

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; and making environmental findings.**

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

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

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

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

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

23 2. In Resolution No. 585-10, this Board found that hosting the Event would generate
24 significant public benefits for the City including: (i) the generation of significant new jobs and
25 economic development in a very short period of time; (ii) substantially increased public access

1 to the waterfront; (iii) new opportunities for people to view and enjoy the San Francisco Bay;
2 and (iv) an extraordinary opportunity to showcase San Francisco and the Bay to the nation
3 and the world.

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

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

24 5. By adoption of this ordinance, this Board of Supervisors intends to establish
25 restrictions on all aerial signs and advertising in the airspace over the Event in furtherance of

1 the City’s goals of ensuring a successful Event, promoting a pleasant spectator experience,
2 and protecting public safety, as well as the City’s responsibilities under the terms of the Host
3 Agreement.

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

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8 **ARTICLE 49. AERIAL SIGNS.**

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10 **SEC. 4900. DEFINITIONS.**

11 “Director” shall mean the Executive Director of the Port of San Francisco or his or her
12 designee.

13 “Event Airspace” shall mean the airspace located above an area extending one-half mile
14 laterally in each direction from the Primary Regulated Area established for the 2013 34th America’s
15 Cup regattas by the United States Coast Guard under 33 U.S.C. 1233 § 100.T11-0551B.

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17 **SEC. 4901. GENERAL PROHIBITION.**

18 Except as allowed under Section 4902, no person shall use any type of aircraft or other self-
19 propelled or buoyant airborne object to display in any manner or for any purpose any sign or
20 advertising device within the Event Airspace. For the purpose of this section, a “sign or advertising
21 device” includes, but is not limited to, a poster, banner, writing, picture, painting, light, model, display,
22 emblem, notice, illustration, insignia, or symbol. A “sign or advertising device” does not include a
23 sign or advertising device when placed on or attached to any ground, building, or structure. Such a
24 sign or advertising device shall be permitted, prohibited, or otherwise regulated as provided under any
25 applicable law.

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2 **SEC. 4902. EXCEPTIONS.**

3 (a) Section 4901 shall not prohibit the display of an identifying mark, trade name, trade
4 insignia, or trademark on the exterior of an aircraft or self-propelled or buoyant airborne object if the
5 displayed item is under the ownership or registration of the aircraft's or airborne object's owner.

6 (b) Section 4901 shall not prohibit the display of a sign or advertising device placed wholly and
7 visible only within the interior of an aircraft or self-propelled or buoyant airborne object.

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9 **SEC. 4903. CRIMINAL AND CIVIL PENALTIES.**

10 (a) Criminal Penalty. Any person who violates any provision of this Article shall be deemed
11 guilty of an infraction. Any person who violates this Article more than once prior to its expiration shall
12 be guilty of an infraction or a misdemeanor, at the discretion of the prosecutor. A first violation of this
13 Article is an infraction is punishable by a fine of not more than \$100. A second violation prior to the
14 expiration of this Article is an infraction punishable by a fine of not more than \$200 or a misdemeanor
15 punishable by a fine of not to exceed \$1,000 or by imprisonment in the County Jail for a period not to
16 exceed six months, or by both such fine and imprisonment, at the discretion of the prosecutor. A third
17 or subsequent violation prior to the expiration of this Article is an infraction punishable by a fine of not
18 more than \$500 or a misdemeanor punishable by a fine of not to exceed \$1,000 or by imprisonment in
19 the County Jail for a period not to exceed six months, or by both such fine and imprisonment, at the
20 discretion of the prosecutor. Each day a person engages in conduct in violation of this Article shall
21 constitute a separate violation.

22 (b) Administrative Penalty. The Director may issue administrative citations for the violation of
23 any provision of this Article. San Francisco Administrative Code Chapter 100, "Procedures
24 Governing the Imposition of Administrative Fines," is hereby incorporated in its entirety and shall

1 govern the amount of fees and the procedure for imposition, enforcement, collection, and
2 administrative review of administrative citations issued under this Article.

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4 **SEC. 4904. CONFLICT WITH FEDERAL OR STATE LAW.**

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

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11 **SEC. 4905. SUNSET CLAUSE.**

12 This Article shall expire on September 30, 2013 or upon the date of receipt of written
13 certification from the City Attorney to the Clerk of the Board of Supervisors that the Federal Aviation
14 Administration has issued a temporary flight restriction for the Event Airspace under 14 CFR Sec. 145
15 that prohibits the use of this airspace by aircraft not authorized or accredited by the event, whichever
16 occurs sooner. Upon expiration of this Article, the City Attorney shall cause this Article to be removed
17 from the Police Code.

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

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

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4 APPROVED AS TO FORM:
5 DENNIS J. HERRERA, City Attorney

6 By: _____
7 FRANCESCA GESSNER
8 Deputy City Attorney

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