbills**
 6 **distributed in violation of the ordinance and to impose civil penalties for violations, and**
 7 **by renumbering sections 184.71 through 184.77.**

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

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

13 Section 1. Article 5.7 of The San Francisco Public Works Code is hereby amended to
 14 read as follows:

15 **Section 184.70. DISTRIBUTION OF HANDBILLS ON PRIVATE PREMISES.**

16 (a) Findings. The Board hereby finds and declares that the City has a compelling
 17 need to prohibit the distribution of Handbills on private premises where the occupant ~~of that~~
 18 ~~premises~~ has expressed his or her unwillingness to receive such Handbills. Prohibiting
 19 distributions of Handbills in defiance of an occupant's expressed desire not to receive them
 20 strikes an appropriate accommodation between the rights of distributors to solicit willing
 21 listeners with the rights of occupants to object to receive the material.

22 This Ordinance is also aimed at decreasing the adverse effects of the distribution of
 23 unsolicited Handbills on private premises. The prohibition against delivering Handbills
 24 contrary to the expressed desire of the occupant and the requirement that Handbills be folded
 25 or otherwise attached to the outside of a premises will decrease the amount of litter created

1 by Handbills. A system to enable the City to recover costs of cleanup of Handbills distributed in
2 violation of this Article will allow further enforcement of the provisions of this Article. A registration
3 system will allow the City to identify distributors of Handbills and thereby further enforcement of the
4 provisions of this Article.

5 (b) Prohibition When "No Handbills" Sign Posted. It shall be unlawful for any
6 Person to distribute, cause to be distributed, or suffer, allow or permit the distribution of any
7 Handbill to or upon any private premises in the City by placing or causing any such Handbill to
8 be deposited or placed in or upon any porch, yard, steps, hallway, or mailbox located on, or
9 used in connection with such premises when such premises has posted thereon in a
10 conspicuous place, a notice or notices of at least eight square inches in area bearing the
11 words "No Handbills" or the like, unless such Person has first received the written permission
12 of the occupant of such premises authorizing the Person so to distribute.

13 (c) Distributed Matter To Be Folded. It shall be unlawful for any Person to
14 distribute, cause to be distributed, or suffer, allow or permit the distribution of any Handbill to
15 or upon any private premises in the City by placing or causing any such Handbill to be
16 deposited or placed in or upon any porch, yard, steps, hallway, or mailbox located on, or used
17 in connection with such premises unless the same is prepared and placed in the manner set forth
18 by the Director in rules, regulations and/or interpretations adopted under the authority of section
19 184.75 in order to prevent Handbills from being blown about by the winds from the locations where
20 they are placed.

21 (d) Handbills distributed in violation of Article a nuisance. A Handbill distributed in
22 violation of this Article is hereby declared to be and is a public nuisance. ~~folded or otherwise so~~
23 prepared or placed, that it will not be blown therefrom by the winds.

24 ~~Section 184.71. REGISTRATION REQUIRED.~~

1 (a) — ~~It shall be unlawful for any Person to distribute, cause to be distributed, or suffer, allow~~
2 ~~or permit the distribution of any Handbill to or upon any private premises in the City by placing or~~
3 ~~causing any such Handbill to be deposited or placed in or upon any porch, yard, steps, hallway, or~~
4 ~~mailbox located on, or used in connection with such premises unless such Person has complied with the~~
5 ~~provisions of this Section.~~

6 (b) — ~~Procedure to Obtain Registration Number. Any Person seeking to distribute Handbills~~
7 ~~upon private premises in the City shall first apply to the Director for a registration number. The~~
8 ~~application may be made by electronic means, including, but not limited to, telephone, facsimile, and e-~~
9 ~~mail. In the application, the Person shall state: (1) the Person's name; (2) the Person's current street~~
10 ~~address and current telephone number; (3) the name of the Person responsible for the distribution of~~
11 ~~the Handbills who shall be personally liable for improper distribution of the Handbills; and (4) the~~
12 ~~responsible Person's current street address and current telephone number. Upon receipt of the~~
13 ~~application and payment of the fees provided in Subsection (e) of this Section, the Director shall~~
14 ~~forthwith issue a registration number to the registrant. The registration number shall expire one year~~
15 ~~after the date of issuance. Upon application by the registrant providing the information required in~~
16 ~~this Section, the Director shall renew the registration for one year periods.~~

17 (c) — ~~Exception for Emergencies. Any Person who seeks to distribute Handbills in response~~
18 ~~to an Emergency, as that term is defined in Section 184.56(g), may distribute the Handbills before~~
19 ~~registering with the Director so long as the Person registers within 72 hours of distributing the~~
20 ~~Handbills.~~

21 (d) — ~~Distributor's Registration Number. Each Person who registers pursuant to the terms of~~
22 ~~this Section shall be given a registration number and the registrant shall not directly, or through his~~
23 ~~servants, agents or employees, distribute or suffer to be distributed any matter hereinbefore referred to~~
24 ~~unless the words "Registration No. _____" (with the registration number designated by the Director~~
25 ~~inserted) are stamped in a legible manner on each separate piece of said matter.~~

1 (e) — ~~Registration Fees. The fee for obtaining a registration number pursuant to the~~
2 ~~requirements of this Section shall be \$20.00. The fee for renewing a registration number pursuant to~~
3 ~~the requirements of this Section shall be \$10.00. The Director shall waive these fees if the registrant~~
4 ~~files with the Director an affidavit signed under penalty of perjury declaring that the registrants~~
5 ~~inability to pay the fee would prevent the registrant from distributing Handbills.~~

6 (f) — ~~Confidentiality. In order to protect the anonymity of speakers, the Director shall protect~~
7 ~~the confidentiality of all information provided in any application for permission to distribute Handbills~~
8 ~~pursuant to this Section. The Director and his or her staff may use that information only for the~~
9 ~~purpose of enforcing this Article.~~

10 **Section ~~184.71,184.72.~~ EXCLUSIONS.**

11 The provisions of this Article shall not apply to: (1) the distribution and delivery of any
12 Newspaper, or (2) any distribution or delivery made by a duly authorized public officer or
13 employee of or contractor acting with the authority of the City, the State of California, or the
14 United States acting to promote the purpose of the contract.

15 **Section ~~184.72,184.73.~~ CRIMINAL PENALTIES.**

16 Any Person who violates any provision of this Article shall be guilty of a misdemeanor
17 and upon conviction thereof shall be punished by a fine of not more than \$100 or by
18 imprisonment in the County Jail for a period of not more than 30 days, or by both such fine
19 and imprisonment.

20 **Section ~~184.73,184.74.~~ ENFORCEMENT. INVESTIGATION BY DIRECTOR.**

21 (a) The Director shall investigate, or cause to be investigated, all complaints made to
22 the Department regarding the violation of any of the provisions of this Article and take such
23 actions regarding any violation as is provided therein.

24 (b) If the City incurs any expense in cleaning up Handbills because they were distributed in
25 violation of this Article, the Person responsible for such distribution may be billed as provided in

1 Subsection (c) of this Section. If such bill is not paid as required by Subsection (c), the Person or
2 Persons responsible for such posting are subject to payment of a civil penalty as provided in Subsection
3 (d) of this Article.

4 (c) Whenever an officer or employee of the City removes any Handbills distributed in violation
5 of this Article, the Director may send a bill to the Person responsible for such distribution for the cost
6 of clean-up. Such bill shall include all costs, direct and indirect, incurred in the clean-up, and in
7 administering the billing procedure. The bill shall describe the basis for the amount billed by
8 indicating the approximate number of Handbills cleaned up, the time necessary for removal, the hourly
9 cost of removal, and other relevant information, including, but not limited to, the general locations
10 from which the Handbills were removed and the dates and times on which the work was performed.
11 The bill shall also specify a date by which the bill is to be paid, which shall be not fewer than ten
12 business days after the bill is mailed. The Person billed must pay the bill by the date specified.

13 (d) Any Person in violation of any provision of this Article and who fails to pay the amount
14 billed for such violation shall be liable for payment of a civil penalty in an amount equal to (1) the
15 costs incurred by the City occasioned by the violation of this Article, (2) the costs to the City incurred
16 in obtaining imposition of such civil penalties through litigation, including the cost of paying City
17 employees or other persons to engage in the litigation, and (3) an additional amount equal to 50
18 percent of the total of (1) and (2) of this Subsection. As an alternative, the civil penalty authorized by
19 this Section may be assessed by an administrative citation issued by Department of Public Works
20 officials designated in Section 38 of the Police Code. Such administrative penalties shall be assessed,
21 enforced and collected in accordance with Section 39-1 of the Police Code and shall include the costs
22 to the City incurred in obtaining the imposition of the penalty, including the cost of paying City
23 employees to engage in the administrative process.

24 (e) All monies received by the City in payment of civil penalties for violation of this Article
25 shall be used by the Director for cleaning up litter in the City.

1 (f) In any civil action or administrative proceeding seeking recovery of a civil penalty for
2 any violation of this Article, proof that the Handbill contains the name or in any other manner
3 identifies a Person shall give rise to a rebuttable presumption that the Person caused such Handbills to
4 be distributed.

5 (g) In undertaking enforcement of this Article, the City, including, but not limited to,
6 the Department, is assuming an undertaking only to promote the general welfare. It is not
7 assuming, nor is it imposing on its officers and employees, an obligation for breach of which it
8 is liable in money damages to any Person who claims that such breach proximately caused
9 injury. The obligations this Article imposes on City officials are intended to be directive only.
10 The provisions of this Article shall not be invalidated to the extent City officials do not comply
11 with any obligation imposed herein.

12 **Section ~~184.74.184.75.~~ PUBLICATION OF NOTICE.**

13 The Director shall publish a copy of this Article, and any amendments thereto, once in one
14 or more newspapers of general circulation, post a copy of the Article on or near the front door
15 of the Chamber of Commerce and on a bulletin board in or adjacent to the City Hall for a
16 period of 90 calendar days after its passage, and prominently provide notice of this Article in
17 any material made available to the public regarding the City's regulations of Handbills.

18 The notice requirements of this Section are intended to enhance community awareness
19 of the City's regulations of Handbills. However, the notice requirements shall be given only
20 directive effect. Accordingly, the failure of the Director to provide the notice required by this
21 Section shall not be a defense in any criminal proceeding or civil action brought to enforce the
22 provisions of this Article nor shall such failure relieve any Person of criminal or civil liability for
23 Handbill distributions that violate this Article. The notice requirement shall not change the effective
24 date of the ordinance amending this Article or delay its enforcement during the posting period.

25 **Section ~~184.75.184.76.~~ AUTHORITY TO MAKE RULES, ETC.**

1 The Director is empowered to adopt rules, regulations, and interpretations of this
2 Ordinance as he or she may deem necessary and proper to interpret and administer the
3 provisions of this Article provided that the rules, regulations, and interpretations shall not be
4 inconsistent with any of the provisions of this Article.

5 **Section ~~184.76.184.77.~~ SEVERABILITY.**

6 If any of the provisions of this Article or the application thereof to any Person or
7 circumstance is held invalid, the remainder of this Article, including the application of such part
8 or provisions to Persons or circumstances other than those to which it is held invalid, shall not
9 be affected thereby and shall continue in full force and effect. To this end, the provisions of
10 this Article are severable.

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

By: _____
Amy S. Ackerman
Deputy City Attorney