

1 [Police Code - Aerial Signs and Advertising]

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3 **Ordinance amending the Police Code to prohibit the use of aircraft, self-propelled, or**
4 **buoyant objects to display any sign or advertising device in the airspace over the 34th**
5 **~~America’s Cup course area~~City and County of San Francisco; and making**
6 **environmental findings.**

7 NOTE: Additions are *single-underline italics Times New Roman*;
8 deletions are *strike-through italics Times New Roman*.
9 Board amendment additions are double-underlined;
10 Board amendment deletions are ~~strike-through normal~~.

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11 Be it ordained by the People of the City and County of San Francisco:

12 Section 1. The Planning Department has determined that the actions contemplated in
13 this ordinance comply with the California Environmental Quality Act (California Public
14 Resources Code Section 21000 et seq.). Said determination is on file with the Clerk of the
15 Board of Supervisors in File No. 130744 and is incorporated herein by reference.

16

17 Section 2. Findings. The Board of Supervisors of the City and County of San
18 Francisco hereby finds as follows:

19 ~~1. By Resolution No. 585-10 (File No. 101259), this Board of Supervisors approved the~~
20 ~~terms of a host agreement for the 34th America’s Cup and related regattas (the “Event”) with~~
21 ~~the America’s Cup Event Authority (“Event Authority”), which was executed by the parties on~~
22 ~~December 31, 2010 as the America’s Cup Host and Venue Agreement (the “Host~~
23 ~~Agreement”) upon the selection of the City and County of San Francisco (“City”) as host city~~
24 ~~for the Event.~~

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1 2. In Resolution No. 585-10, this Board found that hosting the Event would generate
2 significant public benefits for the City including: (i) the generation of significant new jobs and
3 economic development in a very short period of time; (ii) substantially increased public access
4 to the waterfront; (iii) new opportunities for people to view and enjoy the San Francisco Bay;
5 and (iv) an extraordinary opportunity to showcase San Francisco and the Bay to the nation
6 and the world.

7 3. Allowing aerial signs and advertising such as towing banners in the airspace above
8 the Event during race activities would create visual blight and clutter that would (i) undermine
9 the viewing experience for the thousands of spectators who are expected to attend the Event,
10 (ii) pollute the visual landscape of the San Francisco waterfront that is being showcased by
11 the Event, and (iii) create potentially dangerous visual distractions for the race participants.
12 To provide a pleasant viewing experience for spectators by allowing for uninterrupted viewing
13 of the Event activities, to protect public safety, and to safeguard the overall success of the
14 Event, the Board wishes to protect the airspace above the Event from any and all commercial
15 or promotional interruption during the racing events.

16 4. — In addition, Section 10.3 of the Host Agreement requires the City to work with
17 the Event Authority to develop and implement a program to protect the Event from “ambush
18 marketing.” Specifically, Section 10.3(b) requires the City to take a number of actions on
19 behalf of the Event Authority and the Event in general, including seeking “the prohibition of
20 use of Event Airspace during the [e]vent, and in respect of appropriately large perimeters
21 around the airspace of the [v]enue to prevent any unauthorized aircraft or any other floating or
22 flying device (in particular hot air/helium/other gas balloons or blimps) from being used to
23 advertise or carry out ambush marketing activities.” Ambush marketing refers to unauthorized
24 parties taking actions to associate themselves with, and therefore capitalize on, the visibility
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1 and intellectual property of a particular event without entering appropriate contractual
2 relationships to do so.

3 5. By adoption of this ordinance, this Board of Supervisors intends to establish
4 restrictions on all aerial signs and advertising in the airspace over the Event in furtherance of
5 the City's goals of ensuring a successful Event, promoting a pleasant spectator experience,
6 and protecting public safety, as well as the City's responsibilities under the terms of the Host
7 Agreement.

8 1. In recent years, San Francisco voters have consistently sided with initiatives to
9 restrict the amount of advertising allowed in the City and County of San Francisco, including
10 the following:

11 Approving Measure B in 2002 to prohibit all new general advertising signs on
12 private property.

13 Approving Measure K in 2007 and Measure E in 2009 to prohibit all new general
14 advertising signs on street furniture and City-owned buildings.

15 Disapproving Measure D in 2009 which would have created a Mid-Market
16 Special Sign District where new general advertising signs would be permitted.

17 2. Many areas of the City are saturated with general advertising signs. In these areas
18 the general advertising signs are obtrusive, out of scale, and contribute to visual pollution and
19 blight.

20 3. Tourism, San Francisco's largest revenue generating industry, benefits from the
21 preservation of the City's unique character, architecture and vistas. Reducing the amount of
22 advertising in the City will help accentuate its distinctive appearance and the character that
23 tourists visit the City to experience.

24 The use of aircraft to display signs and advertising in the airspace over the City and
25 County of San Francisco ("City") creates aesthetic blight that undermines the scenic beauty of

1 the City's unique visual landscape and vistas. The display of aerial signage through aircraft
2 also generates air pollution and creates visual distraction that can pose traffic safety hazards
3 for motorists and pedestrians in the City. By their nature, aerial signs are intended to distract,
4 and aim to capture and hold the attention of members of the public including drivers,
5 pedestrians, bicyclists, and others. For these reasons, the Board of Supervisors finds that the
6 use of aircraft displaying signs and advertising in the airspace over the City creates visual
7 blight and creates potential and actual traffic, health and safety hazards. The purposes of this
8 Article are (1) to protect the distinctive appearance and physical beauty of the City's visual
9 landscape and vistas and prevent visual blight, (2) to promote the public health, safety and
10 welfare of motorists, pedestrians, bicyclists, and others using the City's streets by eliminating
11 traffic and safety hazards caused by the display of aerial signs in the airspace over the City;
12 (3) to aid in the attraction of tourists and other visitors who are so important to the economy of
13 the City and who are drawn to the City for its aesthetic beauty; and (4) to reduce exhaust
14 emissions by eliminating as an emissions source aircraft displaying signs or advertising.

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16 Section 3. The San Francisco Police Code is hereby amended by adding Article 49, to
17 read as follows:

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19 **ARTICLE 49. AERIAL SIGNS.**

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21 **SEC. 4900. DEFINITIONS.**

22 "Director" shall mean the Executive Director of the Port of San Francisco or his or her
23 designee.

24 "Event Airspace" shall mean the airspace located above an area extending one-half
25 mile laterally in each direction from the Primary Regulated Area established for the 2013 34th

1 America's Cup regattas by the United States Coast Guard under 33 U.S.C. 1233 § 100.T11-
2 0551B.

3
4 **SEC. 49004. GENERAL PROHIBITION.**

5 *Except as allowed under Section 49012, no person shall use any type of aircraft or other self-*
6 *propelled or buoyant airborne object to display in any manner or for any purpose any sign or*
7 *advertising device within the event Airspace of the City and County of San Francisco. For the*
8 *purpose of this section, a "sign or advertising device" includes, but is not limited to, a poster, banner,*
9 *writing, picture, painting, light, model, display, emblem, notice, illustration, insignia, or symbol. A*
10 *"sign or advertising device" does not include a sign or advertising device when placed on or attached*
11 *to any ground, building, or structure. Such a sign or advertising device shall be permitted, prohibited,*
12 *or otherwise regulated as provided under any applicable law.*

13
14 **SEC. 49012. EXCEPTIONS.**

15 *(a) Section 49004 shall not prohibit the display of an identifying mark, trade name, trade*
16 *insignia, or trademark on the exterior of an aircraft or self-propelled or buoyant airborne object if the*
17 *displayed item is under the ownership or registration of the aircraft's or airborne object's owner.*

18 *(b) Section 49004 shall not prohibit the display of a sign or advertising device placed wholly*
19 *and visible only within the interior of an aircraft or self-propelled or buoyant airborne object.*

20
21 **SEC. 49023. CRIMINAL AND CIVIL PENALTIES.**

22 *(a) Criminal Penalty. Any person who violates any provision of this Article shall be deemed*
23 *guilty of an infraction. Any person who violates this Article more than once prior to its expiration shall*
24 *be guilty of an infraction or a misdemeanor, at the discretion of the prosecutor. A first violation of this*
25 *Article is an infraction is punishable by a fine of not more than \$100. A second violation prior to the*

1 expiration of this Article is an infraction punishable by a fine of not more than \$200 or a misdemeanor
2 punishable by a fine of not to exceed \$1,000 or by imprisonment in the County Jail for a period not to
3 exceed six months, or by both such fine and imprisonment, at the discretion of the prosecutor. A third
4 or subsequent violation prior to the expiration of this Article is an infraction punishable by a fine of not
5 more than \$500 or a misdemeanor punishable by a fine of not to exceed \$1,000 or by imprisonment in
6 the County Jail for a period not to exceed six months, or by both such fine and imprisonment, at the
7 discretion of the prosecutor. Each day a person engages in conduct in violation of this Article shall
8 constitute a separate violation.

9 (b) Administrative Penalty. The ~~Director~~City Administrator may issue administrative citations
10 for the violation of any provision of this Article. San Francisco Administrative Code Chapter 100,
11 “Procedures Governing the Imposition of Administrative Fines,” is hereby incorporated in its entirety
12 and shall govern the amount of fees and the procedure for imposition, enforcement, collection, and
13 administrative review of administrative citations issued under this Article.

14
15 **SEC. 49034. CONFLICT WITH FEDERAL OR STATE LAW.**

16 Nothing in this Article shall authorize the City to impose any duties or obligations in conflict
17 with limitations on municipal authority imposed by federal or State law. This Article shall be construed
18 so as not to conflict with applicable federal or State law. In engaging in enforcement actions pursuant
19 to Section 4902, the City is authorized to implement this Article so as to avoid a conflict, if any, with
20 applicable federal or State law.

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22 **SEC. 4905. SUNSET CLAUSE.**

23 ~~This Article shall expire on September 30, 2013 or upon the date of receipt of written~~
24 ~~certification from the City Attorney to the Clerk of the Board of Supervisors that the Federal~~
25 ~~Aviation Administration has issued a temporary flight restriction for the Event Airspace under~~

1 ~~14 CFR Sec. 145 that prohibits the use of this airspace by aircraft not authorized or accredited~~
2 ~~by the event, whichever occurs sooner. Upon expiration of this Article, the City Attorney shall~~
3 ~~cause this Article to be removed from the Police Code.~~

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5 Section 4. Effective Date. This ordinance shall become effective 30 days from the
6 date of passage.

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8 Section 5. In enacting this Ordinance, the Board intends to amend only those words,
9 phrases, paragraphs, subsections, sections, articles, numbers, punctuation, charts, diagrams,
10 or any other constituent part of the Police Code that are explicitly shown in this legislation as
11 additions, deletions, Board amendment additions, and Board amendment deletions in
12 accordance with the "Note" that appears under the official title of the legislation.

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

16 By: _____
17 FRANCESCA GESSNER
18 Deputy City Attorney

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