

## **Legislative Review (Updated)**

BOS File No: 160553

Name: Planning Code - Signs - Exemptions and General Advertising Sign Penalties

### Legislation Overview:

Ordinance amending the Planning Code to clarify that all noncommercial Signs are exempt from regulation pursuant to Planning Code, Article 6; increase penalties for repeat violations for the display of illegal General Advertising Signs; shorten the time before penalties for General Advertising Sign violations begin to accrue; allow property liens for such penalties that go unpaid; affirming the Planning Department's determination under the California Environmental Quality Act; and making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1, and a finding of public necessity, convenience, and welfare under Planning Code, Section 302.

Sponsor(s): Aaron Peskin

Date Introduced: 5/17/2016

Date Referred: 5/24/2016

### Referred to Depts./Commissions:

5/24/2016: Referred to Planning for environmental review; Small Business Commission for review and recommendation; and Department of Building Inspection for informational purposes.

6/15/2016: Referred Planning Commission for public hearing and recommendation (per Planning Code, Section 302.(b)). (30 day extension granted)

### **Heard by Planning Commission: 9/15/2016**

BOS File Nos. 160553 and 160424 (related file) heard together in the Planning Commission on September 15, 2016.

#### Highlights from Commissioner and staff discussion:

- The Commission was supportive of the legislation and its intent.
- Most questions were technical in nature.
- Recommendation: to approve (unanimous vote of 5-0).

Scheduled for BOS Committee: TBD

## Definitions

### **Business Sign<sup>1</sup>**

A sign which **directs attention to the primary business, commodity, service, industry or other activity which is sold, offered, or conducted on the premises** upon which such sign is located, or to which it is affixed. Where a number of businesses, services, industries, or other activities are conducted on the premises, or a number of commodities, services, or other activities with different brand names or symbols are sold on the premises, up to one-third of the area of a business sign, or 25 square feet of sign area, whichever is the lesser, may be devoted to the advertising of one or more of those businesses, commodities, services, industries, or other activities by brand name or symbol as an accessory function of the business sign, provided that such advertising is integrated with the remainder of the business sign, and provided also that any limits which may be imposed by this Code on the area of individual signs and the area of all signs on the property are not exceeded. The primary business, commodity, service, industry, or other activity on the premises shall mean the use which occupies the greatest area on the premises upon which the business sign is located, or to which it is affixed.



Source: SF Planning Department, "Signs," November 2012.



Source: Google Maps

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<sup>1</sup> Planning Code Sec. 602.3. See [http://library.amlegal.com/nxt/gateway.dll/California/planning/article6signs?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:sanfrancisco\\_ca\\$anc=JD\\_602.3](http://library.amlegal.com/nxt/gateway.dll/California/planning/article6signs?f=templates$fn=default.htm$3.0$vid=amlegal:sanfrancisco_ca$anc=JD_602.3)

To install a new sign or retrofit an existing sign, business owners need to apply for a permit at Planning Information Center (note: additional review may be necessary for historic properties).

Business owners must follow a variety of business sign guidelines (which vary by zoning district):<sup>2</sup>

- Number of signs
  - Most Commercial districts limit to 1 sign projecting over sidewalk.
- Size of signs
  - Window signs limited to 1/3 of the window, to allow visibility into the store.<sup>3</sup>
  - No sign can be higher than lowest residential window sill (in cases of storefront on ground floor, with residential above).
- Height of signs
  - Varies by district.
  - Ex: maximum of 60 ft. height in North Beach and Castro NCDs.
- Projection over sidewalk
  - About 6 feet or 75% of sidewalk width.
- Type of illumination
  - Illuminated signs allowed in most commercial districts.
  - Flashing and blinking lights generally prohibited.
- Prohibited signs
  - Temporary signs (posters, sale banners, general advertising displays) are prohibited in most commercial districts.

### General Advertising Sign<sup>4</sup>

A sign, legally erected prior to the effective date of Section 611<sup>5</sup> of this Code, which **directs attention to a business, commodity, industry or other activity which is sold, offered or conducted elsewhere** than on the premises upon which sign is located, or to which it is affixed, and which is sold, offered or conducted on such premises only incidentally if at all.

“General Advertising Sign” is sometimes used interchangeably with “billboard.” However, general advertising signs are not just freestanding structures. They also include replastered posters, murals, advertisements on the side of buildings, and advertisements affixed to business doors and gates at the sidewalk level.

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<sup>2</sup> <http://sf-planning.org/signs> Video from San Francisco Planning Department: <https://youtu.be/L0ZW6z7VDXE>

<sup>3</sup> For more information, see Planning Department’s [Storefront Transparency Video](#).

<sup>4</sup> Planning Code Sec. 602.7. See

[http://library.amlegal.com/nxt/gateway.dll/California/planning/article6signs?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:sanfrancisco\\_ca\\$anc=JD\\_602.7](http://library.amlegal.com/nxt/gateway.dll/California/planning/article6signs?f=templates$fn=default.htm$3.0$vid=amlegal:sanfrancisco_ca$anc=JD_602.7)

<sup>5</sup> Section 611 prohibits new general advertising signs at any location within the City as of March 5, 2002. Section 611(c) pertains to the lawful relocation of signs.

Billboard:



Source: SF Planning Department



Source: SF Planning Department

Replastered poster:



Source: [Beyond Chron](#)



Source: SF Planning Department



Source: [SF Gate](#)



Mural:



Source: SF Planning Department



Source: SF Planning Department

Advertisement affixed to the side of a building:



Source: [SFist.com](http://SFist.com)



Source: SF Planning Department

Advertisement affixed to the business door/gate at sidewalk level:

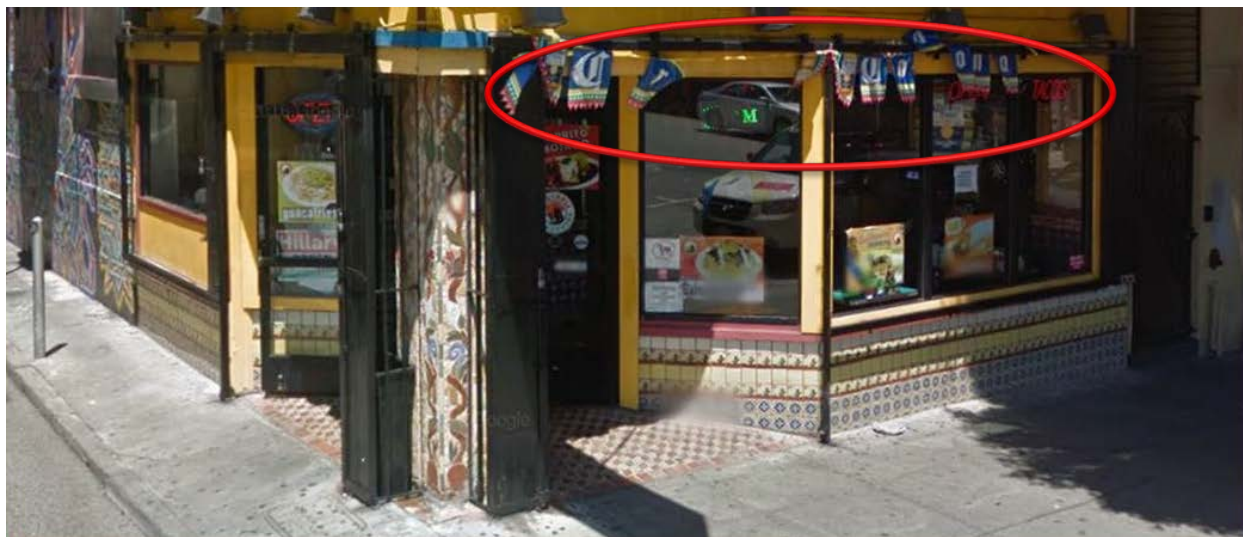


Source: SF Planning Department

Additional examples of general advertising signs:







The General Advertising Signs Program (GASP) is not presently targeting non-structural signs at the sidewalk level for enforcement. However, the types of signs depicted in the images above are considered general advertising signs. Therefore, if the proposed legislation passes, and if GASP changes its enforcement practices, small business owners displaying these types of signs may be affected.

## Identifying Sign<sup>6</sup>

*Note: This definition is included here because this type of sign is affected by the proposed legislation. However, its relevance to small businesses is limited.*

A sign for a use listed in [Article 2](#) of this Code as either a principal or a conditional use permitted in an R District,<sup>7</sup> regardless of the district in which the use itself may be located, which sign **serves to tell only the name, address and lawful use of the premises** upon which the sign is located, or to which it is affixed. A bulletin board of a public, charitable or religious institution, used to display announcements relative to meetings to be held on the premises, shall be deemed an identifying sign. With respect to shopping malls containing five or more stores or establishments in NC Districts, and shopping centers containing five or more stores or establishments in NC-S Districts<sup>8</sup> or in the City Center Special Sign District, identifying signs shall include signs which tell the name of and/or describe aspects of the operation of the mall or center. Shopping malls, as that term is used in this Section, are characterized by a common pedestrian passageway which provides access to the businesses located therein.



Source: SF Planning Department, "Signs," November 2012.

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<sup>6</sup> Planning Code Sec 602.10. See

[http://library.amlegal.com/nxt/gateway.dll/California/planning/article6signs?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:sanfrancisco\\_ca\\$anc=JD\\_602.10](http://library.amlegal.com/nxt/gateway.dll/California/planning/article6signs?f=templates$fn=default.htm$3.0$vid=amlegal:sanfrancisco_ca$anc=JD_602.10)

<sup>7</sup> "R District" shall mean any RH-1(D), RH-1, RH-1(S), RH-2, RH-3, RM-1, RM-2, RM-3, RM-4, RTO, RTO-M, RC-1, RC-2, RC-3 or RC-4 District.

<sup>8</sup> Neighborhood Commercial Shopping Center District (Defined in Sec. 713.1). NC-S Districts are intended to serve as small shopping centers or supermarket sites which provide retail goods and services for primarily car-oriented shoppers. They commonly contain at least one anchor store or supermarket, and some districts also have small medical office buildings.



## Effect of Proposed Legislation

### *Existing Law*

Numerous categories of signs are exempted from regulation under Article 6 of the Planning Code (Signs),<sup>9</sup> such as:

- Official public notices
- Traffic control signs
- Political flags
- Religious symbols attached to buildings
- Temporary signs in connection with political campaigns and with civic noncommercial health, safety, and welfare campaigns
- Commemorative and informational plaques
- Identifying signs directing patrons of establishments to open space and parking resources
- Non-illuminated murals in certain districts

Penalties for violations of regulations governing general advertising signs:<sup>10</sup>

- Responsible parties for the violation include both the property owner on which a sign is placed and the sign company that owns or operates the sign.
- In general, a Responsible Party has 30 days from issuance of a notice of violation to abate the violation.
- For repeat violations, the Responsible Party has 3 days from issuance of a notice of violation to abate the violation.

### *Amended Law*

- Removes “[a] bulletin board of a public, charitable or religious institution, used to display announcements relative to meetings to be held on the premises” from the definition of an identifying sign.<sup>11</sup>
- Clarifies that all noncommercial signs are exempt from regulation by Article 6 of the Planning Code.<sup>12</sup>
- Enhances the penalties for general advertising sign violations.<sup>13</sup>
  - Shortens the time within which a Responsible Party must respond to a notice of violation from 30 days to three days (or five days if the notice of violation is sent by mail), after which time penalties begin to accrue.
  - Repeat violations of general advertising sign regulations would be subject to enhanced daily penalties, which would range from a multiple of 2 to 5 times the base penalties for the violation.
  - For a repeat violation, Responsible Parties would be able opt for an alternative penalty calculation consisting of the income earned by the Responsible Parties for the display of the illegal general advertising sign, including but not limited to revenue earned by the sign owner or operator from advertisers or advertisement placement

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<sup>9</sup> Planning Code Section 603

<sup>10</sup> Planning Code Section 610

<sup>11</sup> Planning Code Section 602.10

<sup>12</sup> Planning Code Section 603

<sup>13</sup> Planning Code Section 610

firms and revenue earned by the property owner or lessee from the lease or sublease of the property to the sign owner or operator for the duration of the violation, plus an additional 20 percent of that total income amount.

- Provides that in a reconsideration hearing, an administrative law judge must make a rebuttable presumption that the penalties imposed are reasonable, but may consider the nature and egregiousness of the violation, the financial resources of the Responsible Party, the need to deter illegal conduct, and the Responsible Party's culpability, to determine whether the penalty is excessive.
- Provides that the Director of the Planning Department may make all penalties due and all additional authorized costs and charges, including attorneys' fees, a lien on the property on which the illegal sign is located.

### Background: Efforts to Curb Proliferation of General Advertising Signs

1987: City and County of San Francisco v. Eller Outdoor Advertising – Section 603 must be interpreted to exempt all categories of noncommercial signs from regulation under Article 6 of the Planning Code.

The proposed ordinance (BOS File No. 160553) would amend Section 603 to make it consistent with this ruling.

2002: Proposition G<sup>14</sup> (sponsored by Supervisors Peskin, McGoldrick, Leno, Ammiano, and Gonzalez)

- Goal: end billboard proliferation
- Prohibit any new general advertising signs
- Passed with strong support: 72.89% in favor (141,052 votes)<sup>15</sup>

2006: Planning Department's General Advertising Sign Program (GASP).

- First phase = develop an inventory of all signs in the City.
  - Method:
    - Letters sent to all known sign operators in City, asking them to file sign inventories. (Around 1200 signs were reported.)
    - Staff conducted comprehensive field survey to verify sign company inventories. (Around 1600 signs were found.)

2007: Ordinance No. 52-07 – City adopted the current penalty scheme

- Enforcement phase of GASP began in October 2007 with first Notices of Violation (NOVs)<sup>16</sup>

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<sup>14</sup> “Proposition G is a City ordinance that would prohibit additional general advertising signs. This ordinance would allow existing general advertising signs to be moved to a new location, if current law permitted these signs at the new location. A public hearing would be required before a sign could be moved.” <http://sf-planning.org/sites/default/files/FileCenter/Documents/3284-PropositionG.pdf>

<sup>15</sup> <http://sfgov.org/elections/results-summary-nov-2002>

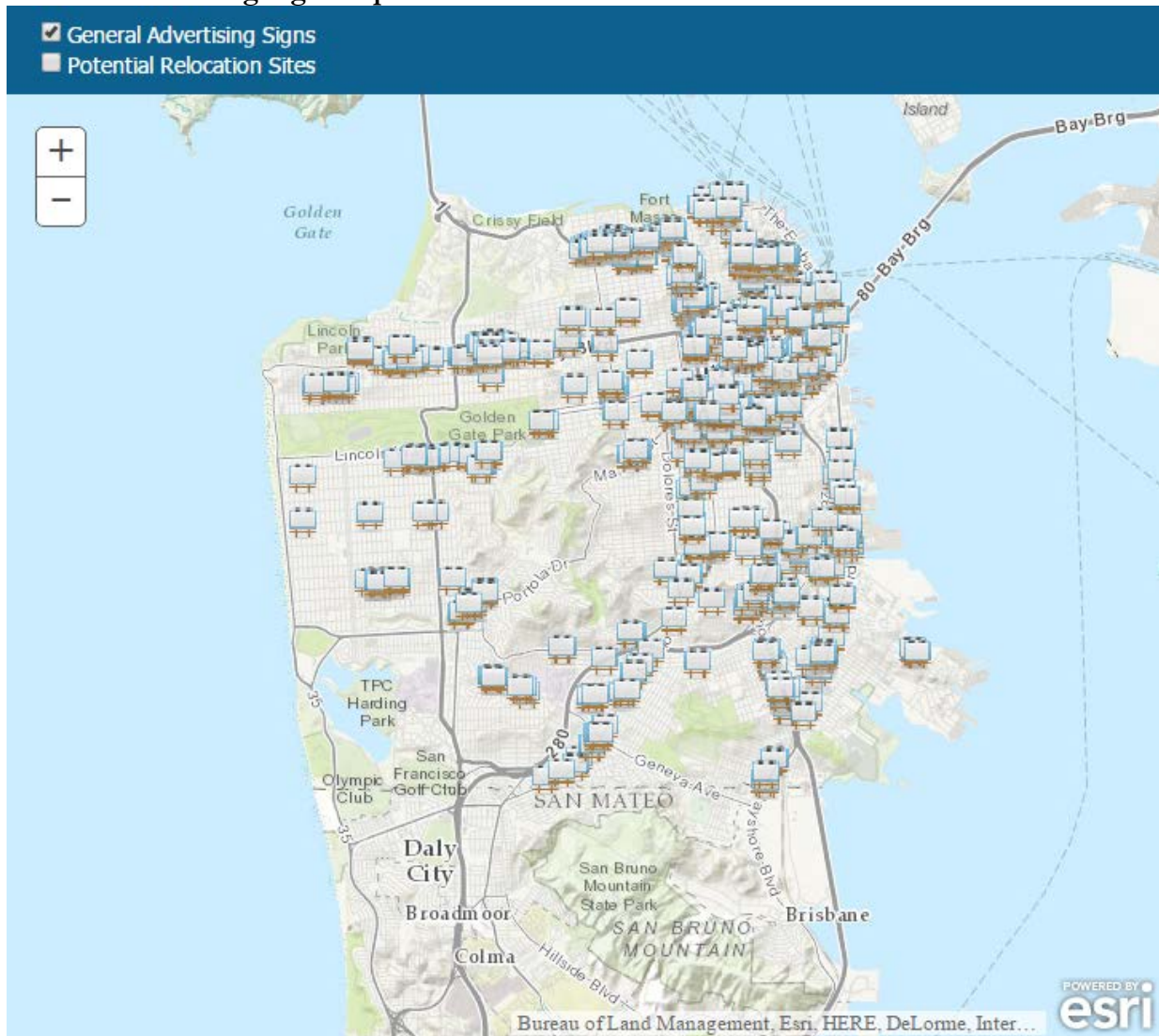
<sup>16</sup> Process: When a sign is found in violation of the Planning Code, an enforcement case is opened and an NOV is issued pursuant to Planning Code Section 610. The NOV is sent to both the property owner and the sign company (together the “responsible party”). The responsible party has 45 days to either 1) file a permit to remove the sign, 2) correct the violation, or 3) request reconsideration before an Administrative Law Judge (ALJ). A Reconsideration Hearing requires written evidence and a fee of \$3,400. All enforcement related fees and penalties are deposited into the Planning Code Enforcement Fund (see page 2 for revenue summary). <http://sf->

\*Since 2007, estimated 200 additional general advertising signs have been illegally installed in the City despite the ban in 2002 (Prop G).

2016: Most recently, during Super Bowl 50, Verizon was given notice to remove ads from Embarcadero Four under existing law, which prevents any and all new general advertising signs.

The map below shows the distribution of general advertising signs throughout the City of San Francisco.

### General Advertising Sign Map<sup>17</sup>



<http://sf-planning.org/sites/default/files/FileCenter/Documents/8736-1st%20GASP%20Annual%20Report%20Mar%202008.pdf> p. 5.

<sup>17</sup> <http://sf-planning.org/general-advertising-sign-map>



### Types of Signs Used by Small Businesses

- A-frames → Business sign
- Windows → Business sign
- Signs attached to or painted on walls
  - On the premises of the business → most likely a business sign
    - Exception: the sign advertises something that is only incidentally sold/offered/conducted on the premises. For example, a Coca Cola advertisement sign on the outside of a neighborhood convenience store is a general advertising sign, even if Coca Cola is one of the products sold at the convenience store.
  - Off premises → general advertising sign
- Awnings → Business sign
- Billboards (rarely used by small businesses, due to the cost) → general advertising sign

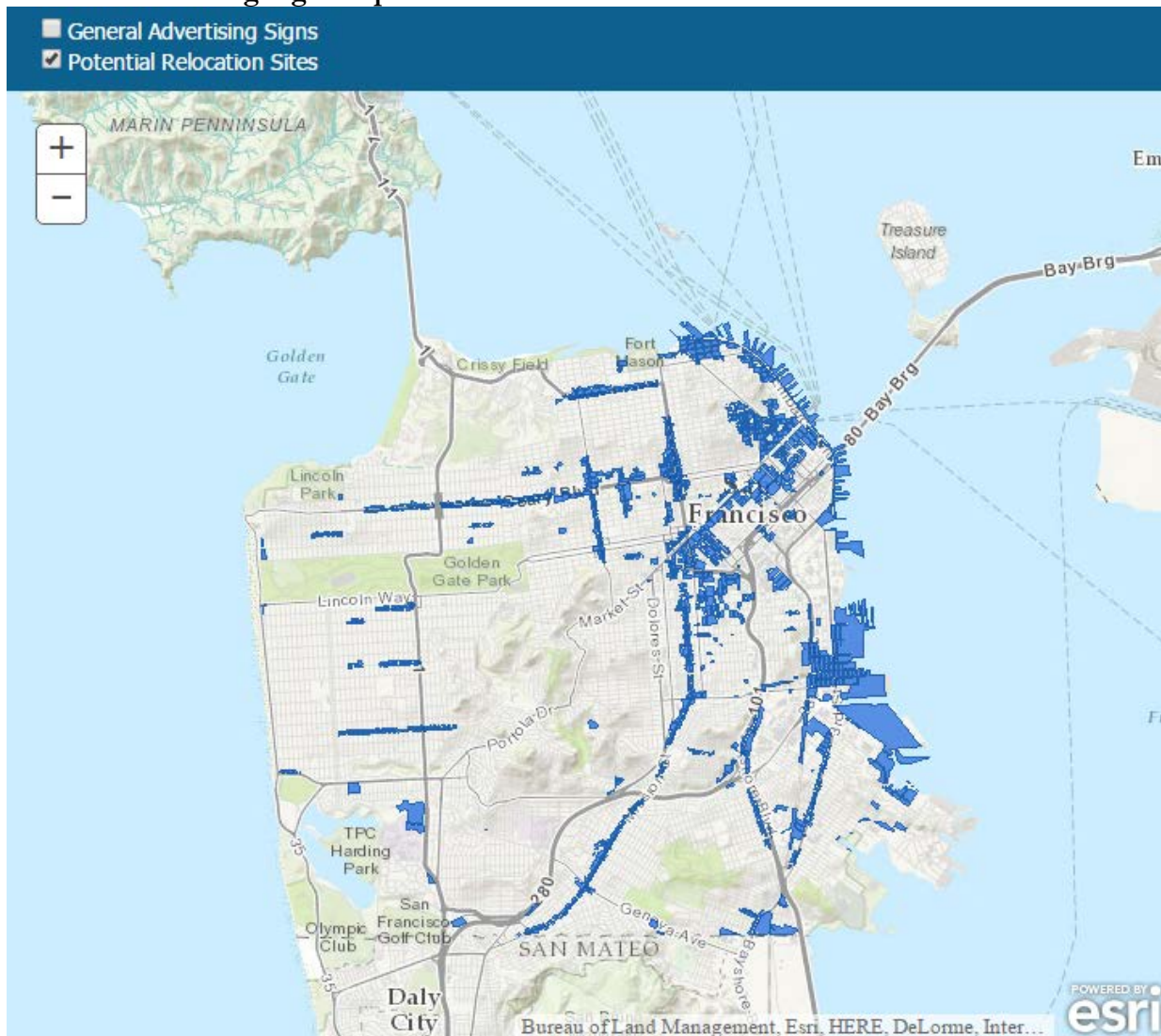
### Relocation of Signs<sup>18</sup>

- No new signs shall be permitted at any location in the City as of March 5, 2002 (Prop G) (except on motor vehicles and public right of way as permitted by local law).
- However, relocation of existing signs may be permitted.
- Board of Supervisors may enter into agreement with GA signs companies to provide for relocation of existing legally permitted GA signs. Subject to conditional use procedures (Sec 303).

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<sup>18</sup> Planning Code Sections 303(k) and 611

## General Advertising Sign Map: Relocation Sites<sup>19</sup>



### Staff Assessment/Key Questions

- Was this legislation primarily introduced to prevent the type of temporary general advertising signs that were erected during SB50?
- What happens to existing murals that might be general advertising signs?
- Does the proposed legislation make any changes to policies regarding sign relocation (Planning Code Sec. 611)?

<sup>19</sup> <http://sf-planning.org/general-advertising-sign-map>