

FILE NO. 030482

ORDINANCE NO. 87-03

1 [Authorizing administrative penalties for littering and specified nuisance violations.]

2  
3 **Ordinance amending Sections 37, 38, and 63 of the Police Code, Sections 41.13, 283.1,**  
4 **287 and 600 of the Health Code and Sections 170, 173, 174, 174.2, 184.63, and 724.5 of**  
5 **the Public Works Code to authorize the assessment of administrative penalties as an**  
6 **alternative to infractions for littering and specified nuisance violations and authorize**  
7 **specified classes of employees to issue such penalties; amending the Police Code by**  
8 **adding a new Section 39-1 to establish procedures for the imposition, review and**  
9 **collection of administrative penalties.**

10 Note: Additions are *single-underline italics Times New Roman*;  
11 deletions are ~~*strikethrough italics Times New Roman*~~.  
12 Board amendment additions are double underlined.  
Board amendment deletions are ~~strikethrough normal~~.

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

14 Section 1. The San Francisco Police Code is hereby amended by amending Sections  
15 37, 38 and 63, and adding a new Section 39-1, to read as follows:

16 **SEC. 37. PENALTY.**

17 (a) Any person who shall violate any of the provisions of Sections 33, 34, 35 or 36 of  
18 this Article shall be guilty of an infraction and, upon conviction thereof, shall be punished for  
19 the first offense by a fine of not less than \$80 nor more than \$100; and for a second offense  
20 by a fine of not less than \$150 nor more than \$200; and for each additional offense by a fine  
21 of not less than \$300 nor more than \$500.

22 (b) Any person who shall violate any of the provisions of Section 35(a) of this Article  
23 shall be guilty of an infraction and, upon conviction thereof, shall be punished for the first  
24 offense by a fine of not less than \$80 nor more than \$100; for a second offense by a fine of  
25

1 not less than \$150 nor more than \$200; and for each additional offense by a fine of not less  
2 than \$300 nor more than \$500.

3 (c) Alternatively, any person who violates any of the provisions of Sections 33, 34, or 35(a) of  
4 this Article shall be subject to an administrative penalty not to exceed \$300 for each violation.  
5 Administrative penalties authorized by this section shall be assessed, enforced and collected in  
6 accordance with Section 39-1 of this Code.

7 **SEC. 38. ENFORCEMENT OF LITTER LAWS; DESIGNATED OFFICERS AND**  
8 **EMPLOYEES.**

9 The classes of officers or employees of the City and County of San Francisco  
10 hereinbelow set forth may have the duty of enforcing those provisions of state law or the San  
11 Francisco Municipal Code which relate to abatement of nuisance conditions on public property or  
12 the littering of private or public property, including, but not limited to, streets, sidewalks, parks,  
13 squares or recreation areas within said City and County, the removal or abatement of any  
14 such litter from said private or public property or the unauthorized use of litter receptacles. In  
15 addition to any other authority provided by state law or the Municipal Code, each of these classes of  
16 officers or employees may also issue citations or notices of violation imposing administrative penalties  
17 authorized by Section 39-1.

18	Classification No.	Class Title
19	<u>0941</u>	<u>Manager VII (positions assigned to the Department</u>
20		<u>of Public Works only)</u>
21	<u>1312</u>	<u>Public Information Officer (positions assigned to the</u>
22		<u>Department of Public Works only)</u>
23	<u>1314</u>	<u>Public Relations Officer (positions assigned to the</u>
24		<u>Department of Public Works only)</u>
25	3130	Arboretum Director

1	<del>3203</del>	<del>Pool Lifeguard</del>
2	<del>3210</del>	<del>Head Lifeguard</del>
3	3230	Golf Director
4	3234	Harbormaster
5	3287	Assistant Recreation Supervisor
6	3289	Recreation Supervisor
7	3291	Principal Recreation Supervisor
8	<u>3292</u>	<u>Assistant Superintendent, Recreation</u>
9	<del>3322</del>	<del>Assistant Head Animal Keeper</del>
10	<del>3324</del>	<del>Head Animal Keeper</del>
11	<del>3340</del>	<del>Zoo Director</del>
12	3418	Gardener Assistant Supervisor
13	3422	Park Section Supervisor
14	<u>3426</u>	<u>Urban Forester</u>
15	3432	Assistant Director, Arboretum
16	3436	Tree Topper Supervisor I
17	<u>3438</u>	<u>Tree Crew Supervisor II</u>
18	3440	Landscaping and Street Planting Supervisor
19	3462	Assistant Director, Golf Course Maintenance
20	3464	Area Supervisor, Parks, Squares and Facilities
21	3466	Assistant Superintendent, Parks, Squares and
22		Facilities
23	<u>5103</u>	<u>Operations Superintendent</u>
24	5170	Superintendent, Street Cleaning and Tree Planting
25	5173	Assistant Superintendent, Street Cleaning and Tree

1		Planting
2	<u>5182</u>	<u>Deputy Director of Engineering</u>
3	<u>5190</u>	<u>Director of Public Works</u>
4	<u>5194</u>	<u>Deputy Director for Operations</u>
5	6120	Environmental Health Inspector
6	6122	Senior Environmental Health Inspector
7	6124	Principal Environmental Health Inspector
8	6126	Chief, Bureau of Environmental Health Services
9	6127	Assistant Chief, Bureau of Environmental Health
10		Services
11	6230	Street Inspector
12	6231	Senior Street Inspector
13	6232	Street Inspector Supervisor
14	7215	General Laborer Supervisor I
15	7281	Street Cleaning General Foreman
16	<u>8208</u>	<u>Park Patrol Officer</u>
17	<u>8210</u>	<u>Head Park Patrol Officer</u>
18	8214	Parking Controlman
19	8280	Environmental Control Officer
20	<u>8282</u>	<u>Senior Environmental Control Officer</u>
21	H4**	Inspector, Bureau of Fire Prevention and Public
22		Safety
23	H220	Lieutenant, Bureau of Fire Prevention and Public
24		Safety
25	H32	Captain, Bureau of Fire Prevention and Public Safety

1 H40 Battalion Chief, Fire Department

2 H50 Assistant Chief, Fire Department

3 **SEC. 39-1. PROCEDURE FOR ASSESSMENT AND COLLECTION OF**  
4 **ADMINISTRATIVE PENALTIES FOR SPECIFIED LITTERING AND NUISANCE**  
5 **VIOLATIONS.**

6 (a) This Section shall govern the imposition, assessment and collection of administrative  
7 penalties imposed pursuant to Sections 37, 38, and 63 of the Police Code, Sections 41.13, 283.1, 287,  
8 and 584.600 of the Health Code, and Sections 170, 173, 174, 174.2, 184.63 and 724.4 724.5 of the  
9 Public Works Code.

10 (b) The Board of Supervisors finds:

11 (1) That it is in the best interest of the City and its citizens to provide an alternative,  
12 administrative penalty mechanism for enforcement of the littering and nuisance violations  
13 covered by this section in addition to the existing enforcement mechanisms authorized under  
14 the California Penal Code; and

15 (2) That the administrative penalty scheme established by this section is not intended  
16 to be punitive in nature, but is instead intended to compensate the public for the injury and  
17 damage caused by the prohibited conduct. The administrative penalties authorized under this  
18 section are intended to be reasonable and not disproportionate to the damage or injury to the  
19 City and the public caused by the prohibited conduct.

20 (b)(c) Administrative Citation. Where an officer or employee designated in Section 38  
21 determines that there has been a violation of a local litter or nuisance law that authorizes imposition of  
22 an administrative penalty, the officer or employee may issue an administrative citation to the person  
23 and/or entity responsible for the violation. For purposes of this Section, an entity is responsible if an  
24 officer, employee or agent of the entity commits the violation. The citation shall inform the person or  
25 entity responsible of the date, time, place and nature of the violation and the amount of the

1 proposed penalty, and shall state that the penalty is due and payable to the City Treasurer within 15  
2 City business days from the date of the notice, if not contested within the time period specified.  
3 The citation shall also state that the person or entity responsible has the right, pursuant to Subsection  
4 (e)(d), to request administrative review of the citing officer or employee's determination as to the  
5 violation and assessment of penalties- ,and shall set forth the procedure for requesting  
6 administrative review. The notice shall inform the owner of the date, time, place and nature of  
7 the violation and the amount of the proposed penalty, and shall state that the penalty  
8 becomes effective if not contested within the time period specified. In addition, the notice  
9 shall set forth the procedures for requesting the hearing. The Director shall serve the  
10 administrative citation as follows:

11 1. Where there is a nexus between the violator and a specific property;

12 (A) One copy of the Notice shall be posted in a conspicuous place upon the building or  
13 property.

14 (B) One copy of the Notice shall be served upon each of the following:

15 (i) The person, if any, in real or apparent charge and control of the premises or  
16 property involved;

17 (ii) The owner of record.

18 Service required by subparagraph (B) may be made by personal service or by certified  
19 mail.

20 2. Where the issuing officer or employee is unable to ascertain a nexus between the  
21 violation and property within the City, a completed copy of the administrative citation may be served  
22 on the individual who has committed the violation by presenting the person with a completed copy  
23 of the citation personal service or by certified mail.

24 3. For purposes of this Section, there is a nexus where activity on the property has caused,  
25 contributed to, or been a substantial factor in causing, the violation.

1            (e)(d) Request for Hearing;Hearing.

2            (1) A person or entity that has been issued an administrative citation may request  
3 administrative review in order to contest the ~~notice of violation citation~~ issued in accordance with this  
4 section. Administrative review shall be initiated by filing a request for administrative review with the  
5 Director of Public Works within 15 City business days from the date of the ~~notice of violation~~ citation.  
6 Failure to request a hearing within the time specified in the ~~notice~~ citation shall be deemed an  
7 admission that the cited person or entity committed the violation identified in the administrative  
8 citation.

9            (2) Whenever administrative review is requested pursuant to this Section, the Director of  
10 Public Works shall, within five City business days of receipt of the request, notify the requestor of the  
11 date, time, and place of the administrative review hearing by certified mail. Such hearing shall be held  
12 no later than thirty (30) calendar days after the Director receives the request, unless time is extended  
13 by mutual agreement of the affected parties.

14            (3) The administrative review hearing shall be conducted by a neutral hearing officer from  
15 outside the Department of Public Works and the department whose employee issued the citation,  
16 assigned by the Director of Administrative Services. The Director of Administrative Services may  
17 issue rules as needed to implement this requirement. The parties may present evidence and  
18 testimony to the hearing officer. All testimony shall be under oath. The hearing officer shall  
19 ensure that a record of the proceedings is maintained. The burden of proof to uphold the  
20 violation shall be on the City, but the administrative citation shall be prima facie evidence of the  
21 violation.

22            (4) The hearing officer shall issue a decision including a summary of the issues and the  
23 evidence presented, and findings and conclusions, within ten (10) calendar days of the conclusion of  
24 the hearing. The hearing officer may uphold the penalty imposed by the citation, reduce the  
25 penalty, or dismiss the citation. A copy of the decision shall be served by certified mail upon the

1 person or entity contesting the violation. The decision shall be a final administrative determination.  
2 An aggrieved party may seek judicial review of the decision pursuant to California Code of Civil  
3 Procedure Sections 1094.5 and 1094.6.

4 (d)(e) Payment and Collection of Penalty

5 (1) Where a person or entity has not made a timely request for administrative review,  
6 the penalty shall be due and payable to the City Treasurer on or before 15 City business days  
7 from the date of issuance.

8 (2) Where a person or entity has made a timely request for administrative review, and  
9 the penalty has been upheld in whole or in part upon review ~~Unless a timely notice of appeal~~  
10 ~~of the hearing officer's decision is filed,~~ any administrative penalty imposed by the hearing officer  
11 shall be due and payable not later than ten City business days from the date of the notice of decision  
12 issued under subparagraph ~~(e)~~ (d)(4).

13 (3) If all or any portion of the amount a penalty due and payable under paragraphs (1)  
14 or (2) remains unpaid after that the specified due date, the Director of Public Works shall send the  
15 violation written notice that the penalty is overdue. Penalties that remain unpaid 30 days after the due  
16 date shall be subject to a late payment penalty of ten percent (10%) plus interest at the rate of one  
17 percent (1%) per month on the outstanding balance, which shall be added to the penalty amounts from  
18 the date that payment is due. Persons and entities against whom administrative penalties are imposed  
19 shall also be liable for the costs and attorney's fees incurred by the City and County in bringing any  
20 civil action to enforce the provisions of this section, including obtaining a ~~court order~~ judgment for  
21 the amount requiring payment of the administrative penalty and other costs and charges.

22 (2)(4) Where there is a nexus between the violation and property in the City owned by the  
23 violation, the Director shall further inform the violator that if the amount due is not paid within 30 days  
24 from the date of the notice, the Director shall initiate proceedings to make the amount due and all  
25



1 additional authorized costs and charges, including attorneys fees, a lien on the property. Such liens  
2 shall be imposed in accordance with Chapter 10, Article XX of the Administrative Code.

3 ~~(e)~~(f) The revenues generated by penalties from an administrative citation issued pursuant to  
4 this Section may be expended only by the department that is responsible for issuing the administrative  
5 citation, except that each department other than Public Works that issues administrative citations  
6 pursuant to this Section shall reimburse the Department of Public Works for the costs incurred by the  
7 Department of Public Works in administering review of those citations issued by the other department.  
8 The revenues from administrative citations issued by Class 8280 Environmental Control Officers and  
9 8282 Senior Environmental Control Officers may be expended exclusively by the Department of  
10 Public Works for the purpose of funding litter enforcement and abatement except where the use or  
11 expenditure of those revenues is specifically directed by law to another program within the Department  
12 of Public Works

13 **SEC. 63. OBSTRUCTIONS ON STREETS AND SIDEWALKS.**

14 (a) It shall be unlawful for any person, firm or corporation, occupying or having charge  
15 or control of any premises, to place or cause to be placed, or suffer to remain upon the  
16 sidewalk, or upon the half of the street in front of such premises, any Article or substance  
17 which shall obstruct the passage of such street or sidewalk.

18 (b) It shall be unlawful for any person, firm or corporation to enter into a lease, rental  
19 agreement or contract of any kind, written or oral, with or without compensation, for the use of  
20 any street or sidewalk.

21 (c) As an alternative to any other fines or penalties applicable to a violation of this section, any  
22 person, firm or corporation who is in violation of this section shall be subject to an administrative  
23 penalty not to exceed \$300 for each violation. The administrative penalty shall be assessed, enforced  
24 and collected in accordance with Section 39-1 of this Code.

1 Section 2. The San Francisco Health Code is hereby amended by amending Sections  
2 41.13, 283.1 287, and ~~584~~600, to read as follows:

3 **SEC. 41.13. PENALTIES.**

4 Any person violating any of the provisions of Sections 41.1 through 41.12, inclusive, of  
5 this Article, except the provisions of Sections 41.5.1, 41.11(c), 41.12(a) and 41.12(d), shall be  
6 deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of  
7 not more than \$500 or by imprisonment in the County Jail for a period of not more than six  
8 months, or by both such fine and imprisonment.

9 Any person violating the provisions of Sections 40, 41.11(c) and 41.12(a) of this Article  
10 shall be deemed to be guilty of an infraction and upon conviction thereof shall be punished for  
11 the first offense by a fine not to exceed \$10; for the second offense by a fine not to exceed  
12 \$25; for a third and each additional offense by a fine not to exceed \$50.

13 Any person violating the provisions of Section 41.12(d) of this Article shall: (1) upon the  
14 first offense in any 12-month period, be deemed to be guilty of an infraction and upon  
15 conviction thereof shall be punished by a fine not to exceed \$10; (2) upon the second offense  
16 in any 12-month period, be deemed to be guilty of an infraction and upon conviction thereof  
17 shall be punished by a fine not to exceed \$50; (3) upon the third and each additional offense  
18 in any 12-month period, be deemed to be guilty of a misdemeanor and upon conviction  
19 thereof shall be punished by a fine of not more than \$500 or by imprisonment in the County  
20 Jail for a period of not more than six months, or by both such fine and imprisonment.

21 Any person violating the provisions of Section 41.5.1 of this Article shall be subject to the  
22 penalties provided in said section.

23 *In the alternative to any other penalty imposed under this Section for a violation of Section 40,*  
24 *a person violating Section 40 may be assessed an administrative penalty not to exceed \$300 for each*  
25

1 violation. Such penalty shall be assessed, enforced and collected in accordance with Section 39-1 of  
2 the Police Code.

3 **SEC. 283.1. PENALTY.**

4 Any person, firm or corporation violating any of the provisions of Section 283 of this  
5 Article shall be guilty of an infraction and, upon conviction thereof, shall be punished for the  
6 first offense by a fine of not less than \$80 nor more than \$100; and for a second offense by a  
7 fine of not less than \$150 nor more than \$200; and for each additional offense by a fine of not  
8 less than \$250 nor more than \$500. In the alternative, any person, firm or corporation violating  
9 any of the provisions of Section 283 of this Article may be assessed an administrative penalty not to  
10 exceed \$300 for each violation. Such penalty shall be assessed, enforced and collected in accordance  
11 with Section 39-1 of the Police Code.

12 **SEC. 287. PENALTIES.**

13 Any person who shall violate any of the provisions of Section 280 or 286 of this Article,  
14 shall be guilty of an infraction or a misdemeanor. If charged as an infraction, upon conviction  
15 thereof, said person shall be punished for the first offense by a fine of not less than \$80 nor  
16 more than \$100; for a second offense by a fine of not less than \$150 nor more than \$200; and  
17 for each additional offense by a fine of not less than \$250 nor more than \$500.

18 If charged as a misdemeanor, upon conviction thereof, said person shall be punished  
19 by imprisonment in the County Jail not exceeding one year or a fine not exceeding \$1,000.  
20 The complaint charging such violation shall specify whether the violation is a misdemeanor or  
21 infraction, which decision shall be solely that of the District Attorney.

22 As an alternative to any other fines or penalties applicable to a violation of Section 280 of this  
23 Article, any person who is in violation of Section 280 may be subject to an administrative penalty not  
24 to exceed \$300 for each violation. The administrative penalty shall be assessed, enforced and  
25 collected in accordance with Section 39-1 of the Police Code.

1           **SEC. 581. NUISANCE PROHIBITED.**

2           (a)     No Person shall have upon any premises or real property owned,  
3 occupied or controlled by him, or her, or it any public nuisance.

4           (b)     The following conditions are hereby declared to be a public nuisance:

5           (1)     Any accumulation of filth, garbage, unsanitary debris or waste material or  
6 decaying animal or vegetable matter unless such materials are set out for collection in  
7 compliance with Section 283 of this Code;

8           (2)     Any accumulation of hay, grass, straw, weeds, or vegetation overgrowth;

9           (3)     Any accumulation of waste paper, litter or combustible trash unless such  
10 materials are set out for collection in compliance with Section 283 of this Code;

11          (4)     Any buildings, structures, or portion thereof found to be unsanitary

12          (5)     Any matter or material which constitutes, or is contaminated by, animal or  
13 human excrement, urine or other biological fluids;

14          (6)     Any visible or otherwise demonstrable growth of mold or mildew in the  
15 interiors of any buildings or facilities;

16          (7)     Any pest harborage or infestation including but not limited to pigeons,  
17 skunks, raccoons, opossums, and snakes, except for pigeon harborages that comply with  
18 Section 37(e) of this Code;

19          (8)     Any noxious insect harborage or infestation including, but not limited to  
20 cockroaches, fleas, scabies, lice, spiders or other arachnids, houseflies, wasps and  
21 mosquitoes, except for harborages for honey-producing bees of the genus *Apis* regulated by  
22 the California Food and Agriculture Code Sections 29000 et seq. which are not otherwise  
23 determined to be a nuisance under State law.

24          (9)     Any article of food or drink in the possession or under the control of any  
25 person which is tainted, decayed, spoiled or otherwise unwholesome or unfit to be eaten or

1 drunk. The term "food" as used in this subparagraph includes all articles used for food and  
2 drink by humans, whether simple, mixed or compound.

3 (10) Any lead hazards which are within the control of the Owner or Manager of  
4 the building, structure or property. Unless otherwise stated in this Article, the term "lead  
5 hazards" as used in this subparagraph shall have the same meaning as that set forth in  
6 Section 1603 of this Code. For the purposes of this subparagraph, the term "children" as  
7 used in Section 1603 of this Code shall mean any person who is up to 72 months of age. For  
8 the purposes of this subparagraph, any paint, both interior and exterior, found on buildings  
9 and other structures built before 1979 is presumed to be lead-based paint, such presumption  
10 may be rebutted by competent evidence demonstrating that such paint is not lead-based  
11 paint;

12 (11) Any vacant lots, open spaces, and other properties in the City and County  
13 of San Francisco, which become infested with poison oak (*Toxicodendron diversilobum*) or  
14 poison ivy shrub (*Rhus toxicodendron*) hereafter referred to as poisonous growth;

15 (12) Any violation of Section 37 of this Code;

16 (13) Any violation of Section 92 of this Code;

17 (14) Any violation of Section 590 of this Article;

18 (15) Anything else that the Director deems to be a threat to public health and  
19 safety.

20 ~~(c) As an alternative to any other fines or penalties applicable to a violation of~~  
21 ~~subparagraphs (b)(1), (b)(2) or (b)(3) of this section, any Person who is in violation of one or~~  
22 ~~more of those subparagraphs shall be subject to an administrative penalty not to exceed~~  
23 ~~\$300. The administrative penalty shall be assessed, enforced and collected in accordance~~  
24 ~~with Section 39-1 of the Police Code.~~

1           **SEC. 600. PENALTY.**

2           In addition to any other penalties provided in this Article, any person, or their  
3 agents, violating any of the provisions of this Article, or failing to comply with any direction or  
4 order of the Director given pursuant to the provisions of this Article, shall be guilty of a  
5 misdemeanor, and upon conviction thereof shall be punished by a fine of not less than \$100  
6 and not more than \$1000, or by imprisonment if the County Jail for a period of not less than  
7 10 days nor more than three months, or by both such fine and imprisonment.

8           As an alternative to any other fines or penalties applicable to a violation of  
9 subparagraphs (b)(1), (b)(2) or (b)(3) of Section 581, any person or their agents who are in  
10 violation of one or more of those subparagraphs shall be subject to an administrative penalty  
11 not to exceed \$300 for each violation. The administrative penalty shall be assessed, enforced  
12 and collected in accordance with Section 39-1 of the Police Code.

13           Section 3. The San Francisco Public Works Code is hereby amended by amending  
14 Sections 170, 173, 174.2, 184.63, and ~~724.4~~724.5 to read as follows:

15           **SEC. 170. GARBAGE RECEPTACLES.**

16           **(a) Garbage Receptacles Prohibited on Sidewalk, Street, or Any Public Right-of-**  
17 **Way.** Except as otherwise provided in Sections 170.1 and 173, Chapter X, Part II, San  
18 Francisco Municipal Code (Public Works Code), no person, firm or corporation occupying or  
19 having charge or control of any premises shall place or cause to be placed, or suffer to  
20 remain, upon the sidewalk, street or any other dedicated public right-of-way, any can,  
21 container or receptacle used for the collection of garbage, refuse, ashes, cinder, sludge, offal,  
22 broken glass, crockery, tins, boxes, animal or vegetable matter, rubbish or other like matter,  
23 except on the day the contents of said receptacle are to be collected by the licensed collector  
24 thereof or after the hour of 6:00 p.m. of the day immediately prior to the day of said collection;  
25 provided further, that any person, firm or corporation occupying or having charge of any

1 commercial premises shall remove any such receptacle from the sidewalk, street or other  
2 dedicated public right-of-way immediately after the contents of said receptacle have been  
3 collected or immediately upon opening said premises for business on the day of said  
4 collection.

5 (b) The Director of Public Works, in issuing any written notice to abolish, abate and  
6 remove a nuisance under Section 174.1 of this Article, may direct any person, firm or  
7 corporation occupying or having charge of any commercial premises, to securely lock every  
8 can, container or receptacle placed for collection pursuant to Section 170(a) on any area open  
9 to the public, to prevent access to the contents thereof by any person other than the licensed  
10 refuse collector. Any such written notice shall be issued as set forth in Section 174.1.

11 (c) Each violation of Subsection (a) shall constitute an infraction and shall be  
12 punishable by a fine of not less than \$80 nor more than \$100; for a second offense by a fine  
13 not less than \$150 nor more than \$200; and for each additional offense by a fine not less than  
14 \$250 nor more than \$500. In the alternative, an administrative penalty not to exceed \$250 may be  
15 assessed for each violation. Such penalty shall be assessed, enforced and collected in accordance with  
16 Section 39-1 of the Police Code.

17 **SEC. 173. PLACEMENT AND MAINTENANCE OF LITTER RECEPTACLES.**

18 (a) It is the intent of this Section to ensure that public areas are kept clean and free  
19 from litter.

20 (b) Any person, firm or corporation operating a grocery store, a liquor store or an  
21 establishment selling food or beverages for consumption off the premises shall place and  
22 maintain a litter receptacle outside of each exit from said premises for the use of the patrons  
23 thereof during business hours.

24 (c) Any person, firm, corporation, or property owner operating a place of employment  
25 shall provide and maintain adjacent to the place of employment sufficient ashtrays or other

1 receptacles for the disposal of cigarettes, cigars, and other similar combustible products used  
2 by employees and patrons who smoke. The Director of Public Works shall authorize the  
3 placement of such ashtrays or other receptacles in the public right-of-way where necessary.

4 (d) The design, capacity, location, and number of ashtrays and receptacles shall be  
5 prescribed by the Director of Public Works. Decals may be placed upon said receptacles  
6 subject to the limitations set forth in Section 171 of this Article.

7 (e) The receptacle shall be emptied when full and at the close of business each day  
8 and the contents thereof shall be stored or set out for collection in the same manner as other  
9 refuse generated in the operation of the business. Each receptacle shall be maintained in a  
10 clean and sanitary condition.

11 (f) Violation of this Section shall constitute an infraction and shall be punishable by a  
12 fine of not less than \$80 nor more than \$100; for a second offense by a fine not less than  
13 \$150 nor more than \$200; and for each additional offense by a fine not less than \$250 nor  
14 more than \$500. In the alternative, an administrative penalty not to exceed \$250 may be assessed for  
15 each violation. Such penalty shall be assessed, enforced and collected in accordance with Section 39-1  
16 of the Police Code.

17 **SEC. 174.2. PENALTIES FOR VIOLATION.**

18 Any owner of property or any business occupying property which abuts a public  
19 sidewalk, stairway or other pedestrian right-of-way for public pedestrian travel, or both such  
20 owner and business jointly and severally, who fail to comply with the Director of Public Works'  
21 notice to abate the nuisance as specified in Section 174.1 of this Code shall be subject to an  
22 ~~civil~~ administrative penalty of not more than \$200 300, assessed, enforced and collected in  
23 accordance with Section 39-1 of the Police Code. Further, a violation of any of the provisions of  
24 this Article shall constitute an infraction. Upon conviction thereof, said owner of the abutting  
25 property and/or the business occupying the abutting property shall be punished for the first



1 offense by a fine of not less than \$30 or more than \$100 and for a second and each additional  
2 offense by a fine of not less than \$100 or more than \$500. The provisions of this Section shall  
3 not apply to any department, board or commission of the City and County.

4 **SEC. 184.63. CIVIL PENALTY.**

5 (a) Any Person in violation of any provision of this Article and of failing to pay the  
6 amount billed such Person for such violation shall be liable for payment of a civil penalty in an  
7 amount equal to (1) the costs incurred by the City occasioned by the failure to remove Signs  
8 and by damaged property occasioned by their posting or removal, and (2) the costs to the City  
9 incurred in obtaining imposition of such civil penalties through litigation, including the cost of  
10 paying City employees or other persons to engage in the litigation, and (3) an additional  
11 amount equal to 50 percent of the total of (1) and (2) of this Subsection. ~~Alternatively, this~~ As  
12 an alternative, the civil penalty authorized by this Section may be assessed as an administrative  
13 penalty, and by an administrative citation issued by Department of Public Works officials  
14 designated in Section 38 of the Police Code. Such administrative penalties shall be assessed,  
15 enforced and collected in accordance with Section 39-1 of the Police Code, and shall include the  
16 costs to the City incurred in obtaining the imposition of the penalty, including the cost of  
17 paying City employees to engage in the administrative process.

18 (b) All monies received by the City in payment to civil penalties for violation of this  
19 Article shall be deposited to the credit of the Bureau of Street Environmental Services of the  
20 Department of Public Works in a special fund, to be entitled "Sign Removal Fund." Revenue  
21 from such fund shall be used exclusively for the costs related to the removal of illegally posted  
22 Signs and repair of City property damaged by such posting. Balances remaining in the fund at  
23 the close of any fiscal year shall have been deemed to have been provided for a specific  
24 purpose within the meaning of Section 9.113 of the Charter, and shall be carried forward and  
25

1 accumulated in said fund for the purposes recited herein. The monies received into this fund  
2 are hereby appropriated exclusively for the purposes set forth herein.

3 **SEC. 724.5. EXCEEDING PERMISSIBLE USE OR OCCUPATION WITHOUT**  
4 **PERMISSION - PENALTY FEE AND CRIMINAL PENALTY.**

5 (a) If the Director of Public Works determines that the permittee has exceeded the  
6 scope of the temporary street occupancy permit, either in terms of duration or area, or  
7 determines any other violation of the permit terms or conditions has occurred, the Director of  
8 Public Works shall order the permittee to correct the violation within a specified time period. If  
9 any person has occupied public right-of-way without permission for purposes of building  
10 construction operation or for any other purpose, the Director shall immediately order the  
11 violator to vacate the occupied area. Should the violation not be corrected as ordered or in  
12 the case of occupation without a permit, the permittee or person shall pay a penalty fee of up  
13 to \$1,000 per day for each day of violation. Failure to pay any fee assessed under these  
14 provisions shall constitute good cause for immediate revocation of the temporary street  
15 occupancy permit or removal of unpermitted obstructions, and the project property shall be  
16 subject to a lien in the same amount, in accordance with the requirements of Article XX of  
17 Chapter 10 of the San Francisco Administrative Code, commencing with Section 10.230.

18 **(b) Criminal Penalty.**

19 (1) Any person who shall violate any of the provisions of this Section shall be guilty of  
20 an infraction at each location where such violation occurs. Every violation determined to be an  
21 infraction is punishable by (1) a fine not exceeding \$100 for the first violation within one year;  
22 (2) a fine not exceeding \$200 for a second violation within one year from the date of the first  
23 violation; (3) a fine not exceeding \$500 for the third and each additional violation within one  
24 year from the date of the first violation.

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

5 (c) Administrative Penalty.

6 In the alternative to the criminal penalty authorized by Subsection (b), an of this Section for  
7 violations of Section 724.4(a), Department of Public Works officials designated in Section 38  
8 of the Police Code may issue administrative penalty citations for violations of Section 724(a).  
9 The administrative penalty shall not to exceed \$300 may be assessed for each violation. Such  
10 penalty shall be assessed, enforced and collected in accordance with Section 39-1 of the Police Code.

11  
12 APPROVED AS TO FORM:  
13 DENNIS J. HERRERA, City Attorney

14 By:   
15 DAVID A. GREENBURG  
16 Deputy City Attorney  
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# 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:** 030482

**Date Passed:**

Ordinance amending Sections 37, 38, and 63 of the Police Code, Sections 41.13, 283.1, 287 and 600 of the Health Code and Sections 170, 173, 174, 174.2, 184.63, and 724.5 of the Public Works Code to authorize the assessment of administrative penalties as an alternative to infractions for littering and specified nuisance violations; amending the Police Code by adding a new Section 39-1 to establish procedures for the imposition, review and collection of administrative penalties.

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April 22, 2003 Board of Supervisors — AMENDED, AN AMENDMENT OF THE WHOLE BEARING SAME TITLE

Ayes: 11 - Ammiano, Daly, Dufty, Gonzalez, Hall, Ma, Maxwell, McGoldrick, Newsom, Peskin, Sandoval

April 22, 2003 Board of Supervisors — PASSED ON FIRST READING AS AMENDED

Ayes: 10 - Ammiano, Daly, Dufty, Gonzalez, Ma, Maxwell, McGoldrick, Newsom, Peskin, Sandoval

Noes: 1 - Hall

April 29, 2003 Board of Supervisors — FINALLY PASSED


Ayes: 11 - Ammiano, Daly, Dufty, Gonzalez, Hall, Ma, Maxwell, McGoldrick, Newsom, Peskin, Sandoval

File No. 030482

I hereby certify that the foregoing Ordinance was **FINALLY PASSED** on April 29, 2003 by the Board of Supervisors of the City and County of San Francisco.

MAY 09 2003

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

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

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