



SAN FRANCISCO PLANNING DEPARTMENT

General Advertising Sign Program Annual Report

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Staff Contact: Daniel A. Sider, AICP
dan.sider@sfgov.org, (415) 558-6697

1650 Mission St.
Suite 400
San Francisco,
CA 94103-2479

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

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 Department's General Advertising Sign Program (GASP) that includes revenues, expenditures, and a progress report on the program's activities. Prior to this document, the most recent such report was presented to the Planning Commission on November 20, 2008.

The GASP is the result of legislation passed in 2006 which 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.

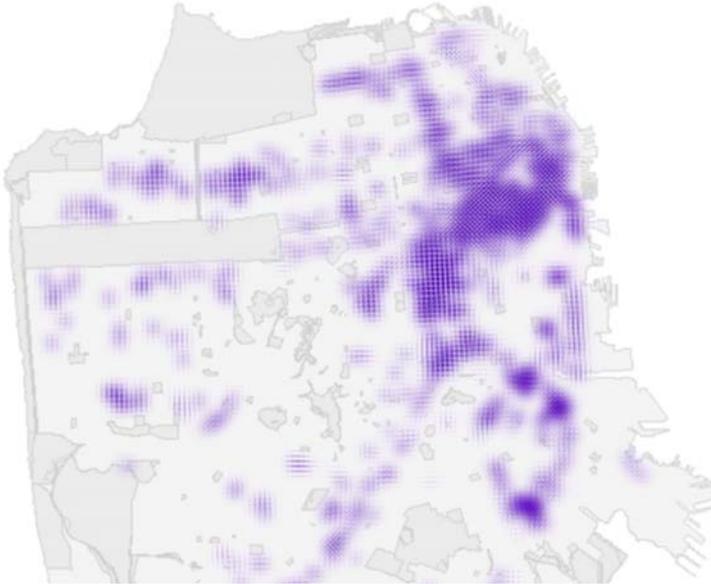
1. KEY DEVELOPMENTS IN THIS REPORTING PERIOD

- 318 illegal signs have been removed, up from 177 at the end of the previous reporting period.
- 68 percent of all signs in the City's inventory have been processed, up from 38 percent at the end of the previous reporting period.
- 12 Requests for Reconsideration of NOV's were completed during this reporting period, up from 4 during the previous period. Only a single Request has ever been granted.
- 150 in-lieu applications were processed during this reporting period, up from 54 applications processed during the previous reporting period.
- 65 new illegal signs were installed during this reporting period, many of which were signs adhered directly to vacant storefront windows. Between May 1 and September 30 the Department issued NOV's for 43 signs at 11 locations.
- Roughly \$120,000 in fines and penalties have been collected in Fiscal Year 2009-2010 to-date; this is 33 percent above penalty collections for the whole of the previous fiscal year.
- New legislation established 'repeat offender' provisions and lowered the NOV compliance period from 45 to 30 days.
- One additional staff member joined the GASP for a total of three full-time staff.

2. PROGRAM BACKGROUND

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. In addition to the various sign company inventories, the GASP independently surveyed and documented every general advertising sign in San Francisco.

Generalized Concentration of General Advertising Signs



As part of the original submittal required from each sign company, a special process was created whereby signs for which no permit could 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 the sign is determined to be “likely legally authorized”².

At the start of 2008, the ‘processing’ of the overall sign inventory began. 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 any authorizing permits and (2) initiate the abatement of any Code

violations. Signs are processed primarily based on geography, with priority given to new complaints and 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 30 days to either (1) remove the sign, (2) correct the violation, or (3) file a Request for Reconsideration of the NOV, as discussed below. On the 31st 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. Penalties range from \$100 each day for signs smaller than 100 square feet to \$2,500 each day for signs larger than 500 square feet.³

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 voided. If the ALJ upholds the NOV, the violation must be

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 Determinations for in-lieu requests are based on the five “likely legal” criteria of Planning Commission Resolution Number 17258.

³ Planning Code Section 610(b)(2)(B) contains a sliding scale of penalties based on the size of a sign.

abated and, if advertising copy has remained during the Reconsideration process, a mandatory twenty-day fixed penalty based upon the size of the sign is assessed. The ALJ's decision is not subject to any further administrative appeals.

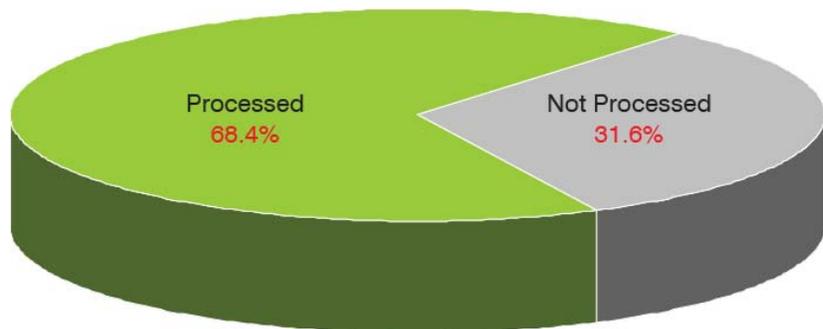
Since the inception of the GASP, numerous outdoor advertising companies have sued the City to prevent effective enforcement of the City's sign ordinances and to overturn decisions made with respect to particular signs. This is not surprising given how lucrative highly visible signage can be; anecdotal information suggests that owners of buildings with good freeway visibility can receive upwards of \$50,000 each month in rent for allowing a sign company to post a billboard on their property. The sign companies themselves, which often maintain inventories of dozens or hundreds of signs, in turn receive an even greater income from advertisers.

Eight GASP-related cases are currently in litigation; another two have already been resolved. Among the ten total actions, seven relate to individual signs and seek to overturn a City decision while the remainder relate to broader policy issues. While this report cannot provide details of ongoing litigation, it should be noted that one such case has resulted in a preliminary injunction which prevents the City from releasing aggregated inventory information, maps, and other data which would otherwise be public information.

3. ANNUAL PROGRESS

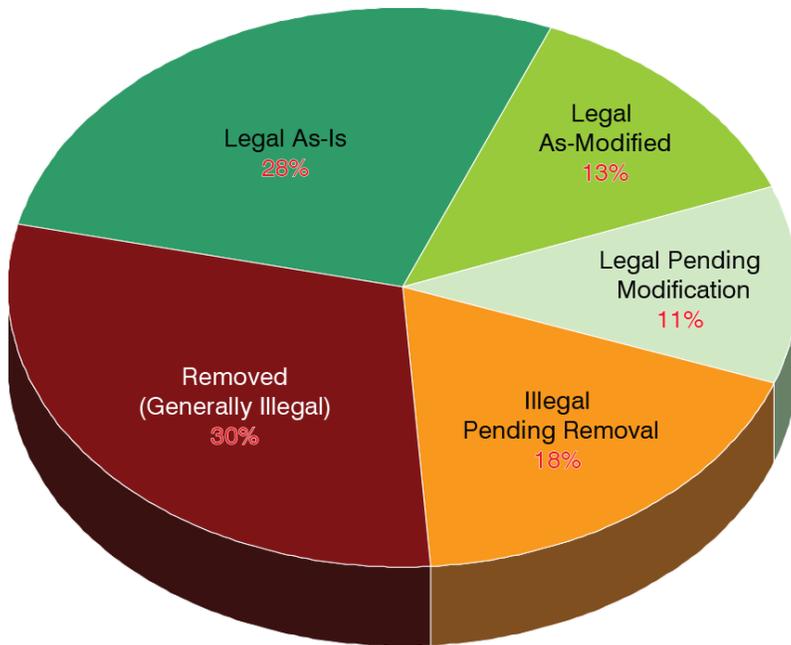
As of November 1, 2009, the Department has processed 1,076 of the known 1,574 general advertising signs in the City, representing roughly 68 percent of the total. A 'processed' sign is one which has been (1) determined to be legal, (2) determined to be illegal and removed, (3) found to exceed the scope 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. Barring legal or other unforeseen issues, and based on the current rate of progress, the City's inventory should be completely processed by the end of 2010.

Progress in Reviewing Total Sign Inventory (n=1,574)



Of the 1,076 processed signs, 52 percent are broadly in compliance with the Planning Code. Included in this grouping are signs that (1) complied as surveyed, (2) *now* comply following modifications made in response to an NOV, or (3) *will* comply once the terms of an issued NOV have been met.

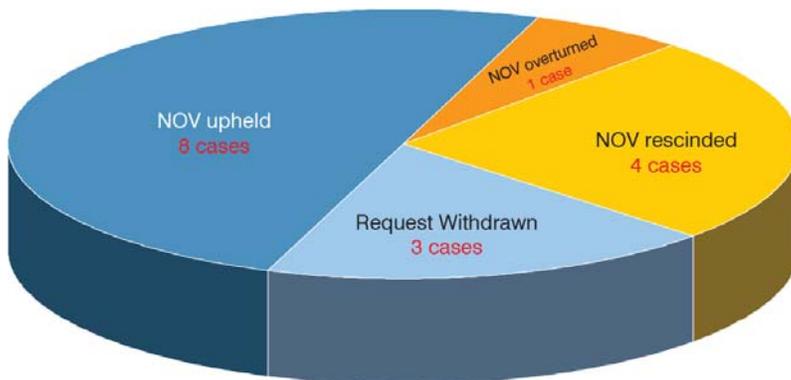
Disposition of Signs Reviewed to Date (n=1,076)



The remaining 48 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, 2009, 318 general advertising signs have been removed.*⁴

Twenty Requests for Reconsideration have been filed over the course of the program⁵. Eight of those Requests have resulted in NOV's being upheld while only one resulted in an NOV being overturned. Four cases are still in the pre-hearing or pre-decision stage, while the remaining seven Requests were either withdrawn by the applicant or the NOV in question was rescinded by the Department. With respect to the latter categories, it should be noted that through the course of hearing preparation, new information is oftentimes presented by a Requestor. Should that evidence indicate that the sign in question is legal, contrary to previous evidence, the Department typically rescinds the NOV.

Outcomes of Completed Requests for Reconsideration (n=16)



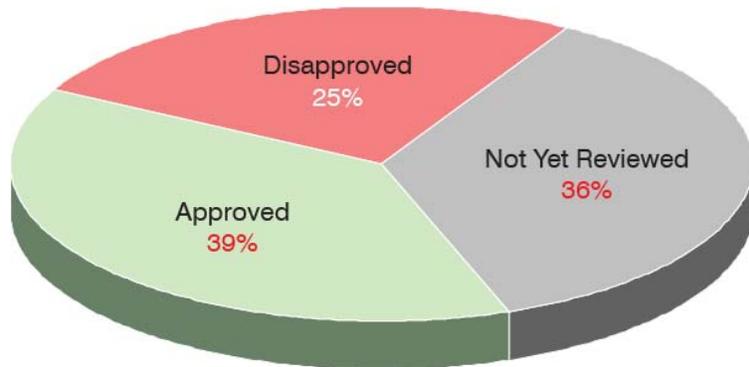
Through their lack of documentation, in-lieu applications represent a particularly contentious and complex group of signs. 320 requests for in lieu permits have been made, 204 of which have been processed. Of those, 123 have been found to be likely legal while the remaining 81 have been

removed or are pending removal. Two of these are the subject of pending Requests for Reconsideration.

⁴ 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 between 5 and 15 percent of all signs removed.

⁵ Through November 1, 2009.

Applications for In-Lieu Permits (n=320)



4. FINANCIAL DATA

GASP revenue to-date this Fiscal Year is \$344,153. The majority of this funding stems from two sources: (1) the annual inventory maintenance fee - accounting for \$213,562 and (2) fines and penalties – accounting for \$119,461.⁶

With respect to number 2, above, it should be noted that substantial penalties have been assessed but not yet collected. Roughly \$450,000 of outstanding revenue is related to cases where a violation has been addressed, but penalties remain unpaid. An additional \$3.5 million in penalties is related to sign violations where the both the violation itself and accrued penalties remain outstanding.⁷ The overwhelming majority of these signs are controlled by two out-of-town sign companies which are involved in separate litigation with the City. As such, collection will hinge largely on the outcome of those matters.

It should also be noted that \$67,500 of penalties collected to date stem from the introduction of provisions designed to address 'repeat violators.' Under Ordinance Number 290-08, repeat violators of general advertising sign regulations are subject to a reduced 3-day window of compliance before penalties begin to accrue. Since the effective date of the legislation, the Department has cited 18 total 'repeat violator' signs at 5 different locations.

⁶ These figures are based on FY2009-2010 revenues to-date. The GASP's reporting period (November 1 through October 31) does not coincide with the City's Fiscal Year (July 1 through June 31).

⁷ These are cases in which penalties continue to accrue on a daily basis.

Program Revenues Over Time

	FY06-07	FY07-08	FY08-09	FY09-10 [as of 11/1/09]	FY09-10 [Full Year Projected]	Program Totals ⁸
Sign registration or re-registration fee ⁹	\$431,200	\$62,720	\$28,686	\$6,430	\$25,000	\$547,606
In-lieu application fee ¹⁰	\$94,400	\$0	\$0	\$0	\$0	\$94,400
Annual inventory maintenance fee ¹¹	\$0	\$57,264	\$84,860	\$213,562	\$215,000	\$357,124
Reconsideration Fees ¹²	\$0	\$20,400	\$30,550	\$4,700	\$25,000	\$75,950
Fines and Penalties ¹³	\$ 61,249	\$102,594	\$91,914	\$119,461	\$240,000 ¹⁴	\$555,757
Totals	\$586,849	\$242,978	\$236,010	\$344,153	\$565,000	\$1,630,837

The vast majority of expenditures relate to staff costs. The GASP is presently staffed by three full-time code enforcement personnel (two Planner II's and one Planner III) 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. Costs associated with legal services continue to be substantial.

⁸ Totals are based on FY2009-2010 full year projected revenues.

⁹ Planning Code Section 358 establishes sign registration fees for initial registration of a sign or subsequent changes of control (e.g. Sign Company A sells a sign to Sign Company B) of \$643 per sign (an increase from \$560 in previous years).

¹⁰ During the period in which the Department could accept in-lieu applications, Planning Code Section 358 established inventory processing fees of \$320 per sign for those signs previously submitted to the Department as an in-lieu application.

¹¹ For the current Fiscal Year, Planning Code Section 358 establishes an annual inventory maintenance fee of \$211 per sign. This fee increased from \$75 in the previous fiscal year and \$48 before then. This increase reflects the significant and unexpectedly increasing costs of operating the program, particularly those costs associated with legal services integral to the continued functioning of the GASP.

¹² Planning Code Section 610(d)(2) establishes a fee of \$3,400 to file a Request for Reconsideration. In cases where a Request is withdrawn, fees are refunded, less expenses.

¹³ Fines and penalties are set forth throughout the Planning Code, including Sections 604.1(d), 604.2(g), and 610(b)(2).

¹⁴ While a straight-line projection of penalties received thus far in FY2009-2010 would suggest a total penalty revenue of \$480,000 for the complete fiscal year, a more realistic projection, based on litigation timelines, outstanding penalties, and previous years' collection rates, is provided here.

Program Expenditures Over Time

	FY06-07	FY07-08	FY08-09	FY09-10 [Actual as of 11/1/09]	FY09-10 [Full Year Projected]	Program Totals ¹⁵
Planning Dept. Staff	\$131,793	\$284,761	\$254,992	\$92,650	\$302,271	973,817
City Attorney Staff	\$0	\$111,370	\$250,816	\$0 ¹⁶	\$250,000	612,186
Misc. costs ¹⁷	\$19,000	\$24,372	\$14,464	\$1,000	20,000	77,836
Totals	\$150,793	\$420,503	\$520,272	\$93,650	\$572,271	1,663,839

On balance, revenue projections for the remainder of FY2009-2010 (including both collections of outstanding penalties and the resolution of certain outstanding legal matters) are generally consistent with projected FY2009-2010 expenses. Similarly, projections also indicate that all-time revenues and expenses continue to be generally aligned. In broad terms, and based on available data, the GASP continues to bring in only revenue which is sufficient to cover operating expenses.

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¹⁵ Totals are based on FY2009-2010 full year projected expenditures.

¹⁶ The City Attorney's Office has not yet transmitted any formal bills to the Planning Department thus far this Fiscal Year.

¹⁷ This figure accounts for office and other supplies, software and equipment, data processing, staff training, vehicle rental, reproduction, and Rent Board ALJ Services.