



# SAN FRANCISCO PLANNING DEPARTMENT

---

July 24, 2009

Mr. John Arntz  
Director of Elections  
Department of Elections  
1 Dr. Carlton B. Goodlett Place, Room 48  
San Francisco, CA 94102

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

Reception:  
**415.558.6378**

Fax:  
**415.558.6409**

Planning  
Information:  
**415.558.6377**

VIA INTERDEPARTMENTAL MAIL AND  
VIA ELECTRONIC MAIL TO: [evan.kirk@sfgov.org](mailto:evan.kirk@sfgov.org)

Dear Mr. Arntz,

In response to your request of July 2, 2009, please find below the Planning Department's analysis of the proposed "Mid-Market Arts Revitalization and Tourism Special (ARTS) Sign District".

With respect to the roles and responsibilities which are germane to the Planning Department, we have prepared the following generalized analysis:

*The proposed Ordinance would establish a new sign-specific zoning district on and nearby Market Street between 5th and 7th Streets. Within this District, the Ordinance would generally do the following:*

- 1. undo 2002's Proposition G, which banned all new general advertising signs in the City;*
- 2. undo 1970's Market Street Special Sign District, which, prior to Prop G prohibited general advertising signs along the downtown portion of Market Street; and*
- 3. require the Central Market Community Benefit District ("CBD") to develop a signage program, make determinations regarding the consistency of all sign applications with that program, collect money from property owners who install new general advertising signs, and distribute that money to support the purposes of the District.*

*By allowing a range of new general advertising signs where none are currently permitted, the Ordinance involves the potential for a significant visual impact to the immediate neighborhood and to key public views. Additionally, much of the proposed Signage District is also within the Market Street Theater and Loft Historic District, which illustrates the distinct architectural design in San Francisco just before and after the 1906 Earthquake. Accordingly, the introduction of new general advertising signage could have an unknown impact on the character and/or integrity of the Historic District.*

*Several provisions of the proposed Ordinance may expose the City to legal liability. The Ordinance will also require additional, currently unfunded expenditures by the City to regulate signage in accordance with the Ordinance.*

In addition, the following five topics emerged as being particularly significant in the course of our review:

**1. REGULATION OF SIGN CONTENT.**

*The proposed Ordinance appears to regulate content in new general advertising signs. Such regulation may be considered an unconstitutional restriction on speech and could put the City at risk of legal liability. Specifically:*

Section 608.16(d)(1) requires that new signs "reflect and be responsive to the purposes of the Mid-Market ARTS-SD."

Section 608.16(d)(3) encourages specific types of sign content to appear within the District.

**2. DELEGATION OF CITY AUTHORITY.**

*The Planning Department is currently the City's lead agency for the regulation of general advertising signage. The proposed Ordinance would delegate some of Department's review and permitting functions. Such unprecedented delegation of power to a private entity may create the risk of legal liability for the City. Moreover, because of the new powers that would be assigned to the CBD, concerns regarding the CBD's membership, decision-making process, and accountability are apparent. These issues are not addressed in the proposed Ordinance. Specifically:*

Section 608.16(h)(2) and 608.16(h)(3)(A) require that the CBD develop and administer a "signage program" and that no new general advertising signs be allowed until such program, along with "minimum criteria that must be met by any sign," are developed by the CBD. The CBD would "regulate" signs and allow only signs of companies which are "approved by the CBD."

**3. SIGNAGE TYPE AND SCALE**

*The Ordinance contains a number of provisions which would adjust longstanding physical regulations for signage. Specifically:*

Section 608.16(d)(2)(B) allows roof signs without requiring that they be backed by a wall which forms a complete backdrop for the sign. No roof signs have been allowed anywhere in San Francisco unless completely backed by a wall since 1965.

Section 608.16(d)(2)(C) allows wind signs, such as balloons, ribbons, streamers, and signage similar to and including “dancing inflatable men.” No wind signs have been allowed anywhere in San Francisco since 1965.

Section 608(d)(2)(I) allows wall signs to extend 10 feet above the roofline in certain circumstances. General advertising wall signs have not been permitted to extend above the roofline anywhere in San Francisco since 1965.

#### 4. TECHNICAL ISSUES

*The Ordinance contains a number of omissions and irregularities which are of particular note. Specifically:*

Section 608.16(d)(2)(A) establishes a 500 square foot per-sign limit. However, the Ordinance does not establish a limit on the number of general advertising signs per parcel. Accordingly, the 500 square foot restriction is not a meaningful limit on total signage. For example, four 500-square foot individual yet contiguous general advertising signs could be arranged in a rectangular pattern on a given wall, thus providing 2,000 visual square feet of advertising space. Section 608.16(d)(5) goes further by specifically encouraging this practice through digital signage that is “linked so that the images generated or broadcast can be shared among one or more such signs.”

Sections 608.16(d)(5)(A) and (B) allow *but do not require* that a certain portion of advertising time on digital signage be devoted to civic and arts purposes. Specifically, the Ordinance requires that “*up to five percent*” of space on digital signage be reserved for such uses. This provision sets a maximum level, rather than a minimum level, of advertising devoted to civic and arts purposes. For example, a digital sign that offers zero percent civic and/or arts advertising would be in compliance with this provision. The wording of this provision may be misleading to voters, who may believe that advertising on digital signage in the District would necessarily promote civic and arts purposes.

Section 606.16(d)(4) states that “when feasible... signs shall be positioned such that they are viewable by pedestrians on the sidewalk.” This provision merely states a non-binding preference rather than a meaningful requirement. Similarly, no criteria are provided which could be used to determine whether a pedestrian sign orientation is feasible or infeasible. Moreover, a sign can be viewable *both* to pedestrians in the area and to pedestrians, residents, or travelers far outside of the immediate area. As such, the wording of this provision may be misleading to voters, who may believe that advertising would necessarily be oriented only to pedestrians within the District.

Section 608.16(h) requires the collection of a certain portion of sign revenue from property owners based on whether "the ground floor of a property is substantially used as an arts activity." The term "substantial" is not defined.

Section 608.16(d)(2)(G) prohibits new general advertising signs if "the total illumination" measured from certain locations exceeds specified thresholds. Such illumination is to be measured using "foot-candles of illumination" and "nanometers per square meter". Development and implementation of a regulatory program involving these cumulative metrics, which have not previously been used by the Planning Department, would require the acquisition of equipment and the expenditure of additional funds not provided by the Ordinance.

**5. ISSUES WHICH ARE BEYOND THE SCOPE OF THE PLANNING CODE.**

*The Planning Code regulates land use and physical development throughout the City. The proposed Ordinance would expand the Planning Code to include regulating (a) transfers of money between private parties (property owners and the CBD) and (b) the programming of, and business decisions by, third parties (the CBD). Implementing and enforcing these requirement is beyond the Planning Department's purview, if not that of any other City Agency. Specifically:*

Section 608.16(h)(3) requires that the CBD (1) develop rules and regulations concerning the collection and expenditure of monies, (2) collect money from property owners, and (3) spend the money pursuant to the previously mentioned rules and regulations.

Section 608.16(g) requires that a non-governmental agency, the CBD, undertake certain programs in the District, specifically programs to "encourage" storefront improvement, illumination, and signage.

Section 608.16(h)(3)(D) authorizes the CBD to "begin developing a plan for the creation of [a] ticket booth."

On balance, the effects of this proposed Ordinance are complex and there are numerous technical and legal issues involved. Accordingly, please do not hesitate to consult us as the Ballot Simplification Committee's deliberations move forward. Please contact Daniel Sider of my staff directly at [dan.sider@sfgov.org](mailto:dan.sider@sfgov.org) or (415)558-6697 directly.

Sincerely,



John Rahaim  
Director of Planning