

FILE NO. 041308

ORDINANCE NO. 5305

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[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

1 or otherwise attached to the outside of a premises will decrease the amount of litter created
2 by Handbills. A system to enable the City to recover costs of cleanup of Handbills distributed
3 in violation of this Article will allow further enforcement of the provisions of this Article. ~~A~~
4 ~~registration system will allow the City to identify distributors of Handbills and thereby further~~
5 ~~enforcement of the provisions of this Article.~~

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

14 (c) Distributed Matter To Be Folded. It shall be unlawful for any Person to
15 distribute, cause to be distributed, or suffer, allow or permit the distribution of any Handbill to
16 or upon any private premises in the City by placing or causing any such Handbill to be
17 deposited or placed in or upon any porch, yard, steps, hallway, or mailbox located on, or used
18 in connection with such premises unless the same is folded or otherwise so prepared or
19 placed that it will not be ^{blown} blow therefrom by the winds. ~~folded or otherwise so prepared or placed~~
20 that it will not be blow therefrom by the winds. ~~prepared and placed in the manner set forth by the~~
21 Director in rules, regulations and/or interpretations adopted under the authority of section 184.75 in
22 order to prevent Handbills from being blown about by the winds from the locations where they are
23 placed.

1 ~~(d) — Handbills distributed in violation of Article a nuisance. A Handbill distributed in~~
2 ~~violation of this Article is hereby declared to be and is a public nuisance. *folded or otherwise so*~~
3 ~~*prepared or placed, that it will not be blown therefrom by the winds.*~~

4 ~~Section 184.71. REGISTRATION REQUIRED.~~

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

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

21 ~~(c) — Exception for Emergencies. Any Person who seeks to distribute Handbills in response~~
22 ~~to an Emergency, as that term is defined in Section 184.56(g), may distribute the Handbills before~~
23 ~~registering with the Director so long as the Person registers within 72 hours of distributing the~~
24 ~~Handbills.~~

1 (d) ~~Distributor's Registration Number. Each Person who registers pursuant to the terms of~~
2 ~~this Section shall be given a registration number and the registrant shall not directly, or through his~~
3 ~~servants, agents or employees, distribute or suffer to be distributed any matter hereinbefore referred to~~
4 ~~unless the words "Registration No. _____" (with the registration number designated by the Director~~
5 ~~inserted) are stamped in a legible manner on each separate piece of said matter.~~

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

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

15 **Section ~~184.71,184.72.~~ EXCLUSIONS.**

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

20 **Section ~~184.72,184.73.~~ CRIMINAL PENALTIES.**

21 Any Person who violates any provision of this Article shall be guilty of an infraction a
22 ~~misdemeanor~~ and upon conviction thereof shall be punished by a fine of not more than \$250.
23 ~~\$100~~ or by imprisonment in the County Jail for a period of not more than 30 days, or by both
24 such fine and imprisonment.

1 **Section ~~184.73.184.74.~~ ENFORCEMENT. INVESTIGATION BY DIRECTOR.**

2 **INVESTIGATION BY DIRECTOR.**

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

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

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

21 (d) ~~Any Person in violation of any provision of this Article and who fails to pay the~~
22 ~~amount billed for such violation shall be liable for payment of a civil penalty in an amount~~
23 ~~equal to (1) the costs incurred by the City occasioned by the violation of this Article, (2) the~~
24 ~~costs to the City incurred in obtaining imposition of such civil penalties through litigation,~~

1 including the cost of paying City employees or other persons to engage in the litigation, and
2 (3) an additional amount equal to 50 percent of the total of (1) and (2) of this Subsection. As
3 an alternative, the civil penalty authorized by this Section may be assessed by an
4 administrative citation issued by Department of Public Works officials designated in Section
5 38 of the Police Code. Such administrative penalties shall be assessed, enforced and
6 collected in accordance with Section 39-1 of the Police Code and shall include the costs to the
7 City incurred in obtaining the imposition of the penalty, including the cost of paying City
8 employees to engage in the administrative process.

9 (e) All monies received by the City in payment of civil penalties for violation of this
10 Article shall be used by the Director for cleaning up litter in the City.

11 (f) In any civil action or administrative proceeding seeking recovery of a civil
12 penalty for any violation of this Article, proof that the Handbill contains the name or in any
13 other manner identifies a Person shall give rise to a rebuttable presumption that the Person
14 caused such Handbills to be distributed.

15 (g) In undertaking enforcement of this Article, the City, including, but not limited to,
16 the Department, is assuming an undertaking only to promote the general welfare. It is not
17 assuming, nor is it imposing on its officers and employees, an obligation for breach of which it
18 is liable in money damages to any Person who claims that such breach proximately caused
19 injury. The obligations this Article imposes on City officials are intended to be directive only.
20 The provisions of this Article shall not be invalidated to the extent City officials do not comply
21 with any obligation imposed herein.

22 **Section ~~184.74, 184.75.~~ PUBLICATION OF NOTICE.**

23 The Director shall publish a copy of this Article, and any amendments thereto, once in
24 one or more newspapers of general circulation, post a copy of the Article on or near the front
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1 door of the Chamber of Commerce and on a bulletin board in or adjacent to the City Hall for a
2 period of 90 calendar days after its passage, and prominently provide notice of this Article in
3 any material made available to the public regarding the City's regulations of Handbills.

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


12 **Section ~~184.75.184.76.~~ AUTHORITY TO MAKE RULES, ETC.**

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

17 **Section ~~184.76.184.77.~~ SEVERABILITY.**

18 If any of the provisions of this Article or the application thereof to any Person or
19 circumstance is held invalid, the remainder of this Article, including the application of such part
20 or provisions to Persons or circumstances other than those to which it is held invalid, shall not
21 be affected thereby and shall continue in full force and effect. To this end, the provisions of
22 this Article are severable.

1 APPROVED AS TO FORM:
2 DENNIS J. HERRERA, City Attorney

3 By: 
4 Amy S. Ackerman
5 Deputy City Attorney
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SUPERVISOR MA
BOARD OF SUPERVISORS

FILE NO.

LEGISLATIVE DIGEST (Revised)

[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.)



City and County of San Francisco

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

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

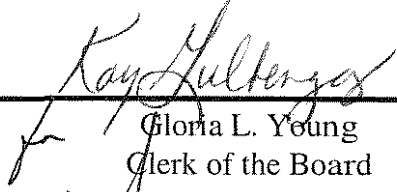
Ayes: 11 - Alioto-Pier, Ammiano, Daly, Dufty, Elsbernd, Ma, Maxwell,
McGoldrick, Mirkarimi, Peskin, Sandoval

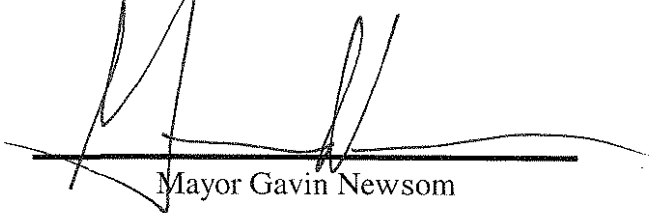
File No. 041308

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.

APR 01 2005

Date Approved


for
Gloria L. Young
Clerk of the Board


Mayor Gavin Newsom