Amended of the whole in committee as further amended. 02/28/05

FILE NO. 041308
ORDINANCE NO. 53-05

[Regulating the Distribution of Handbills.]

Ordinance amending Article 5.7 of the Public Works Code by repealing section 184.71, which required persons distributing Handbills to register and pay fees, amending section 184.73 to make violation of the ordinance an infraction instead of a misdemeanor, amending section 184.74 to permit the City to recover costs incurred in cleaning up Handbills distributed in violation of the ordinance and to impose civil penalties for violations, and by renumbering sections 184.71 through 184.77.

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

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

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

Section 184.70. DISTRIBUTION OF HANDBILLS ON PRIVATE PREMISES.

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

This Ordinance is also aimed at decreasing the adverse effects of the distribution of unsolicited Handbills on private premises. The prohibition against delivering Handbills contrary to the expressed desire of the occupant and the requirement that Handbills be folded...
or otherwise attached to the outside of a premises will decrease the amount of litter created by Handbills. A system to enable the City to recover costs of cleanup of Handbills distributed in violation of this Article will allow further enforcement of the provisions of this Article. A registration system will allow the City to identify distributors of Handbills and thereby further enforcement of the provisions of this Article.

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

(c) Distributed Matter To Be Folded. It shall be unlawful for any Person to distribute, cause to be distributed, or suffer, allow or permit the distribution of any Handbill to or upon any private premises in the City by placing or causing any such Handbill to be deposited or placed in or upon any porch, yard, steps, hallway, or mailbox located on, or used in connection with such premises unless the same is folded or otherwise so prepared or placed that it will not be blown therefrom by the winds.

In order to prevent Handbills from being blown about by the winds from the locations where they are placed.
(d) Handbills distributed in violation of Article a nuisance. A Handbill distributed in
violation of this Article is hereby declared to be and is a public nuisance, folded or otherwise so
prepared or placed, that it will not be blown therefrom by the winds.

Section 184.71: REGISTRATION REQUIRED.

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

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

(c) Exception for Emergencies. Any Person who seeks to distribute Handbills in response
to an Emergency, as that term is defined in Section 184.56(g), may distribute the Handbills before
registering with the Director so long as the Person registers within 72 hours of distributing the
Handbills.
(d) Distributor's Registration Number. Each Person who registers pursuant to the terms of
this Section shall be given a registration number and the registrant shall not directly, or through his
servants, agents or employees, distribute or suffer to be distributed any matter hereinbefore referred to
unless the words "Registration No. ______" (with the registration number designated by the Director
inserted) are stamped in a legible manner on each separate piece of said matter.

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

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

Section 184.71.184.72. EXCLUSIONS.

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

Section 184.72.184.73. CRIMINAL PENALTIES.

Any Person who violates any provision of this Article shall be guilty of an infraction a
misdemeanor and upon conviction thereof shall be punished by a fine of not more than $250,
$100 or by imprisonment in the County Jail for a period of not more than 30 days, or by both
such fine and imprisonment.
Section 184.73.184.74. ENFORCEMENT. INVESTIGATION BY DIRECTOR.

INVESTIGATION BY DIRECTOR.

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

(b) If the City incurs any expense in cleaning up Handbills because they were distributed in violation of this Article, the Person responsible for such distribution may be billed as provided in Subsection (c) of this Section. If such bill is not paid as required by Subsection (c), the Person or Persons responsible for such posting are subject to payment of a civil penalty as provided in Subsection (d) of this Article.

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

(d) Any Person in violation of any provision of this Article and who fails to pay the amount billed for such violation shall be liable for payment of a civil penalty in an amount equal to (1) the costs incurred by the City occasioned by the violation of this Article, (2) the costs to the City incurred in obtaining imposition of such civil penalties through litigation,
including the cost of paying City employees or other persons to engage in the litigation, and

(3) an additional amount equal to 50 percent of the total of (1) and (2) of this Subsection. As

an alternative, the civil penalty authorized by this Section may be assessed by an

administrative citation issued by Department of Public Works officials designated in Section

38 of the Police Code. Such administrative penalties shall be assessed, enforced and

collected in accordance with Section 39-1 of the Police Code and shall include the costs to the

City incurred in obtaining the imposition of the penalty, including the cost of paying City

employees to engage in the administrative process.

(e) All monies received by the City in payment of civil penalties for violation of this

Article shall be used by the Director for cleaning up litter in the City.

(f) In any civil action or administrative proceeding seeking recovery of a civil

penalty for any violation of this Article, proof that the Handbill contains the name or in any

other manner identifies a Person shall give rise to a rebuttable presumption that the Person

caus[ed such Handbills to be distributed.

(g) In undertaking enforcement of this Article, the City, including, but not limited to,

the Department, is assuming an undertaking only to promote the general welfare. It is not

assuming, nor is it imposing on its officers and employees, an obligation for breach of which it

is liable in money damages to any Person who claims that such breach proximately caused

injury. The obligations this Article imposes on City officials are intended to be directive only.

The provisions of this Article shall not be invalidated to the extent City officials do not comply

with any obligation imposed herein.

Section 184.74, 184.75. PUBLICATION OF NOTICE.

The Director shall publish a copy of this Article, and any amendments thereto, once in

one or more newspapers of general circulation, post a copy of the Article on or near the front

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door of the Chamber of Commerce and on a bulletin board in or adjacent to the City Hall for a period of 90 calendar days after its passage, and prominently provide notice of this Article in any material made available to the public regarding the City's regulations of Handbills.

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

Section 184.75-184.76. AUTHORITY TO MAKE RULES, ETC.

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

Section 184.76-184.77. SEVERABILITY.

If any of the provisions of this Article or the application thereof to any Person or circumstance is held invalid, the remainder of this Article, including the application of such part or provisions to Persons or circumstances other than those to which it is held invalid, shall not be affected thereby and shall continue in full force and effect. To this end, the provisions of this Article are severable.
APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

By: Amy B. Ackerman
Deputy City Attorney
[Regulating the Distribution of Handbills.]

Ordinance amending Article 5.7 of the Public Works Code by repealing section 184.71, which required persons distributing Handbills to register and pay fees, amending section 184.73 to make violation of the ordinance an infraction instead of a misdemeanor, and by renumbering sections 184.71 through 184.77.

Existing Law

The City currently regulates the distribution of handbills on private premises.

1. The City prohibits any person from distributing handbills upon any private premises where the premises has posted a "no handbills" sign.

2. The City requires any person distributing handbills to obtain a registration number by providing the name and address of both the person distributing the handbills and the person responsible for the distribution. The person must pay a registration fee of $20.00, which the Director of the Department of Public Works may waive under certain circumstances.

3. The ordinance provides that violation of the ordinance is punishable as a misdemeanor.

Amendments to Current Law

1. This ordinance would eliminate the registration requirement for distributing handbills.

2. This ordinance would provide that violation of the ordinance would be punishable as an infraction. (Amended by Committee on 11/4/04.)

3. (This amendment to the proposed legislation deletes the prior proposed amendment that would have established a process to permit the City to recover costs incurred in cleaning up Handbills distributed in violation of the ordinance and imposing civil penalties for violations.)
Tails

Ordinance

File Number: 041308  Date Passed:

Ordinance amending Article 5.7 of the Public Works Code by repealing section 184.71, which required persons distributing handbills to register and pay fees, amending section 184.73 to make violation of the ordinance an infraction instead of a misdemeanor, and by renumbering sections 184.71 through 184.77.

November 16, 2004  Board of Supervisors — CONTINUED
Ayes: 9 - Alioto-Pier, Ammiano, Daly, Dufty, Elsbernd, Gonzalez, Maxwell, Peskin, Sandoval
Excused: 2 - Ma, McGoldrick

November 23, 2004  Board of Supervisors — PASSED ON FIRST READING
Ayes: 6 - Alioto-Pier, Dufty, Elsbernd, Ma, McGoldrick, Peskin
Noes: 5 - Ammiano, Daly, Gonzalez, Maxwell, Sandoval

December 7, 2004  Board of Supervisors — RE-REFERRED: City Services Committee
Ayes: 11 - Alioto-Pier, Ammiano, Daly, Dufty, Elsbernd, Gonzalez, Ma, Maxwell, McGoldrick, Peskin, Sandoval

March 15, 2005  Board of Supervisors — PASSED ON FIRST READING
Ayes: 11 - Alioto-Pier, Ammiano, Daly, Dufty, Elsbernd, Ma, Maxwell, McGoldrick, Mirkarimi, Peskin, Sandoval

March 22, 2005  Board of Supervisors — FINALLY PASSED
Ayes: 11 - Alioto-Pier, Ammiano, Daly, Dufty, Elsbernd, Ma, Maxwell, McGoldrick, Mirkarimi, Peskin, Sandoval
I hereby certify that the foregoing Ordinance was FINALLY PASSED on March 22, 2005 by the Board of Supervisors of the City and County of San Francisco.

Gloria L. Young
Clerk of the Board

Mayor Gavin Newsom