[Requiring Activation of Closed Captions on Television Receivers.]

Ordinance amending the San Francisco Police Code by adding Article 44, Sections 4400 to 4407 to require the activation of closed captioning on television receivers intended for use by the general public and authorizing the imposition of civil penalties and/or criminal fines for violations of this requirement.

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. FINDINGS.

(a) Hearing loss is a significant problem in the United States. It is estimated that approximately one in 20 Americans are hearing impaired. This means that nearly 10,000,000 Americans are hearing impaired, nearly 1,000,000 of these are functionally deaf.

(b) As television increasingly becomes a more important means of communication, it is critical that hearing impaired persons have full access to this medium. Since 1980, closed captioning has been used to provide this assistance.

(c) Closed captioning consists of a transcript or dialog of the audio portion of a television program that is displayed along the bottom portion of the television receiver screen when the user activates the feature.

(d) In 1993, the Federal Communications Commission ("FCC") required that all analog television receivers manufactured and sold in the United States with screens larger than 13 inches contain built-in decoder circuitry to display closed captions. In 2002, the FCC imposed a similar requirement on digital television receivers. As a result, it is likely that most televisions in use today have this capability.
(e) In 1996, Congress amended the Communications Act to require that all video program distributors (including broadcasters, cable operators, etc.) add closed captioning to certain video programming and authorized the FCC to establish a transition schedule for complying with this requirement.

(f) Under the FCC’s rules, since January 1, 2006 video program distributors have been required to add closed captioning to all new English language programming. Starting on January 1, 2010, a similar requirement will apply to Spanish language programming. The FCC also required video program distributors to add closed captioning to a certain percentage of their previously broadcast programs. As a result, a high percentage of television programs that are broadcast today are likely to have closed captions.

(g) Television receivers are increasingly in use in facilities that are open to the general public. Hospital waiting rooms, bars and restaurants, health clubs, bus stations, airport lounges, appliance stores, etc. are the types of locations where the general public can gain access to television broadcasts.

(h) Television receivers in these locations enable members of the general public to obtain the latest news reports in an emergency, watch their local sports teams in action, or simply pass the time while waiting for an appointment or service to be completed. Hearing-impaired persons should not be excluded from these activities.

(i) Federal requirements under the Americans with Disabilities Act ("ADA") are limited in this regard. While the ADA requires places of "public accommodation" to ensure that disabled persons are not discriminated against because of the absence "auxiliary aides and services" including closed caption decoders, regulations promulgated by the United States Department of Justice only require the use of closed captioned television receivers in
hotels with five or more rooms and hospital waiting rooms. The ADA, however, does not prevent the City and County of San Francisco from imposing more stringent requirements.

(j) This ordinance, therefore, requires that television receivers located in any part of a facility open to the general public have closed captioning activated at all times when the facility is open and the television receiver is in use.

Section 2. The San Francisco Police Code is hereby amended by add Article 44, Sections 4400 to 4407, to read as follows:

SEC. 4400. TITLE.
This Article shall be known as the Closed Captions Activation Requirement Ordinance.

SEC. 4401. DEFINITIONS.
The following words and phrases, whenever used in this Article, shall be construed as defined in this Section:

(a) "City" means the City and County of San Francisco.

(b) "Closed-Captioned Television Receiver" means a television receiver that has a built-in decoder to display Closed Captioning.

(c) "Closed Captioning" means a transcript or dialog of the audio portion of a television program that is displayed on the bottom portion of a television receiver screen when the user activates the feature.

(d) "Person" means a natural person or any legal entity, including but not limited to a corporation, firm, partnership or trust.

(e) "Public Area" means that part of a Public Facility that is open to members of the general public. By way of example only, Public Area includes the following: (1) lobbies and reception areas of businesses open to the public; (2) waiting rooms in hospitals, outpatient clinics and other medical offices; (3) service areas of bars and restaurants; (4) exercise, lounge, dressing and bar and
restaurants areas of health clubs; (6) sales areas of retail stores; (7) classrooms and other parts of school buildings serving students and faculty members; and (8) service areas of barbershops, hair or nail salons.

(f) "Public Facility" means any building, business, store, office or indoor or outdoor facility of any kind that is open to all members of the general public or only to certain members of the general public (i.e., customers, patients, guests, residents, ticket holders, passengers, students, clients, members). By way of example only, a Public Facility includes the following: (1) hospitals, out-patient clinics, or other medical facilities; (2) restaurants, bars, clubs, or other establishments that serve food and/or drinks for consumption on the premises; (3) health, golf, tennis, swim or boat clubs, gyms, or other facilities used for recreation or exercise; (4) hair or nail salons, barbershops, cleaners, day spas, laundromats, travel agencies, or other facilities that offer personal services; (5) offices used by doctors, dentists, accountants, lawyers, architects, engineers, insurance agents or adjustors, or other professionals; (6) service stations, stores or shops for the repair or maintenance of appliances, shoes, motor vehicles, or other items or products; (7) automobile and motorcycle dealerships, or other showrooms for the display of merchandise offered for sale; (8) grocery and specialty food stores, or other stores that sell consumable products; (9) clothing, shoe, cookware, photo, general merchandise, gift, appliance, department, furniture and hardware stores, pharmacies, or other stores that sell goods or merchandise; (10) video arcades, game rooms, pool halls, bowling alleys, amusement parks, or other recreation or amusement center; (11) banks, savings and loan offices, brokerage houses, or other businesses offering financial services; (12) inns, hotels and motels, or other places that provide accommodations to the public; (13) motion picture houses, theaters, concert halls, stadiums, arenas, or other places used for exhibitions or entertainment; (14) libraries, book, music, and video stores, or other places that lend or sell reading, listening or viewing materials; (15) auditoriums, convention centers, lecture halls, or other places used for public gatherings; (16) terminals, depots, or other
stations used for public transportation (including the San Francisco International Airport); (17) museums, galleries, or other places used to display exhibitions of art or other items; (18) public or private nursery, elementary, secondary, undergraduate, or postgraduate schools, or other places of education; (19) day care centers, senior citizen centers, homeless shelters, food banks, adoption agencies, or other social service centers or establishments; (20) parks, open spaces, zoos, or other outdoor recreation areas; and (21) City government offices.

(g) “Regular Hours” means the hours of any day in which a Public Facility is generally open to members of the general public.

SEC. 4402. ACTIVATION OF CLOSED CAPTIONING REQUIRED.

It shall be unlawful for any Person owning or managing a Public Facility to fail to keep Closed Captioning activated on any Closed-Captioned Television Receiver that is in use during Regular Hours in any Public Area.

SEC. 4403. REMEDIAL ACTION NOT REQUIRED.

Nothing in this Article should be construed to require any Person owning or managing a Public Facility to make a Closed Captioned Television Receiver available for viewing in a Public Area if:

(a) no television receiver of any kind is available in a Public Area of the Public Facility; (b) the only television receiver available in a Public Area of the Public Facility is not a Closed Captioned Television Receiver.

SEC. 4404. CIVIL PENALTIES AND FEES.

Any Person who violates this Article may be liable for a civil penalty not to exceed $500 for each day such violation is committed or permitted to continue. Such penalty shall be assessed and recovered in a civil action brought in the name of the people of the City by the City Attorney in any court of competent jurisdiction. In assessing the amount of the civil penalty, the court may consider any one or more of the relevant circumstances presented by any of the parties to the case including, but
not limited to, the following: the nature and seriousness of the violations, the number of violations, the
persistence of the violations, the length of time over which the violations occurred, the willfulness of the
Person charged with the violations, and the assets, liabilities, and net worth of the Person charged with
the violations. The City Attorney also may seek recovery of the attorney’s fees and costs incurred in
bringing a civil action pursuant to this Section.

SEC. 4405. CRIMINAL FINES.

(a) Any Person who violates this Article shall be deemed guilty of an infraction. Every
violation determined to be an infraction is punishable by: (1) a fine not exceeding $100 for the first
violation within one year; (2) a fine not exceeding $200 for a second violation within one year from the
date of the first violation; (3) a fine not exceeding $500 for the third and each additional violation
within one year from the date of the first violation.

(b) When a government official authorized to enforce this Article pursuant to Subsection (a)
has reasonable cause to believe that any Person has committed an infraction in the official’s presence
that is a violation of this Article the official may issue a citation to that Person pursuant to California
Penal Code, Part II, Title 3, Chapters 5, 5C, and 5D.

SEC. 4406. DISCLAIMER.

In enforcing this Article, the City is assuming an undertaking only to promote the general
welfare. The City is not assuming, nor is it imposing on its officers and employees, an obligation for
which a breach by the City could result in the City being liable in money damages to any person who
claims that such breach proximately caused injury.

SEC. 4407. SEVERABILITY.

If any provision of this Article, or the application of any such provision to any Person or
circumstances, shall be held invalid, the remainder of this Article, to the extent it can be given effect, or

Supervisor Alioto-Pier
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the application of those provisions to Persons or circumstances other than those to which it is held invalid, shall not be affected thereby, and to this end the provisions of this Article are severable.

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

By:
WILLIAM K. SANDERS
Deputy City Attorney
Ordinance amending the San Francisco Police Code by adding Article 44, Sections 4400 to 4407 to require the activation of closed captioning on television receivers intended for use by the general public and authorizing the imposition of civil penalties and/or criminal fines for violations of this requirement.

June 17, 2008  Board of Supervisors — PASSED ON FIRST READING
Ayes: 10 - Alioto-Pier, Ammiano, Chu, Daly, Dufty, Elsbernd, McGoldrick, Mirkarimi, Peskin, Sandoval
Excused: 1 - Maxwell

June 24, 2008  Board of Supervisors — FINALLY PASSED
Ayes: 11 - Alioto-Pier, Ammiano, Chu, Daly, Dufty, Elsbernd, Maxwell, McGoldrick, Mirkarimi, Peskin, Sandoval
I hereby certify that the foregoing Ordinance was FINALLY PASSED on June 24, 2008 by the Board of Supervisors of the City and County of San Francisco.

File No. 080529

Date Approved

Angela Calvillo
Clerk of the Board

Mayor Gavin Newsom