

FILE NO. 02-1339

ORDINANCE NO. 237-02

[Financial Information Privacy.]

**Ordinance amending the San Francisco Business and Tax Regulations Code to enact a new Article 20 to provide for the protection of private financial information.**

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. The San Francisco Business and Tax Regulations Code is hereby amended by adding a new Article 20 thereto, to read as follows:

SEC. 2000. This Article shall be known and may be cited as the "San Francisco Financial Information Privacy Ordinance." This Article shall become operative on January 1, 2004.

SEC. 2001. (a) The intent of this Ordinance is to require financial institutions engaging in business in the City and County of San Francisco to provide their customers residing in the the City and County of San Francisco with notice and meaningful choice about how consumers' personal information is shared or sold by their financial institutions.

(b) The intent of this Ordinance is to: (1) afford consumers greater privacy protection than that provided in Public Law 106-102, the federal Gramm, Leach, and Bliley Act, and (2) supplement the federal Fair Credit Reporting Act, 15 U.S.C. Secs. 1681 et seq. by affording greater protection to consumers than is provided under the Fair Credit Reporting Act. The provisions of this Article be interpreted to be consistent with these purposes.

1           SEC. 2002. For the purposes of this Article:

2           (a) "Confidential consumer information" means personally identifiable financial information  
3 (1) provided by a consumer to a financial institution, (2) resulting from any transaction with the  
4 consumer or any service performed for the consumer, or (3) otherwise obtained by the financial  
5 institution. Confidential consumer information does not include publicly available information that is  
6 lawfully made available to the general public from (1) federal, state, or local government records, (2)  
7 widely distributed media, or (3) disclosures to the general public that are required to be made by  
8 federal, state, or local law. Confidential consumer information shall include any list, description, or  
9 other grouping of consumers, and publicly available information pertaining to them that is derived  
10 using any nonpublic personal information other than publicly available information, but shall not  
11 include any list, description, or other grouping of consumers, and publicly available information  
12 pertaining to them that is derived without using any confidential consumer information.

13           (b) "Personally identifiable financial information" means information (1) that a consumer  
14 provides to a financial institution to obtain a product or service from the financial institution, (2) about  
15 a consumer resulting from any transaction involving a product or service between the financial  
16 institution and a consumer, or (3) that the financial institution otherwise obtains about a consumer in  
17 connection with providing a product or service to that consumer. Any personally identifiable  
18 information is financial if it was obtained by a financial institution in connection with providing a  
19 financial product or service to a consumer, including the fact that a consumer is a customer of a  
20 financial institution or has obtained a financial product or service from a financial institution.

21 Personally identifiable financial information includes all of the following:

22           (1) Information a consumer provides to a financial institution on an application to  
23 obtain a loan, credit card, or other financial product or service.

24           (2) Account balance information, payment history, overdraft history and credit or debit  
25 card purchase information.

1           (3) The fact that an individual is or has been a customer of a financial institution or has  
2           obtained a financial product or service from a financial institution.

3           (4) Any information about a financial institution's consumer if it is disclosed in a  
4           manner that indicates that the individual is or has been the financial institution's consumer.

5           (5) Any information that a consumer provides to a financial institution or that a  
6           financial institution or its agent otherwise obtains in connection with collecting on a loan or  
7           servicing a loan.

8           (6) Any information collected through an Internet cookie or any information collecting  
9           device from a Web server.

10          (7) Information from a consumer report.

11          (8) A consumer's Social Security number.

12          (c) "Financial institution" generally means any institution engaging in financial activities as  
13          described in Section 1843(k) of Title 12 of the United States Code and doing business in the City and  
14          County of San Francisco. An institution that is significantly engaged in financial activities is a  
15          financial institution. The term "financial institution" does not include the Federal Agricultural  
16          Mortgage Corporation or any entity chartered and operating under the Farm Credit Act of 1971 (12  
17          U.S.C. Sec. 2001 et seq.), provided that the entity does not sell or transfer confidential consumer  
18          information to a nonaffiliated third party. The term "financial institution" does not include institutions  
19          chartered by Congress specifically to engage in a proposed or actual securitization, secondary market  
20          sale, including sales of servicing rights, or similar transactions related to a transaction of the  
21          consumer, as long as those institutions do not sell or transfer confidential consumer information to a  
22          nonaffiliated third party. The term "financial institution" does not include any person licensed as a  
23          dealer under Article 1 (commencing with Section 11700) of Chapter 4 of Division 5 of the Vehicle Code  
24          that enters into contracts for the installment sale or lease of motor vehicles pursuant to the  
25          requirements of Chapter 2b (commencing with Section 2981) or 2d (commencing with Section 2985.7)

1 of Title 14 of Part 4 of Division 3 of the Civil Code and assigns substantially all of those contracts to  
2 financial institutions within 30 days. The term "financial institution" does not include any provider of  
3 professional services, or any wholly owned affiliate thereof, that is prohibited by rules of professional  
4 ethics or applicable law from voluntarily disclosing confidential client information without the  
5 consent of the client.

6 (d) "Affiliate" means any person or entity that, directly or indirectly, controls, is controlled by,  
7 or is under common control with another person or entity. A franchisor, including any affiliate  
8 thereof, shall be deemed an affiliate of the franchisee for purposes of this Article.

9 (e) "Nonaffiliated third party" means any entity that is not an affiliate of, or related by common  
10 ownership or affiliated by corporate control with, the financial institution.

11 (f) "Consumer" means a natural person residing in the City and County of San Francisco who  
12 obtains or has obtained a financial product or service from a financial institution that is to be used  
13 primarily for personal, family, or household purposes, or that individual's legal representative. For  
14 purposes of this Article, an individual is not a consumer of a financial institution solely because he or  
15 she is (1) a participant or beneficiary of an employee benefit plan that a financial institution  
16 administers or sponsors, or for which the financial institution acts as a trustee, insurer, or fiduciary,  
17 (2) covered under a group or blanket insurance policy or group annuity contract issued by the financial  
18 institution, or (3) a beneficiary in a workers' compensation plan provided that (A) the financial  
19 institution provides all required notices and rights required by this Article to the plan sponsor, group  
20 or blanket insurance policyholder, or group annuity contractholder and (B) the financial institution  
21 does not disclose confidential consumer information about the individual except as authorized in  
22 Section 2006. A consumer does not include an individual who obtains products or services for  
23 business, commercial, or agricultural purposes.

24 (g) "Control" means the direct or indirect possession of the power to direct or cause the  
25 direction of the management and policies of another entity. Control includes any of the following: (1)

1 ownership or power to vote 25 percent or more of the outstanding shares of any class of voting security  
2 of a company, acting through one or more persons, (2) power in any manner over the election of a  
3 majority of the directors, or of individuals exercising similar functions, or (3) the power to exercise a  
4 directing influence over the management of policies of a company.

5 (h) "Necessary to effect, administer, or enforce" means the following:

6 (1) The disclosure is required, or is a usual, appropriate, or acceptable method to carry  
7 out the transaction or the product or service business of which the transaction is a part, and  
8 record or service or maintain the consumer's account in the ordinary course of providing the  
9 financial service or financial product, or to administer or service benefits or claims relating to  
10 the transaction or the product or service business of which it is a part, and includes the  
11 following:

12 (A) Providing the consumer or the consumer's agent or broker with a  
13 confirmation, statement, or other record of the transaction, or information on the status  
14 or value of the financial service or financial product.

15 (B) The accrual or recognition of incentives or bonuses associated with the  
16 transaction that are provided by the financial institution or another party involved in  
17 providing the financial service or product.

18 (2) The disclosure is required or is a lawful method to enforce the rights of the financial  
19 institution or of other persons engaged in carrying out the financial transaction or providing  
20 the product or service.

21 (3) The disclosure is required, or is a usual, appropriate, or acceptable method for  
22 insurance underwriting at the consumer's request, for reinsurance purposes, or for any of the  
23 following purposes as they relate to a consumer's insurance:

24 (A) Account administration.

25 (B) Reporting, investigating, or preventing fraud or material misrepresentation.

1 (C) Processing premium payments.

2 (D) Processing insurance claims.

3 (E) Administering insurance benefits, including utilization review activities.

4 (F) For internal research purposes.

5 (G) As otherwise required or specifically permitted by federal or state law.

6 (4) The disclosure is required, or is a usual, appropriate, or acceptable method, in  
7 connection with the following:

8 (A) The authorization, settlement, billing, processing, clearing, transferring,  
9 reconciling, or collection of amounts charged, debited, or otherwise paid using a debit,  
10 credit or other payment card, check, or account number, or by other payment means.

11 (B) The transfer of receivables, accounts, or interests therein.

12 (C) The audit of debit, credit, or other payment information.

13 (i) "Financial product or service" means any product or service that a financial holding  
14 company could offer by engaging in an activity that is financial in nature or incidental to financial  
15 activity under subsection (k) of Section 1843 of Title 12 of the United States Code (the United States  
16 Bank Holding Company Act of 1956). Financial service includes a financial institution's evaluation or  
17 brokerage of information that the financial institution collects in connection with a request or an  
18 application from a consumer for a financial product or service.

19 (j) "Clearly and conspicuously" means displayed in a manner that is readily noticeable,  
20 readable, and understandable to consumers. Factors to be considered in determining whether a notice  
21 or disclosure is clear and conspicuous include prominence, proximity, absence of distracting elements,  
22 and clarity and understanding of the text disclosure.

23 (k) "Widely distributed media" means publicly available information from a telephone book, a  
24 television or radio program, a newspaper or a Web site that is available to the general public on an  
25 unrestricted basis.

1  
2       SEC. 2003. This Article shall apply to financial institutions, as defined in Section 2002(c), that  
3 have customers who are residents of the City and County of San Francisco. For purposes of this  
4 Article, a person shall be considered a resident of the City and County of San Francisco if the person's  
5 last known mailing address, as shown in the records of the financial institution, is located in the City  
6 and County of San Francisco.

7  
8       SEC. 2004. (a) A financial institution shall not disclose to or share a consumer's confidential  
9 consumer information with any nonaffiliated third party unless (i) the financial institution has provided  
10 written or electronic notice to the consumer to whom the confidential consumer information relates and  
11 (ii) the financial institution has obtained a written or electronic consent acknowledgment from the  
12 consumer that authorizes the financial institution to disclose or share the confidential consumer  
13 information. A financial institution shall not deny a consumer a financial product or a financial service  
14 because the consumer has not provided the consent required by this Article to authorize the financial  
15 institution to disclose or share his or her confidential consumer information with any nonaffiliated  
16 third party; provided, that nothing in this section shall prohibit the disclosure of confidential consumer  
17 information as provided in Section 2006.

18       (b) A financial institution shall not disclose to or share a consumer's confidential  
19 consumer information with any affiliate unless (i) the financial institution has provided written or  
20 electronic notice to the consumer to whom the confidential consumer information relates and (ii) the  
21 financial institution has obtained a written or electronic consent acknowledgment from the consumer  
22 that authorizes the financial institution to disclose or share the confidential consumer  
23 information. A financial institution shall not deny a consumer a financial product or a financial service  
24 because the consumer has not provided the consent required by this Article to authorize the financial  
25 institution to disclose or share his or her confidential consumer information with any affiliate;

1 provided, that nothing in this section shall prohibit the disclosure of confidential consumer information  
2 as provided in Section 2006.

3 (c) The notices required by this Section shall be issued to the consumer as frequently as is  
4 required by the federal Gramm, Leach and Bliley Act, 15 U.S.C. Sec. 6803(a). Unless revoked by the  
5 consumer, consent received from a consumer, as described in the notice, shall be deemed valid until  
6 such time as another notice is required to be issued to the consumer.

7 (d) Nothing in this Article shall prohibit a financial institution from marketing its own products  
8 and services or the products and services of others to the financial institution's own customers,  
9 provided no confidential consumer information is disclosed except as permitted by Section 2006.

10 (e) Except as otherwise provided in this Article, an entity that receives confidential consumer  
11 information from a financial institution under this Article shall not disclose this information to any  
12 other entity, unless the disclosure would be lawful if made directly to the other entity by the financial  
13 institution.

14  
15 SEC. 2005. (a) Nothing in this Article shall require a financial institution to provide a written  
16 or electronic notice to a consumer pursuant to Section 2004(a) if the financial institution does not  
17 disclose confidential consumer information to any nonaffiliated third-party, except as provided in  
18 Section 2006.

19 (b) Nothing in this Article shall require a financial institution to provide a written or electronic  
20 notice to a consumer pursuant to Section 2004(b) if the financial institution does not disclose  
21 confidential consumer information to any affiliate, except as provided in Section 2006.

22 (c) A financial institution shall provide written or electronic notices and consent  
23 acknowledgments to consumers as separate documents that are easily identifiable and distinguishable  
24 from other documents that otherwise may be provided to a consumer. A notice provided to a member  
25 of a household pursuant to Section 2004 shall be considered notice to all members of that household



1 unless that household contains another individual who also has a separate account with the financial  
2 institution. Such notices may be sent to the consumer with other notices required under the federal  
3 Gramm, Leach and Bliley Act, 15 U.S.C. Secs. 6801 et seq.

4  
5 SEC. 2006. (a) This Article shall not apply to information that is not personally identifiable to  
6 a particular person.

7 (b) Sections 2004 and 2005 shall not prohibit the release of confidential consumer information  
8 under the following circumstances:

9 (1) The confidential consumer information is necessary to effect, administer, or enforce  
10 a transaction requested or authorized by the consumer, or in connection with servicing or  
11 processing a financial product or service requested or authorized by the consumer, or in  
12 connection with maintaining or servicing the consumer's account with the financial institution,  
13 or with another entity as part of a private label credit card program or other extension of credit  
14 on behalf of such entity, or in connection with a proposed or actual securitization or secondary  
15 market sale, including sales of servicing rights, related to a transaction of the consumer.

16 (2) The confidential consumer information is released with the consent of or at the  
17 direction of the consumer.

18 (3) The confidential consumer information is:

19 (A) Released to protect the confidentiality or security of the financial  
20 institution's records pertaining to the consumer, the service or product, or the  
21 transaction therein.

22 (B) Released to protect against or prevent actual or potential fraud, identity  
23 theft, unauthorized transactions, claims, or other liability.

24 (C) Released for required institutional risk control, or for resolving customer  
25 disputes or inquiries.

1                   (D) Released to persons holding a legal or beneficial interest relating to the  
2                   consumer.

3                   (E) Released to persons acting in a fiduciary or representative capacity on  
4                   behalf of the consumer.

5                   (4) The confidential consumer information is released to provide information to  
6                   insurance rate advisory organizations, guaranty funds or agencies, applicable rating agencies  
7                   of the financial institution, persons assessing the institution's compliance with industry  
8                   standards, and the institution's attorneys, accountants, and auditors.

9                   (5) The confidential consumer information is released to the extent specifically required  
10                  or specifically permitted under other provisions of law and in accordance with the Right to  
11                  Financial Privacy Act of 1978 (12 U.S.C. Sec. 3401 et seq.), to law enforcement agencies,  
12                  including a federal functional regulator, the Secretary of the Treasury with respect to  
13                  subchapter II of Chapter 53 of Title 31, and Chapter 2 of Title I of Public Law 91-508 (12  
14                  U.S.C. Secs. 1951-1959), the California Department of Insurance, or the Federal Trade  
15                  Commission, and self-regulatory organizations.

16                  (6) The confidential consumer information is released (A) to a consumer reporting  
17                  agency in accordance with the Fair Credit Reporting Act (15 U.S.C. Sec. 1681 et seq.); or (B)  
18                  from a consumer report reported by a consumer reporting agency.

19                  (7) The confidential consumer information is released in connection with a proposed or  
20                  actual sale, merger, transfer, or exchange of all or a portion of a business or operating unit if  
21                  the disclosure of confidential consumer information concerns solely consumers of the business  
22                  or unit.

23                  (8) The confidential consumer information is released to comply with federal, state, or  
24                  local laws, rules, and other applicable legal requirements; to comply with a properly authorized  
25                  civil, criminal, or regulatory investigation or subpoena or summons by federal, state, or local

1 authorities; or to respond to judicial process or government regulatory authorities having  
2 jurisdiction over the financial institution for examination, compliance, or other purposes as  
3 authorized by law.

4 (9) When a financial institution is reporting a known or suspected instance of elder or  
5 dependent adult financial abuse or is cooperating with a local adult protective services agency  
6 investigation of known or suspected elder or dependent adult financial abuse pursuant to Article  
7 3 (commencing with Section 15630) of Chapter 11 of Part 3 of Division 9 of the Welfare and  
8 Institutions Code.

9 (10) The confidential consumer information is released to an affiliate or a nonaffiliated  
10 third party in order for the affiliate or nonaffiliated third party to perform services for or  
11 functions on behalf of, the financial institution in connection with the financial institution's  
12 products and services, such as mailing services, data processing or analysis, or customer  
13 surveys, provided that all of the following requirements are met:

14 (A) The services to be performed by the affiliate or nonaffiliated third party  
15 would be lawful if performed by the financial institution.

16 (B) If the confidential consumer information is disclosed to an affiliate, the  
17 affiliate does not use or disclose the confidential consumer information other than to  
18 carry out the purpose for which the financial institution disclosed the information.

19 (C) If the confidential consumer information is disclosed to a nonaffiliated third  
20 party, there is a written contract between the nonaffiliated third party and the financial  
21 institution that prohibits the nonaffiliated third party from disclosing or using the  
22 confidential consumer information other than to carry out the purpose for which the  
23 financial institution disclosed the information, as set forth in the written contract.

1                    (D) The confidential consumer information provided to the affiliate or  
2                    nonaffiliated third party is limited to that which is reasonably necessary for the affiliate  
3                    or nonaffiliated third party to perform services for on behalf of the financial institution..

4                    (11) The confidential consumer information is released to identify or locate missing and  
5                    abducted children, witnesses, criminals and fugitives, parties to lawsuits, parents delinquent in  
6                    child support payments, organ and bone marrow donors, pension fund beneficiaries, and  
7                    missing heirs.

8                    (c) Nothing in this Article is intended to change existing law relating to access by law  
9                    enforcement agencies to information held by financial institutions.

10  
11                    SEC. 2007. (a) The restrictions on disclosure and use of confidential consumer information,  
12                    and the requirement for notification, disclosure, and opportunity for the consumer to either direct that  
13                    the confidential consumer information not be disclosed or provided prior written consent, as provided  
14                    in this Article, do not apply to any person or entity that meets paragraph (1) or (2) except when  
15                    confidential consumer information is or will be shared with an affiliate or nonaffiliated third party.

16                    (1) The person or entity is licensed in one or both of the following categories and is  
17                    acting within the scope of the respective license:

18                    (A) As an insurance producer licensed pursuant to Chapter 5 (commencing with  
19                    Section 1621), Chapter 6 (commencing with Section 1760), or Chapter 8 (commencing  
20                    with Section 1831) of Division 1 of the Insurance Code.

21                    (B) Is duly licensed to sell securities.

22                    (2) The person or entity meets the requirements in paragraph (1) and has a written  
23                    contractual agreement with another person or entity described in paragraph (1) and the  
24                    contract clearly and explicitly includes the following:

1                   (A) The rights and obligations between the licensees arising out of the business  
2                   relationship relating to insurance or securities transactions.

3                   (B) An explicit limitation on the use of confidential consumer information about  
4                   a consumer to transactions authorized by the contract and permitted pursuant to this  
5                   Article.

6                   (C) A requirement that transactions specified in the contract fall within the  
7                   scope of activities permitted by the licenses of the parties.

8                   (b) The restrictions on disclosure and use of confidential consumer information, and the  
9                   requirement for notification and disclosure provided in this Article, shall not limit the ability of  
10                  insurance producers and brokers to respond to written or electronic, including telephone, requests  
11                  from consumers seeking price quotes on insurance products and services.

12  
13                  SEC. 2008. (a) Any financial institution that negligently discloses or shares confidential  
14                  consumer information in violation of this Article shall be liable, irrespective of the amount of damages  
15                  suffered by the consumer as a result of that violation, for an administrative fine or civil penalty not to  
16                  exceed two thousand five hundred dollars (\$2,500) per violation.

17                  (b) Any financial institution that knowingly and willfully obtains, discloses, or uses confidential  
18                  consumer information in violation of this Article shall be liable upon a first violation, for an  
19                  administrative fine or civil penalty not to exceed two thousand five hundred dollars (\$2,500) per  
20                  violation, or upon a second violation for an administrative fine or civil penalty not to exceed ten  
21                  thousand dollars (\$10,000) per violation, or upon a third or subsequent violation for an administrative  
22                  fine or civil penalty not to exceed twenty-five thousand dollars (\$25,000) per violation.

23                  (c) Any financial institution that knowingly and willfully obtains, discloses, or uses confidential  
24                  consumer information in violation of this Article for financial gain shall be liable upon a first violation  
25                  for an administrative fine or civil penalty not to exceed five thousand dollars (\$5,000) per violation, or

1 upon a second violation for an administrative fine or civil penalty not to exceed twenty-five thousand  
2 dollars (\$25,000) per violation, or upon a third or subsequent violation for an administrative fine or  
3 civil penalty not to exceed two hundred fifty thousand dollars (\$250,000) per violation and shall be  
4 subject to disgorgement of any proceeds or other consideration obtained as a result of the violation.


5 (d) Nothing in this Article shall be construed as authorizing an administrative fine or civil  
6 penalty under both paragraphs (2) and (3) for the same violation.

7  
8 SEC. 2009. This Article shall not be construed in a manner that is inconsistent with the federal  
9 Fair Credit Reporting Act (15 U.S.C. Secs. 1681 et seq.).

10  
11 SEC. 2010. The provisions of this Article shall be severable, and if any phrase, clause,  
12 sentence, or provision is declared to be invalid or is preempted by federal or state law or regulation,  
13 the validity of the remainder of this Article shall not be affected thereby.

14  
15 APPROVED AS TO FORM:  
16 DENNIS J. HERRERA, City Attorney

17  
18 By:

  
19 Dorji Roberts  
20 Deputy City Attorney



# City and County of San Francisco

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

## Tails Ordinance

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**File Number:** 021339

**Date Passed:**

Ordinance amending the San Francisco Business and Tax Regulations Code to enact a new Article 20 to provide for the protection of private financial information.

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December 9, 2002 Board of Supervisors — PASSED ON FIRST READING

Ayes: 8 - Ammiano, Daly, Gonzalez, Maxwell, McGoldrick, Newsom, Peskin,  
Sandoval

Noes: 1 - Hall

December 16, 2002 Board of Supervisors — FINALLY PASSED

Ayes: 9 - Ammiano, Dufty, Gonzalez, Ma, Maxwell, McGoldrick, Newsom,  
Peskin, Sandoval

Noes: 1 - Hall

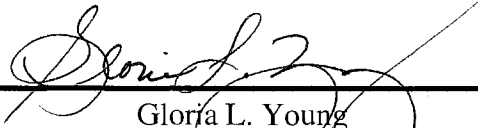
Absent: 1 - Daly


File No. 021339

I hereby certify that the foregoing Ordinance was **FINALLY PASSED** on December 16, 2002 by the Board of Supervisors of the City and County of San Francisco.

DEC 20 2002

\_\_\_\_\_  
Date Approved

  
\_\_\_\_\_  
Gloria L. Young  
Clerk of the Board

  
\_\_\_\_\_  
Mayor Willie L. Brown Jr.