General Advertising Sign Program Annual Report

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The Planning Department's General Advertising Sign Program (GASP) is the result of legislation passed in 2006 that amended the Planning Code to provide for improved monitoring and enforcement of general advertising signs – commonly known as billboards. The primary goals of the program are to build and maintain an inventory of all general advertising signs in San Francisco, to correct outstanding sign-related Planning Code violations, and to remove unlawful signs. The GASP's activities are best understood in the context of 2002's Proposition G which passed with 78 percent of the vote and prohibited all new general advertising signs within San Francisco.

Planning Code Section 604.2(h) requires that the Planning Department submit to the Planning Commission and Board of Supervisors an annual report on the program that includes revenues, expenditures, and a progress report on the program's activities. The most recent such report was previously submitted in March 2008. This report is submitted approximately three months early in order to establish an annual reporting schedule which more closely aligns with (1) the Department's annual sign inventory cycle, and (2) the anniversary of the commencement of major sign enforcement activities.

1. PROGRAM BACKGROUND

ENFORCEMENT PROCESS. In mid-2006 legislation enabling the GASP was adopted. As a part of that legislation, sign inventories and authorizing permits were requested from all sign companies doing business in the City. At the start of 2007, initial Program staff were selected and the GASP began an independent effort to survey and document every general advertising sign in San Francisco. By the end of 2007, Staff had successfully compiled the City's inventory – which continues to be updated as new unlawful signs are detected - and with the start of 2008, the 'processing' of that inventory began. [A generalized view of San Francisco's general advertising sign concentration is provided in Figure 1, below.] This undertaking, which comprises the majority of the GASP's current work, involves examining individual signs on a case-by-case basis to (1) verify compliance with the Planning Code and (2) abate any Code violations.

Signs are processed primarily based on geography, with priority given to (1) new complaints and (2) violations brought to the GASP's attention by other permit activity on the site of an alleged violation. When a sign is found to be in violation of the Planning Code, a Notice of Violation (NOV) is issued to both the property owner and the sign company (together the "responsible party"). The responsible party has 45 days to either (1) remove the sign, (2) correct the violation [if possible without removal,

e.g. reducing sign width to comply with permitted dimensions], or (3) file a Request for Reconsideration of the NOV. On the 46th day after issuing the NOV, should the responsible party not have availed itself of one of these options, daily penalties begin to accrue based on the size of the sign, as discussed below.

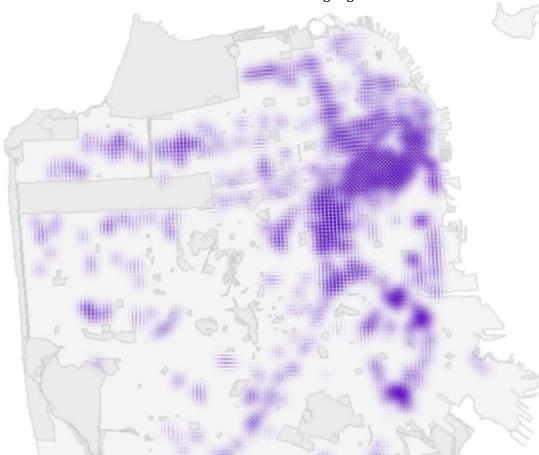


Figure 1. Generalized Concentration of General Advertising Signs

NOV RECONSIDERATION. Should the responsible party file a Request for Reconsideration, a hearing on the NOV is scheduled before an Administrative Law Judge (ALJ). This hearing affords a responsible party the opportunity to present evidence demonstrating why the NOV was issued in error. If the ALJ overturns the NOV, the case is closed and any penalties are rescinded. If the ALJ upholds the NOV the violation must be abated and, if advertising copy has remained during the Reconsideration process, a mandatory twenty-day fixed penalty based upon the size of the sign and presence of advertising copy is assessed. The ALJ's decision is subject to no further administrative appeals.

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IN-LIEU IDENTIFYING NUMBERS. Signs for which no permit can be located were afforded the opportunity to seek an in-lieu identifying number¹ in order to establish the legal nonconforming status of the sign. An in-lieu number can only be issued when determined to be "likely legally authorized" at the time of installation based on the five "likely legal" criteria of Planning Commission Resolution Number 17258. A sign that is not considered likely legal after applying the five criteria is deemed to be in violation of the Planning Code.

PENALTIES. The GASP's efforts are fortified by a robust penalty structure which is designed to deter violations and effectively assess penalties against violators. With the help of the Bureau of Delinquent Revenue at the City Treasurer's Office, outstanding penalties are sent to collections. Additionally, building permits sought on properties with outstanding penalties or violations are not approved. Fines and penalties include the following: (1) \$580 per sign for failure to submit an inventory within 30 days of notice, (2) \$1,160 per sign for failure to submit an inventory within 60 days of notice, (3) \$100 [for signs smaller than 100 square feet] to \$2,500 [for signs larger than 500 square feet] per sign per day for failure to respond to an NOV, (4) \$2,000 to \$50,000 [per the previous size criteria] for an ALJ upholding an NOV in cases where advertising copy remains.

LEGAL ISSUES. The general advertising sign industry is a lucrative one. Anecdotal information suggests that owners of buildings with superior freeway visibility can receive as much as \$50,000 each month in rent for allowing a sign company to post a billboard on their property. The companies themselves, which often maintain inventories of dozens or hundreds of signs, in turn receive an even greater income from advertisers. Accordingly, and because of the high number of illegal signs in the City (as discussed below), it is only logical that sign companies wage fierce legal challenges to the GASP and its activities.

Five GASP-related cases are currently in litigation; another two have already been resolved. Among the seven total actions, four relate to individual sign installations and seek to overturn a City decision while the remainder relate to broader policy issues. Among these actions, one has particular bearing on this and subsequent reports prepared on GASP activities. In response to public records requests to view various inventory submittals received by the Department, a group of sign companies sought and received a preliminary injunction prohibiting the GASP's release of a great deal of what would otherwise be public information. Until this matter is resolved, the Department is forbidden from disseminating certain aggregated data, including the GASP's comprehensive sign database and associated interactive maps.

Aside from litigation activities, the daily operations of the Program require routine consultation with the City Attorney's Office. Sign regulation and enforcement is particularly intricate as a result of issues including perceived threats to free speech, conflicting ownership issues of sign structure versus the properties to which they are attached, and a voluminous amount of case law as could be expected with any such high-stakes industry.

¹ The in-lieu process was tied to the onset of the GASP's enabling legislation. Under Planning Code Section 604.1(c) and the settlement of an associated legal matter a deadline of October 14, 2003 was established for the submittal of all in-lieu applications.

2. PROGRESS

OVERALL OUTCOMES. As of November 1, the Department has processed 580 of the known 1,509 general advertising signs in the City, representing roughly 38 percent of the total. A 'processed' sign is one which has been (1) determined to be legal, (2) determined to be illegal and removed, (3) found to exceed the scope of permit and subsequently brought into compliance with the Code, or (4) the subject of an NOV to which no response has been received and which continues to accrue daily penalties.

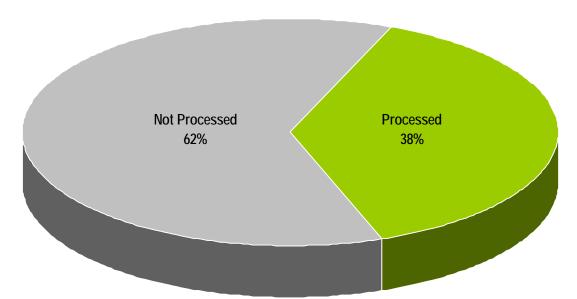


Figure 2. Progress in Reviewing Total Sign Inventory (n=1,509)

The western portion of the City has largely (but not exclusively) been the focus of the GASP's efforts for much of 2008. Staff has completed processing most signs located in the Richmond District, Outer Sunset, and Inner Sunset. Additionally, substantial progress has been made in processing signs in the Marina District, Western Addition, Noe Valley, Eureka Valley, and the Ocean-Merced-Ingleside area. Barring legal or other unforeseen issues, and based on the current rate of progress, the City's inventory should be completely processed by the Summer of 2010.

Of the 580 processed signs, 55 percent are broadly in compliance with the Planning Code. Included in this grouping are signs that (1) complied as surveyed, (2) *now* comply following modification made in response to an NOV, or (3) *will* comply once the terms of an issued NOV have been met.

The remaining 45 percent are signs which do not, and cannot, comply with the Planning Code. This grouping comprises both those that have been removed and those that are required to be removed. *As of November 1, 2008, 141 general advertising signs have been removed.*²

² The vast majority of removed signs did not comply with the Planning Code and were the subject of an NOV and associated enforcement actions. However, a small portion were signs which were voluntarily removed by a property owner or sign company. Statistics are not available, but Staff estimates the total number of signs in this grouping to comprise less than 10 percent of all signs removed.

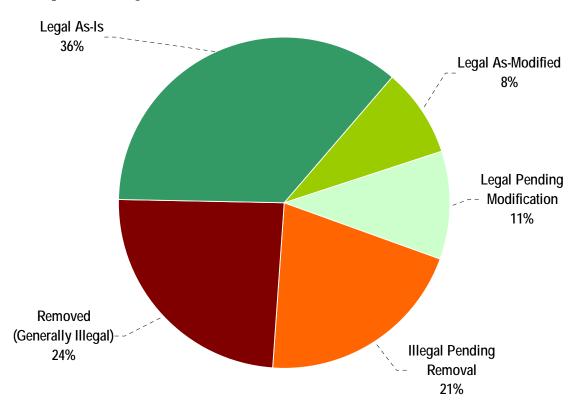


Figure 3. Disposition of Signs Reviewed to Date (n=580)

ALJ OUTCOMES. Seven Requests for Reconsideration have been made over the course of the program, all in 2008. Three of those Requests have resulted in NOV's being upheld, including two in which advertising copy remained and \$50,000 penalties were assessed. One resulted in an NOV being overturned, and three have not yet been decided or heard.

IN-LIEU OUTCOMES. 290 requests for in lieu permits have been made, 50 of which have been processed. Of those, 24 have been found to be likely legal while the remaining 26 have been removed or are pending removal.

3. REVENUES AND EXPENDITURES

To-date in FY08-09, the program has generated \$143,425 in revenue. The majority of funding stems from two revenue streams: (1) the annual inventory maintenance fee – which is set at a cost-recovery level, and (2) fines and penalties, which have generated \$50,500 to-date this Fiscal Year.

It should be noted that approximately \$1.5 million dollars of penalty revenue are outstanding. The vast majority of these penalties, however, are currently the subject of unresolved legal actions. Collection will hinge on the outcome of those matters. Even assuming that none of the outstanding penalties are collected, should new penalties received during remainder of this year be consistent

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with penalty rates during FY07-08, total revenues for this year should be comparable to FY07-08 levels.

Figure 4. Program Revenues Over Time

	FY06-07	FY07-08	FY08-09 (as of 11/08)	
Initial Inventory processing fee ³	\$431,200	\$62,720	\$560	
Initial In-lieu				
inventory processing	\$94,400	\$0	\$0	
fee ⁴				
Annual inventory	\$0	\$57,264	\$82,7256	
maintenance fee ⁵				
Misc. income	\$54,393 ⁷	\$0	\$0	
	\$0	\$13,600	\$10,200	
Reconsideration Fees ⁸				
Fines and Penalties9	\$ 6,856	\$22,848	\$50,500	
Total	\$586,849	\$156,432	\$143,425	

The vast majority of expenditures relate to City Staff costs. The GASP is presently staffed by three full-time code enforcement personnel (a Planner II, a Planner III, and a Student Design Trainee) and a ¼-time Planner IV devoted to program management. In addition to Planning Department resources, the GASP employs the full breadth of litigation, code enforcement, and advice services provided by the City Attorney's Office.

Departmental Staff costs are likely to decrease somewhat this Fiscal Year. This stems primarily from the completion of the City's sign inventory in FY07-08; the Student Design Trainees devoted to that work are no longer employed by the Program. City Attorney's costs, however, have risen dramatically as a result of complex litigation seeking to limit the activities of the GASP and the effects of Proposition G.

³ Planning Code Section 358 establishes inventory processing fees of \$560 per sign. Income from the initial inventory fee was designed to cover program set-up costs and to provide adequate funding to recover the costs of executing the program over its lifespan.

⁴ Planning Code Section 358 establishes inventory processing fees of \$320 per sign for those signs previously submitted to the Department as an in-lieu application.

⁵ Planning Code Section 358 establishes an annual inventory maintenance fee of \$75 per sign as of FY08. Previously the annual inventory maintenance fee was \$48.

⁶ This figure includes \$34,800 in late inventory maintenance fees which have not yet been received but which are anticipated to be filed after the issuance of this report but prior to the Commission's hearing on the matter.

⁷ One-time income from a pre-litigation settlement with Turner Broadcasting.

⁸ Planning Code Section 610(d)(2) establishes a fee of \$3,400 to file a Request for Reconsideration.

⁹ Fines and penalties are set forth throughout the Planning Code, including Sections 604.1(d), 604.2(g), and 610(b)(2).

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Figure 5. Program Expenditures Over Time

	FY06-07	FY07-08	FY08-09 [Actual as of 11/1/08]	FY08-09 [Projected]
Planning Department				
Staff	\$128,714	\$284,760	\$74,051	\$220,000
City Attorney Staff	\$0	\$111,370	\$123,74410	\$220,00011
Misc. operational				
costs ¹²	\$20,286	\$24,372	\$1,838	\$6,000
Total	\$149,000	\$420,502	\$199,633	\$446,000

Along with (1) roughly \$175,000 carried forward from the initial inventory processing fees received in previous years and (2) \$100,000 of penalty monies assessed by the ALJ which are currently the subject of litigation [or other comparable income from outstanding fees], the current Fiscal Year's income is anticipated to cover the current Fiscal Year's expenses.

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¹⁰ This figure represents only first-quarter billings from the City Attorney's office.

¹¹ This figure represents only an educated guess which assumes a substantial increase in cost over the previous year but also accounts for less cost during the balance of this Fiscal Year as substantial briefings and arguments in a number of complex matters are already complete.

¹² Office and other supplies, software and equipment, data processing, staff training, vehicle rental, reproduction, and Rent Board ALJ Services.