

SEC. 674. TOBACCO ADVERTISING AND PROMOTION PROHIBITED.

(a) **Title.** This Section shall be known as the Prohibition of Tobacco Advertising and Promotion Ordinance.

(b) **Definitions.**

(1) "Tobacco product" shall mean any substance containing tobacco leaf, including but not limited to cigarettes, cigars, pipes, tobacco, snuff, chewing tobacco and dipping tobacco.

(2) "Advertising display sign" shall mean a sign, signboard, billboard, poster, freestanding sign or banner that is temporarily or permanently placed on or affixed to the ground, the sidewalk, a pole or post, or a building, or is displayed in the windows or doors of a commercial establishment, and that is used to advertise or promote products.

(3) "Promote" or "promotion" shall include a display of any logo, brand name, character, graphics, colors, scenes, or designs that are trademarks of a particular brand of tobacco product.

(4) "Publicly visible location" shall mean any outdoor location that is visible from any street, sidewalk, or other public thoroughfare, or any location inside a commercial establishment immediately adjacent to a window or door where such location is visible from any street, sidewalk, or other public thoroughfare.

(5) "Person" shall include any individual, firm, partnership, cooperative association, private corporation, personal representative, receiver, trustee, assignee or other legal entity.

(6) "Designated department" means any City department that the County Agricultural Commissioner-Sealer of Weights and Measures has designated to assist with the implementation and enforcement of this Section.

(c) **Tobacco Advertising Prohibited.** No person shall place or maintain, or cause or allow to be placed or maintained, in any manner any advertising or promotion of cigarettes or tobacco products on a billboard or advertising display sign in a publicly visible location in the City.

(d) **Exceptions.** This Section shall not apply to advertising or promotions for tobacco products:

(1) Located inside a commercial establishment, unless such advertising display sign or promotion is attached to, affixed to, leaning against, or otherwise in contact with any window or door in such a manner that it is visible from a street, sidewalk or other public thoroughfare;

(2) On billboards located within 660 feet of any highway, excluding Van Ness Avenue and Lombard Street, if the billboard is oriented so as to be visible from the highway, except as prohibited by federal, State or other local law;

(3) On vehicles;

(4) On any sign located inside or immediately outside a commercial establishment if the sign provides notice that the establishment sells tobacco products, so long as the sign does not promote any brand of tobacco product;

(5) On tobacco product packaging.

(e) **Effective Date.** This Section shall become operative six months after the date it is finally adopted.

(f) **Administration and Enforcement.**

(1) Except as otherwise provided, this Section shall be administered and enforced by the Department of Agriculture/Weights and Measures.

(2) The County Agricultural Commissioner-Sealer of Weights and Measures shall develop guidelines, as appropriate, to ensure

proper implementation and enforcement of this Section. At the request of the County Agricultural Commissioner-Sealer of Weights and Measures, other City departments such as the Department of Public Works and the Planning Department shall assist with the implementation and enforcement of this Section.

(3) The County Agricultural Commissioner-Sealer of Weights and Measures or a designated department shall review and act upon any written complaint submitted by any private citizen or City officer or employee concerning any advertising or promotion prohibited by this Section, within 30 days of receipt of the complaint. The County Agricultural Commissioner-Sealer of Weights and Measures or a designated department shall serve notice requiring correction of any violation of this Section upon the person responsible for the advertising display sign or promotion prohibited by this Section. The notice shall specify a date by which the violation shall be corrected. For billboards that display material prohibited by this Section, the date specified shall provide at least five days for correction. For all other violations, the date specified shall provide at least two days for correction.

(4) The City Attorney is authorized to enforce this Section by appropriate civil action. No such action shall be commenced, however, unless and until the County Agricultural Commissioner-Sealer of Weights and Measures or a designated department has issued a notice requiring correction to any person responsible for any advertising display or promotion prohibited by this Section, the time specified in the notice has passed, and the responsible person has failed to comply with this Section. However, if three notices requiring the correction of any violation of this Section (whether the violation involves the same or different displays) are served on any person within a 30-day period, the City Attorney may pursue the remedies set forth in this Section against that person without the serving of another notice, if the additional violation occurs within 90 days of the serving of the third notice.

(5) Violation of this Section shall constitute grounds for injunctive relief. In addition, any person who violates or refuses to comply with the provisions of this Section shall be liable for a civil penalty of \$100 a day for each violation, which penalty shall be assessed and recovered in a civil action brought in the name of the People of the City and County of San Francisco in any court of competent jurisdiction. Each separate display of tobacco advertising or promotion prohibited by this Section shall be considered a separate violation. Each day such violation is committed or permitted to continue shall constitute a separate violation. In those instances in which a notice of correction is required by this Section, there shall be no penalty assessed for displays that occur during the period of time allowed for correction. Any penalty assessed and recovered in an action brought pursuant to this paragraph shall be paid to the Treasurer of the City and County of San Francisco. The person against whom a penalty is assessed, or against whom an injunction is obtained, also shall be liable for the costs of attorney's fees incurred by the City and County of San Francisco in bringing any civil action to enforce the provisions of this Section.

(6) For purposes of determining liability of persons, firms or corporations controlling franchises or business operations in multiple locations, each individual franchise or business location shall be deemed a separate entity.

(g) Intent as to Additional Legal Restrictions and Remedies.

(1) Nothing in this Section is intended to alter the obligations or restrictions that apply to any person under any other law governing signs, billboards, tobacco advertising or any other matter covered by this Section.

(2) The remedies set forth in this Section are not exclusive. If any action prohibited by this Section is also unlawful under any other law, the penalties and remedies under such other laws may be pursued in addition to those provided in this Section.

(h) Disclaimers. By prohibiting the advertising or promotion of tobacco products in outdoor or publicly visible locations, the City and County of San Francisco 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.

(i) Severability. If any provision of this Section or its application to any person or circumstance is held invalid, this Section, to the extent it can be given effect, or the application of this Section to persons other than the person to whom it is held invalid, shall not be affected thereby, and to this end, the provisions of this Section are severable.