

FILE NO. 081009

ORDINANCE NO. **312-08**

1 [Prohibiting Smoking in Taxicabs and Motor Vehicles for Hire and Free Distribution of  
2 Tobacco Promotional Items Products and Accessories in Places Open to the Public.]

3 Ordinance amending the San Francisco Health Code by amending Section 1009.22 and  
4 amending the San Francisco Police Code by amending Section 1143 and repealing  
5 Sections 53, 53.1, and 1098, to prohibit smoking in taxicabs and other motor vehicles  
6 for hire, and amending San Francisco Police Code Section 95, to prohibit the free  
7 distribution of tobacco promotional items products and accessories in places open to the  
8 public.

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

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

13 Section 1. The San Francisco Health Code is hereby amended by amending Section  
14 1009.22, to read as follows:

15 **SEC. 1009.22. PROHIBITING SMOKING IN BUILDINGS, CERTAIN VEHICLES, AND**  
16 **ENCLOSED STRUCTURES CONTAINING CERTAIN USES AND CERTAIN SPORTS**  
17 **STADIUMS.**

18 (a) Smoking is prohibited in buildings and enclosed structures which contain any of  
19 the facilities or uses set forth below.

20 (1) Facilities owned or leased by the City and County of San Francisco;  
21 every commission, department or agency, with jurisdiction over such property shall adopt  
22 regulations or policies implementing the provisions of this Article; provided, however, with  
23 respect to facilities located outside the City and County of San Francisco, the regulations or  
24 policies shall prohibit smoking in enclosed areas during those times that the public has  
25 access, except that (A) in any enclosed area a designated smoking area may be provided if it

1 is physically separated from and no larger than the nonsmoking area, and (B) when the public  
2 does not have access to an enclosed area, the provisions of Article 19 apply;

3 (2) Facilities in which the business of any governmental body or agency is  
4 conducted, including hearing rooms, courtrooms or places of public assembly;

5 (3) Polling places;

6 (4) Health facilities, including, but not limited to, hospitals, long term care  
7 facilities, doctors' and dentists' offices, inpatient rooms, and outpatient examination and  
8 treatment rooms;

9 (5) Educational facilities;

10 (6) Business establishments;

11 (7) Nonprofit establishments, except that persons qualifying under California  
12 Health Code Section 11362.5 to use medical marijuana may smoke medical marijuana on the  
13 premises of a nonprofit medical marijuana buyer's club;

14 (8) Aquariums, galleries, libraries and museums;

15 (9) Child care facilities, except when located in private homes;

16 (10) Facilities used for exhibiting motion pictures, drama, dance, musical  
17 performance, lectures, or other entertainment;

18 (11) Sports arenas; provided, however, that Subsection (b) shall govern sports  
19 stadiums as defined in that subsection;

20 (12) Convention facilities;

21 (13) Restaurants, subject to the provisions of Section 1009.24.

22 (14) Ticketing, boarding and waiting areas of public transit systems, including  
23 bus, train, trolley and cable car stops and shelters.

1 Smoking is prohibited throughout the building or structure and in the common areas,  
2 including the elevators, hallways, stairways, restrooms, conference and meetings rooms, and  
3 eating and break rooms, if any.

4 (b) No owner, manager, or operator of a sports stadium shall knowingly or  
5 intentionally permit, and no person on the premises shall engage in, the smoking of tobacco  
6 products in any enclosed or open space at a sports stadium except in (1) concourses and  
7 ramps outside seating areas, (2) private suites and corridors to private suites, and (3) areas  
8 designated for parking. Any portion of a sports stadium used as a bar or restaurant shall be  
9 governed by the provisions of this Article regulating smoking in bars and restaurants. For  
10 purposes of this subsection, a sports stadium means a publicly owned facility which has a  
11 seating capacity of at least 30,000 people.

12 (c) Smoking is prohibited at all times in taxicabs and other motor vehicles for hire  
13 as defined in the Police Code, whether owned or leased by the driver, whether or not occupied  
14 by one or more passengers, and whether or not in operation.

15 (d) (e) It is unlawful for any person to smoke in any area where this Article prohibits  
16 smoking. It is unlawful for the owner of any property, facility or establishment subject to this  
17 Article or if a different person has the right to possession or management of such property,  
18 facility or establishment, for that person to permit any person to smoke in any area where  
19 smoking is prohibited by this Article.

20 (e) (d) No person who owns, operates or manages property will be deemed to be in  
21 violation of the requirements of this Article with respect to persons smoking in such areas over  
22 whom they have no right of direction and control if they have taken the following reasonable  
23 steps to prevent smoking by such persons:  
24  
25

1 (1) Posted clear and prominent "no smoking" signs at each entrance to the  
2 premises;

3 (2) Requested, when appropriate, that such person refrain from smoking.  
4 For purposes of this subsection, "reasonable steps" shall not include the physical ejection of  
5 a person from the premises.  
6

7 Section 2. The San Francisco Police Code is hereby amended by repealing Sections  
8 53, 53.1, and 1098 in their entirety.

9 **~~SEC. 53. SMOKING PROHIBITED IN TAXICABS WHERE SIGN POSTED.~~**

10 ~~(a) Purpose. Because the smoking of tobacco or any other substance is a danger to health and~~  
11 ~~is a cause of considerable annoyance and discomfort to those who must work in confined spaces, the~~  
12 ~~Board of Supervisors hereby declares that the purpose of this Section is to protect the health and~~  
13 ~~welfare of taxicab drivers who desire to work in a smoke-free environment.~~

14 ~~(b) "No Smoking" Signs Required To Be Provided. Every person, firm or corporation~~  
15 ~~operating a taxicab or taxicabs, as defined in Section 1076 of this Code, pursuant to a permit issued by~~  
16 ~~the Chief of Police shall provide a "no smoking" sign and/or the international no smoking symbol for~~  
17 ~~each vehicle during all hours of operation and shall authorize the driver of the vehicle to determine~~  
18 ~~whether or not to post the no smoking sign or symbol in the vehicle.~~

19 ~~(c) Smoking Prohibited Where "No Smoking" Sign Posted. It shall be unlawful for any person~~  
20 ~~to smoke or carry a lighted cigar, cigarette or pipe in a taxicab wherein a "no smoking" sign and/or the~~  
21 ~~international no smoking symbol is posted in a place readily to be seen and read by the passengers.~~

22 ~~(d) No Private Right of Action. In undertaking the enforcement of this ordinance, the City and~~  
23 ~~County of San Francisco is assuming an undertaking only to promote the general welfare. It is not~~  
24  
25

1 ~~assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable~~  
2 ~~in money damages to any person who claims that such breach proximately caused injury.~~

3 ~~(e) No Intent to Affect Rights and Obligations Under State Law. This Section is not intended to~~  
4 ~~affect any rights or obligations of taxicab operators or patrons conferred or imposed by state law.~~

5  
6 ***SEC. 53.1. PENALTY.***

7 ~~Any person who shall violate the provisions of Section 53 of this Article shall be guilty of a~~  
8 ~~misdemeanor and, upon conviction thereof, shall be punished by a fine not exceeding \$25 or by~~  
9 ~~imprisonment in the County Jail for not more than 10 days, or by both such fine and imprisonment.~~

10  
11 ***SEC. 1098. SMOKING BY DRIVERS PROHIBITED.***

12 ~~It shall be unlawful for any driver of a motor vehicle for hire in the City and County of San~~  
13 ~~Francisco to smoke any cigar, pipe or cigarette, or to burn tobacco while passengers are occupying~~  
14 ~~any of the seats in such vehicle.~~

15  
16 Section 3. The San Francisco Police Code is hereby amended by amending  
17 Section 1143, to read as follows:

18 ***SEC. 1143. REFUSAL TO CONVEY; REFUSAL TO OBEY ~~POSTED "NO SMOKING" SIGN~~***  
19 ***SMOKING BAN IN TAXICABS.***

20 Notwithstanding the provisions of Section 1141 of this Article, a taxicab driver ~~who has~~  
21 ~~posted a "no smoking" sign or symbol in the vehicle in accordance with Section 53 of this Police code~~  
22 may refuse to convey any person who refuses to obey the ban against smoking in taxicabs in  
23 Article 19F of the Health Code. ~~"no smoking" sign; provided, however, that the taxicab driver brings~~  
24 ~~the "no smoking" sign or symbol to the attention of said person before he or she enters the taxicab.~~

1 Section 4. The San Francisco Police Code is hereby amended by amending  
2 Section 95, to read as follows:

3 **SEC. 95. PROHIBITING THE FREE DISTRIBUTION OF TOBACCO IN PUBLIC PLACES**  
4 **AND PLACES OPEN TO THE PUBLIC; PENALTY.**

5 (a) No person, firm, association or corporation in the business of selling or otherwise  
6 distributing cigarettes or other tobacco or smoking products for commercial purposes shall in  
7 the course of such business distribute, or direct, authorize, or permit any agent or employee to  
8 distribute, (1) any cigarette or other tobacco or smoking product, including any smokeless  
9 tobacco product, or (2) coupons, certificates, or other ~~written material which may be redeemed for~~  
10 ~~tobacco products without charge items that can be exchanged or used to acquire any cigarette or other~~  
11 ~~tobacco or smoking product, including a voucher, ticket, rebate, rebate offer, check, credit, token, code,~~  
12 ~~password or any item labeled "coupon" or "coupon offer"; or (3) any apparel or other merchandise,~~  
13 ~~the sole purpose of which is to advertise any cigarette or other tobacco or smoking product~~  
14 ~~tobacco accessories, including cigarette papers or wrappers, pipes, holders of smoking~~  
15 ~~materials of all types, cigarette rolling machines, and any other item designed primarily for the~~  
16 ~~smoking or ingestion of tobacco or smoking product, to any person on any public street or~~  
17 ~~sidewalk or in any public park or playground or on any other public ground in any public~~  
18 ~~building or place open to the public.~~


19 (b) No agent or employee of any person, firm, association or corporation in the  
20 business of selling or otherwise distributing cigarettes or other tobacco or smoking products for  
21 commercial purposes shall in the course of such business distribute (1) any cigarette or other  
22 tobacco or smoking product, including any smokeless tobacco product, or (2) coupons,  
23 certificates, or other ~~written material which may be redeemed for tobacco products without charge~~  
24 ~~items that can be exchanged or used to acquire any cigarette or other tobacco or smoking product,~~

1 including a voucher, ticket, rebate, rebate offer, check, credit, token, code, password or any item labeled  
2 "coupon" or "coupon offer", or (3) tobacco accessories, including cigarette papers or wrappers,  
3 pipes, holders of smoking materials of all types, cigarette rolling machines, and any other item  
4 designed primarily for the smoking or ingestion of tobacco or smoking product, to any person  
5 on any public street or sidewalk or in any public park or playground or on any other public  
6 ground or in any public building or place open to the public.

7 (c) Any person, firm, association or corporation who violates Subsection (a) shall be  
8 deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of \$1,000 or  
9 by imprisonment in the County Jail for a period not to exceed six months, or by both such fine  
10 and imprisonment. Each distribution of cigarettes or other tobacco or smoking products or  
11 tobacco accessories to a person shall be considered a separate offense.

12 (d) Any person violating Subsection (b) shall be deemed guilty of an infraction. Every  
13 violation is punishable by (1) a fine not exceeding \$100 for a first violation; (2) a fine not  
14 exceeding \$200 for a second violation within one year; (3) a fine not exceeding \$500 for each  
15 additional violation within one year. Each distribution of cigarettes or other tobacco or smoking  
16 products or tobacco accessories to a person shall be considered a separate offense.

17  
18  
19 APPROVED AS TO FORM:  
20 DENNIS J. HERRERA, City Attorney

21 By:   
22 Terence J. Howzell  
23 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:** 081009

**Date Passed:**

Ordinance amending the San Francisco Health Code by amending Section 1009.22 and amending the San Francisco Police Code by amending Section 1143 and repealing Sections 53, 53.1, and 1098, to prohibit smoking in taxicabs and other motor vehicles for hire, and amending San Francisco Police Code Section 95, to prohibit the free distribution of tobacco products and accessories in places open to the public.

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December 9, 2008 Board of Supervisors — PASSED ON FIRST READING

Ayes: 11 - Alioto-Pier, Campos, Chu, Daly, Dufty, Elsbernd, Maxwell,  
McGoldrick, Mirkarimi, Peskin, Sandoval

December 16, 2008 Board of Supervisors — FINALLY PASSED

Ayes: 11 - Alioto-Pier, Campos, Chu, Daly, Dufty, Elsbernd, Maxwell,  
McGoldrick, Mirkarimi, Peskin, Sandoval



File No. 081009

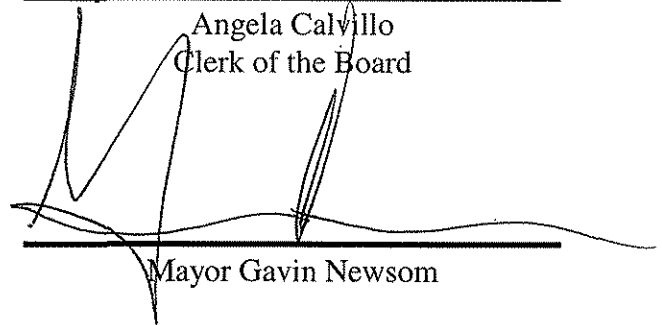
I hereby certify that the foregoing Ordinance was **FINALLY PASSED** on December 16, 2008 by the Board of Supervisors of the City and County of San Francisco.



Angela Calvillo  
Clerk of the Board

12/19/2008

Date Approved



Mayor Gavin Newsom