General Advertising Sign Program Annual Report

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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 19, 2009.

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.

This year's report is particularly notable in that it coincides with the achievement of several major milestones: (1) completing the review of every general advertising sign in the City, (2) determining the legal status of each sign, and (3) initiating enforcement action against all unlawful signs.

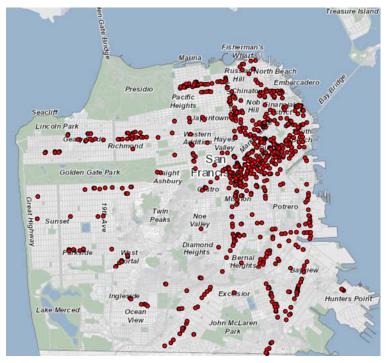
1. KEY ACCOMPLISHMENTS TO DATE

- One-hundred percent of the total 1,672 general advertising signs in the City's inventory have been processed.
- 588 generally illegal signs have been removed.
- 29 Requests for Reconsideration of Notices of Violation (NOV's) have been completed; only a single NOV has been overturned.
- One-hundred percent of the 321 total "in-lieu permit" applications have been processed.
- 98 new illegal signs at 32 different properties were installed during this reporting period; all but 6 have been removed.
- Nine of the 13 separate pieces of litigation brought against the City in regards to GASP activities have been resolved.
- A map of all general advertising signs in the City has been made available in draft form at http://signmap.sfplanning.org.

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, in 2007 the GASP independently surveyed and documented every general advertising sign in San Francisco. The GASP inventory continues to be updated as new unlawful signs are detected.

General Advertising Signs in San Francisco (n=883)



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 inlieu 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. undertaking involved 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 were 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 was found to be in violation of the Planning Code, a Notice of Violation (NOV) was issued to both the property owner and – when known - the sign company (together the "responsible party"). The responsible party then had 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 began 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

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: 100 square feet or less - \$100/day; 101 to 300 square feet - \$1,000/day; 301 to 500 square feet - \$1,750/day; over 500 square feet - \$2,500/day.

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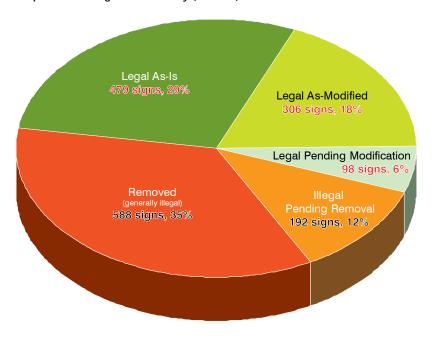
Should the responsible party have filed a Request for Reconsideration, a hearing on the NOV was scheduled before an Administrative Law Judge (ALJ). This hearing affords a responsible party the opportunity to present evidence demonstrating why an NOV was issued in error. If the ALJ overturned an NOV, the case was closed and any penalties were voided. If the ALJ upheld an NOV, the violation was required to be abated and, if advertising copy had remained during the Reconsideration process, a mandatory twenty-day fixed penalty based upon the size of the sign was assessed. ALJ decisions are not subject to any further administrative appeals, but can be appealed to the courts through an administrative writ.

The GASP continues to receive reports of new signs and new violations with respect to existing signs. On an ongoing basis, Staff investigates the alleged violations and initiates the enforcement process where appropriate. Through this process, additional NOV's are issued and subsequent ALJ hearings can occur.

3. ANNUAL PROGRESS

In December 2010, the GASP processed the last known general advertising sign in the City and, in doing so, completed a three-year review of 1,672 total signs. 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.





Overall outcomes. Of the entire sign inventory, 53 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) can and will comply once the terms of an issued NOV have been met. The remaining 47 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. 588 general advertising signs have been removed⁴, up from 318 at the end of the previous reporting period. The remaining 192 signs which illegal pending removal

⁴ 94 percent of removed signs did not comply with the Planning Code and were the subject of an NOV and associated enforcement actions. 6 percent were signs which were removed by a property owner or sign company independent of an NOV.

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discussed below under the 'litigation' heading.

Requests for Reconsideration. 38 requests for Reconsideration have been filed over the course of the program⁵. 13 of those Requests have resulted in NOV's being upheld while only one resulted in an NOV being overturned. Nine cases are still in the pre-hearing or pre-decision stage, while the remaining 15 Requests were either withdrawn by the applicant or the NOV in question was rescinded by the Department. With respect to these latter categories, it should be noted that through the course

Outcomes of Completed Requests for Reconsideration (n=29)

of hearing preparation, new information is oftentimes presented by a Requestor which allows the Department to reconsider the basis for the NOV. Should that evidence indicate that, contrary to previous evidence, a sign is in fact legal, the Department typically rescinds the NOV. Similarly, upon seeing the strength of the Department's Requestors case, withdraw their request rather

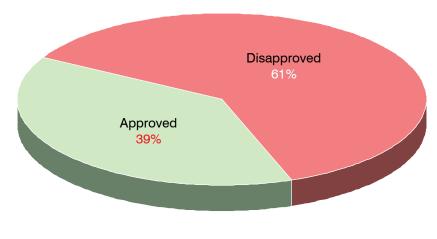
Request Withdrawn 7 cases NOV upheld NOV rescinded

may

than waste their resources defending a sign which cannot be brought into compliance.

New Signs. Despite the Department's efforts, new general advertising signs continue to appear throughout the City. 98 new illegal signs at 32 different locations were installed during this reporting period, up from 65 new signs during the last reporting period. All but 6 of these new signs have been removed to date.





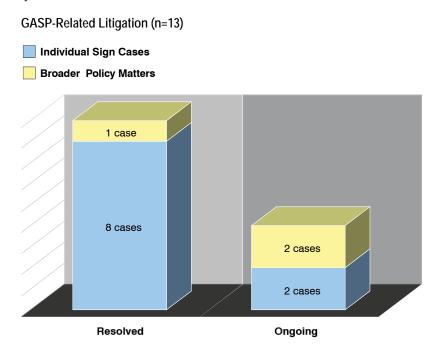
In-Lieu Applications. By virtue of their lack of documentation, in-lieu applications represent a particularly contentious and complex group of signs. A total of 321 requests for inlieu permits were made prior to the closing of the in-lieu application window in October 2003. All have been adjudicated, up from 150 at the end of the previous reporting period. Of the total, 124 have been found to be likely legal while the remaining 197 have been removed or are pending removal. One of these is the subject of pending Requests for Reconsideration.

⁵ Through February 15, 2011.

4. LITIGATION

Since the inception of the GASP, numerous outdoor advertising companies have sued the City to curtail enforcement of the City's sign ordinances and to overturn decisions made with respect to particular signs. While this report cannot provide details of ongoing litigation, it should be noted that four GASP-related cases are currently in litigation while another nine have already been resolved through a formal settlement or a settlement-in-principle. Among the 13 total actions, ten relate to individual signs and seek to overturn a City decision while the remainder challenge specific Planning Code provisions or relate to broader policy issues.

One particular case was brought by a consortium of outdoor advertising companies in an effort to prohibit the City from releasing any aggregated inventory information, maps, or other sign data which would otherwise be public information. This case was concluded in early 2010 with a settlement agreement that allowed the City - beginning in mid-January 2011 - to publish an interactive map containing approximate locations and photographs of general advertising signs throughout the City. That map is now available on-line in draft form at www.signmap.sfplanning.org.



5. FINANCIAL DATA

GASP revenue to-date this Fiscal Year is \$195,111. Much of this funding stems from two sources: (1) the annual inventory maintenance fee - accounting for \$110,428 and (2) fines and penalties – accounting for \$34,188.

With respect to number 2, above, it should be noted that substantial penalties have been assessed but not yet collected. Roughly \$1.1 million of outstanding penalties are related to cases where a violation has been addressed (i.e. an illegal sign has been removed) but penalties remain unpaid. An additional \$8.9 million in penalties is related to sign violations where the both the violation itself and accrued penalties remain outstanding.⁶ The overwhelming majority of this latter group of signs are controlled by two sign companies which are involved in litigation with the City. As such, collection will hinge largely on the outcome of those matters.

⁶ These are cases in which penalties continue to accrue on a daily basis.

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It should also be noted that \$110,019 of penalties collected during the course of the GASP's activities stem from Planning Code provisions which address 'repeat violators.' Sponsored by then-Supervisor Alioto-Pier after being suggested and crafted by GASP Staff, Ordinance Number 290-08 subjects repeat violators of general advertising sign regulations to a reduced 3-day window of compliance before penalties begin to accrue. Since the onset of these provisions, the Department has cited 17 total 'repeat violator' sign installations, all of which have been removed.

Program Revenues Over Time

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					FY10-11	FY10-11	
					[Actual as	[Full Year	Program
	FY06-07	FY07-08	FY08-09	FY09-10	of 2/1/11]	Projected]	Totals ⁷
Sign registration or							
re-registration fee8	\$431,200	\$62,720	\$28,686	\$26,767	\$13,755	\$50,000	\$599,373
In-lieu application							
fee ⁹	\$94,400	\$0	\$0	\$0	\$0	\$0	\$94,400
Annual inventory							
maintenance fee ¹⁰	\$0	\$57,264	\$84,860	\$217,313	\$110,428	\$200,000	\$559,437
Reconsideration							
Fees ¹¹	\$0	\$20,400	\$30,550	\$19,692	\$36,720	\$45,000	\$115,642
Fines and							
Penalties ¹²	\$ 61,249	\$102,594	\$91,914	\$323,369	\$34,188	\$250,000	\$879,126
Totals	\$586,849	\$242,978	\$236,010	\$587,141	\$195,111	\$545,000	\$2,247,978

The vast majority of program expenditures relate to staff costs, both in-house and at the City Attorney's Office. The GASP is presently staffed by two full-time code enforcement personnel (one Planner II and one Planner III) along with a ¼-time Planner IV devoted to program management. This represents a reduction of one full-time Planner II from the previous Fiscal Year's staffing. 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. As suggested above, costs associated with legal services continue to be substantial.

⁷ Totals are based on FY2009-2010 full year projected revenues.

⁸ 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 \$685 per sign.

⁹ 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.

¹⁰ For the current Fiscal Year, Planning Code Section 358 establishes an annual inventory maintenance fee of \$221 per sign.

¹¹ 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.

¹² Fines and penalties are set forth throughout the Planning Code, including Sections 604.1(d), 604.2(g), and 610(b)(2).

Program Expenditures Over Time

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	FY06-07	FY07-08	FY08-09	FY09-10	FY10-11 [Actual as of 2/1/11]	FY10-11 [Full Year Projected]	Program Totals ¹³				
Planning Dept.					- , , ,	.,,					
Staff	\$131,793	\$284,761	\$254,992	\$321,241	\$155,458	\$260,000	\$1,332,787				
City Attorney Staff	\$0	\$111,370	\$250,816	\$280,000	\$65,246	\$280,000	\$922,186				
Misc. costs ¹⁴	\$19,000	\$24,372	\$14,464	\$19,491	\$1,737	\$25,000	\$102,327				
Totals	\$150,793	\$420,503	\$520,272	\$620,732	\$222,441	\$565,000	\$2,277,300				

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

5. NEXT STEPS

With the conclusion of the processing phase, the GASP will "slim down" and realign itself to more efficiently monitor and maintain the general state of compliance that it has brought about. Staff resources are no longer required for extensive technical analyses of hundreds of individual signs. Rather, new signs will require targeted enforcement action, while the City's existing signage inventory will need to be continuously monitored and updated. Additionally, applications for sign relocations, as authorized under Proposition G, Planning Code Section 303(l) and Administrative Code Section 2.21 will likely be filed and will in turn require analysis and public vetting before the Planning Commission and Board of Supervisors. Moving forward, the GASP will be staffed by a single Planner III and its activities will be folded into the Department's broader Code Enforcement function. As a component of the Department's recently reformulated Zoning and Compliance Division, the program will continue to benefit from extensive collaboration with the Office of the Zoning Administrator and other Code Enforcement functions.

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¹³ Totals are based on FY2009-2010 full year projected expenditures.

¹⁴ This figure accounts for office and other supplies, software and equipment, data processing, staff training, vehicle rental, reproduction, and Rent Board ALJ Services.