BOARD of SUPERVISORS

City Hall
Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

MEMORANDUM

LAND USE AND ECONOMIC DEVELOPMENT COMMITTEE

SAN FRANCISCO BOARD OF SUPERVISORS

TO: Supervisor Eric Mar, Chair
Land Use and Economic Development Committee

FROM: Derek Evans, Committee Clerk

DATE: November 20, 2012

SUBJECT: **COMMITTEE REPORT, BOARD MEETING**
Tuesday, November 20, 2012

The following files should be presented as a **COMMITTEE REPORT** at the Board meeting, Tuesday, November 20, 2012. These items were acted upon at the Committee Meeting on November 19, 2012, at 1:00 p.m., by the votes indicated.

Item No. 39 File No. 120996

Ordinance amending the San Francisco Planning Code by adding Section 318 to put a cap on the number of Efficiency Dwelling Units, as defined in the Building Code, that can be constructed with reduced square footage unless the units are group housing, affordable housing, or student housing; amending Section 135(d) and adding Section ~~135.4~~ 140.1 to impose open space and common space requirements on Efficiency Dwelling Units with reduced square footage; and making environmental findings, Planning Code Section 302 findings, and findings of consistency with the General Plan and the Priority Policies of Planning Code Section 101.1.

AMENDED, AMENDMENT OF THE WHOLE BEARING NEW TITLE
RECOMMENDED AS AMENDED AS A COMMITTEE REPORT

Vote: Supervisor Eric Mar - Aye
Supervisor Malia Cohen - Absent
Supervisor Scott Wiener - Aye

Item No. 40 File No. 121029

Ordinance amending the San Francisco Environment Code by adding Section 2109 to suspend the Yellow Pages Distribution Pilot Program.

RECOMMENDED AS COMMITTEE REPORT

Vote: Supervisor Eric Mar - Aye
Supervisor Malia Cohen - Absent
Supervisor Scott Wiener - Aye

c: Board of Supervisors
Angela Calvillo, Clerk of the Board
Rick Caldeira, Deputy Legislative Clerk
Jon Givner, Deputy City Attorney

File No. 121029 Committee Item No. 2
Board Item No. 40

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Land Use and Economic Development **Date** November 19, 2012

Board of Supervisors Meeting **Date** November 20, 2012

Cmte	Board	
☐	☐	Motion
☐	☐	Resolution
☒	☒	Ordinance
☒	☒	Legislative Digest
☐	☐	Budget and Legislative Analyst Report
☐	☐	Legislative Analyst Report
☐	☐	Youth Commission Report
☒	☒	Introduction Form
☒	☒	Department/Agency Cover Letter and/or Report
☐	☐	MOU
☐	☐	Grant Information Form
☐	☐	Grant Budget
☐	☐	Subcontract Budget
☐	☐	Contract/Agreement
☐	☐	Form 126 – Ethics Commission
☐	☐	Award Letter
☐	☐	Application
☐	☐	Public Correspondence

OTHER **(Use back side if additional space is needed)**

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Completed by: Alisa Miller **Date** November 16, 2012
Completed by: Alisa Miller **Date** November 20, 2012

An asterisked item represents the cover sheet to a document that exceeds 25 pages.
The complete document can be found in the file.

[Environment Code - Suspending Yellow Pages Distribution Pilot Program]

Ordinance amending the San Francisco Environment Code by adding Section 2109 to suspend the Yellow Pages Distribution Pilot Program.

NOTE: Additions are *single-underline italics Times New Roman*; deletions are ~~*strike-through 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. Background

(a) On May 17, 2011, the Board of Supervisors passed Ordinance 78-11, which created the Yellow Pages Distribution Pilot Program ("Pilot Program"), regulating the distribution of Commercial Phone Directories for a three-year period beginning May 1, 2012. At the time the legislation was passed, only one federal court decision had addressed whether Commercial Phone Directories were commercial speech subject to lesser speech protections by the First Amendment of the United States Constitution or whether they were speech entitled to full First Amendment protection. That decision determined that Commercial Phone Directories were commercial speech. See *Dex Media West, Inc. v. City of Seattle*, No. C10-1857, 2011 WL 1869330 (W.D. Wash. May 16, 2011.)

(b) According to Ordinance 78-11, codified at Environment Code Sections 2101 to 2108, the Pilot Program was to take effect on May 1, 2012. On February 9, 2012, a three-judge panel of the United States Court of Appeals for the Ninth Circuit heard argument in *Dex Media West, Inc. v. City of Seattle* (Nos. 11-35399 & 11-35787) and cast doubt upon whether Commercial Phone Directories are commercial speech. To allow the Ninth Circuit to render

its determination, the Department of the Environment has suspended implementation or enforcement of the Pilot Program until May 1, 2013.

(c) On October 15, 2012, the Ninth Circuit, in a ruling issued by the three-judge panel, decided that Commercial Phone Directories are not commercial speech but are instead subject to full First Amendment protection. *Dex Media West, Inc. v. City of Seattle*, 2012 WL 4857200, -- F.3d -- (9th Cir. Oct. 15, 2012). The Board of Supervisors has determined in light of this ruling to suspend the Pilot Program as specified below.

(d) Ordinance 78-11 stated that its provisions would be codified at Environment Code Chapter 20, Sections 20.1 through 20.8. Because Chapter 20 of the Environment Code already existed at the time Ordinance 78-11 was enacted, the Pilot Program has been codified as Chapter 21 of the Environment Code, Sections 2101 through 2108. To avoid confusion, this suspension ordinance refers to the Pilot Program as Chapter 21, Sections 2101 through 2108.

Section 2. The San Francisco Environment Code is hereby amended by adding Section 2109, to read as follows:

SEC. 2109. SUSPENSION OF YELLOW PAGES DISTRIBUTION PILOT PROGRAM.

(a) Chapter 21 of the San Francisco Environment Code, Sections 2101 through 2108, is suspended. During the period of suspension, Chapter 21 shall have no force or effect and shall not be enforced.

(b) In the event that, upon further proceedings in Dex Media West, Inc. v. City of Seattle, the United States Court of Appeals for the Ninth Circuit or the Supreme Court of the United States finally holds that the City of Seattle's restrictions on the distribution of Commercial Phone Directories are consistent with the First Amendment to the United States Constitution, then the suspension of Chapter 21 shall be lifted one year from the date the mandate issues in that case.

(c) In the event that the suspension of Chapter 21 is lifted as described in the foregoing subsection (b), then Chapter 21 shall be in force and effect for three years following the date the suspension is lifted, notwithstanding any conflicting sunset date set forth in Section 2108.

Section 3. Effective Date. This ordinance shall become effective 30 days from the date of passage. The Board of Supervisors acknowledges that before this ordinance becomes effective the Department of the Environment will continue its suspension of implementation and enforcement of Chapter 21.

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

By: _____
CHRISTINE VAN AKEN
Deputy City Attorney

FILE NO. 121029

LEGISLATIVE DIGEST

[Environment Code - Suspending Yellow Pages Distribution Pilot Program]

Ordinance amending the San Francisco Environment Code by adding Section 2109 to suspend the Yellow Pages Distribution Pilot Program.

Existing Law

Existing law provides that Commercial Phone Directories, familiarly known as Yellow Pages, may not be distributed to private residences or businesses unless the occupant or authorized representative requests or personally accepts a Yellow Pages. This restriction is in effect through April 30, 2015.

Amendments to Current Law

In light of *Dex Media West, Inc. v. City of Seattle*, 2012 WL 4857200, -- F.3d -- (9th Cir. Oct. 15, 2012), which held that Yellow Pages are fully protected speech under the First Amendment and that the City of Seattle's restrictions on Yellow Pages distribution violated the First Amendment, the current law is amended to suspend the restrictions on distribution of Commercial Phone Directories unless subsequent federal appellate proceedings determine that Seattle's Yellow Pages restrictions are consistent with the First Amendment to the United States Constitution.

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MEMORANDUM

TO: Regina Dick-Endrizzi, Director
Chris Schulman, Commission Secretary
Small Business Commission, City Hall, Room 448

FROM: Alisa Miller, Clerk, Land Use and Economic Development Committee
Board of Supervisors

DATE: November 1, 2012

SUBJECT: REFERRAL FROM BOARD OF SUPERVISORS
Land Use & Economic Development Committee

The Board of Supervisors' Land Use and Economic Development Committee has received the following substitute legislation, which is being referred to the Small Business Commission for comment and recommendation. The Commission may provide any response it deems appropriate within 12 days from the date of this referral.

File No. 121029

Ordinance amending the San Francisco Environment Code by adding Section 2109 to suspend the Yellow Pages Distribution Pilot Program

Please return this cover sheet with the Commission's response to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

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RESPONSE FROM SMALL BUSINESS COMMISSION - Date: _____

____ **No Comment**

____ **Recommendation Attached**

_____
Chairperson, Small Business Commission

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MEMORANDUM

TO: Melanie Nutter, Director, Department of the Environment

FROM: Alisa Miller, Clerk, Land Use and Economic Development Committee
Board of Supervisors

DATE: November 1, 2012

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Land Use and Economic Development Committee has received the following proposed legislation, introduced by Supervisor Chiu on October 23, 2012. This matter is being referred to your department informational purposes only and no additional action is required.

File No. 121029

Ordinance amending the San Francisco Environment Code by adding Section 2109 to suspend the Yellow Pages Distribution Pilot Program.

If you do wish to submit any reports or documentation to be included as part of the file, please send those to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

Print Form

Introduction Form

By a Member of the Board of Supervisors or the Mayor

Time stamp
or meeting date

I hereby submit the following item for introduction (select only one):

☒ 1. For reference to Committee: Rules

An ordinance, resolution, motion, or charter amendment.

☐ 2. Request for next printed agenda without reference to Committee.

☐ 3. Request for hearing on a subject matter at Committee:

☐ 4. Request for letter beginning "Supervisor _____ inquires"

☐ 5. City Attorney request.

☐ 6. Call File No. _____ from Committee.

☐ 7. Budget Analyst request (attach written motion).

☐ 8. Substitute Legislation File No.

☐ 9. Request for Closed Session (attach written motion).

☐ 10. Board to Sit as A Committee of the Whole.

☐ 11. Question(s) submitted for Mayoral Appearance before the BOS on

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

☐ Small Business Commission ☐ Youth Commission ☐ Ethics Commission

☐ Planning Commission ☐ Building Inspection Commission

Note: For the Imperative Agenda (a resolution not on the printed agenda), use a different form.

Sponsor(s):

Supervisor Chiu

Subject:

Ordinance amending the San Francisco Environment Code by adding Section 2109 to suspend the Yellow Pages Distribution Pilot Program.

The text is listed below or attached:

Signature of Sponsoring Supervisor: David Chiu

For Clerk's Use Only:

12/029