

[Enacting a fee on fast food businesses, convenience markets and gasoline station markets to defray the cost of litter and trash clean-up resulting from their operation.]

Draft Ordinance amending the San Francisco Business and Taxation Code by adding Sections 2300 to 2310 to enact a fee on fast food businesses, convenience markets and gasoline station markets to defray the cost of litter and trash clean-up resulting from their operation.

Note: Additions are single-underline italics Times New Roman;
deletions are ~~strikethrough 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. The San Francisco Business and Taxation Code is hereby amended by adding Section 2300 through 2310, to read as follows:

Sec. 2300. Short Title.

This ordinance shall be known as the Litter Abatement Act.

Sec. 2301. Findings.

(a) The accumulation of trash and litter on our streets, sidewalks and other public spaces, particularly near schools, requires significant City resources to collect and dispose of, detracts from the look and livability of our City, and hampers San Francisco's ability to attract investment and retain quality businesses.

(b) The accumulation of trash and litter in or near storm drains or other conduits of water runoff hampers the City's sewer system, can pollute storm water runoff and risks putting the City in violation of its Federal Clean Water Act Permit.

- 1 (c) But for the trash and litter produced by businesses and general business
2 types, no City resources would be required to collect and dispose of it,
3 creating a nexus between the services required as a result of these business'
4 operation and real costs to the City.
- 5 (d) The City wants to encourage businesses to sell and use products that do not
6 end up as litter on City streets.
- 7 (e) It is accepted and common practice among cities throughout California and
8 in the City and County of San Francisco itself, to adopt fees to defray added
9 costs related to the practices or operations of certain businesses.
- 10 (f) The expenses incurred by the City in collecting excess litter caused by
11 certain businesses may be met by fees adopted by the City.
- 12 (g) It is difficult, if not impossible, to trace individual pieces of litter to individual
13 businesses, but it is possible to trace the litter to business or industry types.
- 14 (h) Eligible Businesses are specifically known to rely significantly on disposable
15 products for the regular operation of their business. These are businesses
16 that conduct most of their food service, or convenience store activity on a
17 walk in-walk out basis or drive in-drive out basis, relying on customers to
18 collect and dispose of the trash and litter generated by the operation of their
19 business. Fast food businesses, convenience markets, and gasoline station
20 markets sell products that commonly result in litter on City streets.
- 21 (i) The expenses incurred by the City in implementing an excess litter collection
22 program are reasonable and necessary for the protection of the health and
23 safety of the public.
- 24 (j) The schedule of fees prescribed in this section reasonably reflect the City's
25 expenses in cleaning up excess litter caused by businesses covered by this

1 ordinance, and the fees are proportionate to the burdens caused by the
2 businesses.

3 (k) The fees imposed will deter businesses from selling products that commonly
4 result in litter on City streets and encourage businesses to clean up litter
5 resulting from the products they sell.

6 (l) The revenue generated by the fees will be used to clean up and mitigate the
7 effects of litter caused by products sold by business covered by this section.

8 (m) An Eligible Business's gross receipts is a reasonable measure for a
9 business's market share. That market share is a reasonable measure of the
10 amount of excess litter that the business produces to other businesses.

11 **Sec. 2301. Purpose.**

12 The purpose of this ordinance is to provide for funds necessary for the execution
13 of the City and County of San Francisco's mission to create and maintain safe, clean
14 and sanitary streets, sidewalks, and public spaces by assessing a fee on businesses of
15 type(s) known to generate particularly high amounts of disposable materials that end
16 up as trash and litter on our streets. The fee will not only provide the resources to
17 collect and dispose of such trash to keep our City clean, but will also prevent trash and
18 litter from entering the City's sewer system and potentially hampering the performance
19 of the system.

20 **Sec 2303. Definitions.**

21 (a) "Agency" means the Office of the City Treasurer.

22 (b) "Convenience Market" means any business engaged in the retail sale of food,
23 beverages and small personal convenience items, primarily for immediate off-
24 premises consumption and typically found in establishments with long or late
25 hours of operation but excludes delicatessens and other specialty food shops

1 and businesses, businesses that are defined as General Grocery stores
2 pursuant to Sec. 790.102(a) of the San Francisco Planning Code, and
3 businesses that have a sizeable assortment of fresh fruits and vegetables and
4 fresh cut-meat. Three factors must be weighed in the determination of whether
5 the items are sold for immediate off-premises consumption. These are:

- 6 1. Manner of service of the food or beverage.
- 7 2. The packaging provided.
- 8 3. The condition of the or beverage.

9 (c) "Classification" means the category in which an eligible business is placed for
10 the administration and collection of this fee. Classifications are "small business."
11 Medium business," and "large business."

12 (d) "Eligible Business" means any Fast Food business, Liquor Store, Convenience
13 Market, Gasoline Station Market or Specially Designated Business.

14 (e) "Fast Food Business" means any business that meets the definition of Large
15 Fast Food and Small Self-Service as defined in Sections 790.90 and 790.91 of
16 the San Francisco Planning Code.

17 (f) "Gasoline Station Market" means any business engaged in the sale of food,
18 beverages and small personal convenience items along with the retail sale of
19 gasoline.

20 (g) "Large Business" means an eligible business with annual gross receipts totaling
21 \$1,000,000 or more.

22 (h) "Liquor Store" means any business that meets the definition of Liquor Store as
23 defined in Section 790.55 of the San Francisco Planning Code.

24 (i) "Medium Business" means an eligible business with annual gross receipts
25 between \$500,000 and \$999,999.

1 (j) "Person" means an individual, corporation, partnership, association, organization
2 or similar entity.

3 (k) "Small Business" means an eligible business with annual gross receipts
4 between \$5,000 and \$499,999.

5 (l) "Specially Designated Business" shall mean a business so designated by the
6 City Administrator upon a written determination that the business is generating
7 litter causing an unusual burden upon City services.

8 **Sec. 2304. Eligible Businesses.**

9 All Eligible Businesses and their owners shall be responsible for paying the
10 appropriate fee and be subject to any fines, penalties, or enforcement action taken as a result
11 of their obligation to pay this fee.

12 **Sec 2305. Fee Structure.**

13 (a) To defray the cost to the City and County of San Francisco taxpayers for
14 picking up litter caused by the Eligible Businesses, such businesses shall be
15 subject to a fee (the "Excess Litter Fee") as may be established by ordinance.

16 (b) The fees shall bear a reasonable relationship to the business' burdens on City
17 services. The fees shall be in amount necessary to carry out the regulatory
18 purposes, including administrative costs, and provisions of this ordinance.

19 (c) The fees shall be administered to Eligible Businesses on a "sliding scale"
20 system that will base the amount of fee owed to the City on the classification of
21 the business.

22 (d) The City Treasurer shall send a notice showing the classification for each
23 eligible business, the information upon which the classification was based, and
24 how much each Eligible Business owes. That notice shall include the amount
25

1 owed, the due date, and inform the Eligible Business of its right to appeal under
2 this ordinance.

3 (e) Gross Receipts shall not include the receipts for the sale of alcohol, gasoline or
4 automotive services or products.

5 **Sec. 2306. Administration.**

6 (a) The provisions of this chapter shall be administered and enforced by the
7 Office of the City Treasurer.

8 (b) Statement of Eligible Businesses.

9 (i) Every person who is an Eligible Business shall file annually, or at
10 the Treasurer's request, within thirty days, a statement with the
11 agency that includes information as shall be required by the
12 agency to enable it to administer the provisions of this chapter
13 including whether the business is a "large business," "medium
14 business," or "small business."

15 (ii) The statement shall be on a form prescribed by the Treasurer and
16 shall include a declaration substantially as follows:

17 "I declare under penalty of perjury that to my knowledge all
18 information contained in this statement is true and correct."

19 (c) Declaration of Statements as Confidential Documents.

20 Specific gross receipts figures filed by an Eligible Business
21 pursuant to provisions of this chapter shall be deemed confidential in
22 character and shall not be subject to public inspection, and shall be kept
23 so that the contents thereof shall not become known except to the
24 persons charged with the administration of this chapter.

25 (d) Fee Assessment

1 The fee assessment shall be paid by the Eligible Business within fifteen
2 (15) days after receipt of an invoice from the City Treasurer. The amount of the
3 fee shall be deemed a debt to the City. An action may be commenced in the
4 name of the City in any court of competent jurisdiction for the amount of any
5 delinquent fees. An action to collect the fee must be commenced within three
6 years of the date the fee becomes due. An action to collect penalty for non-
7 payment of the fee must be commenced within three years of the date the
8 penalty accrues. The amount of fee, penalty and interest imposed under the
9 provisions of this chapter may be assessed against the business property on
10 which the fee is imposed in those instances where the owner of the business
11 and the business property are one and the same. If the fees are not paid when
12 due, such fee, penalty and interest shall constitute an assessment against such
13 business property and shall be a lien on the property for the amount thereof
14 including, the lien shall continue until the amount thereof, including all penalties
15 and interest are paid, or until it is discharged of record.

16 (e) Examination of Books, records and witnesses.

17 The Treasurer or duly authorized agent or employee is authorized to
18 examine the books, papers and records of any person subject to this chapter for
19 the purpose of verifying the accuracy of any declaration made, or if no
20 declaration was made, to ascertain the fee due. Every person subject to the
21 provisions of this chapter is directed and required to furnish to the Treasurer or
22 duly authorized agent of employee, the means, facilities and opportunity for
23 making such examinations and investigations. The Treasurer or duly authorized
24 agent or employee is authorized to examine a person under oath, for the
25 purpose of verifying the accuracy of any declaration made, or if no declaration

1 was made, to ascertain the fees due under this chapter. In order to ascertain
2 the fees due under this chapter, the Treasurer may compel, by administrative
3 subpoena, the production of relevant books, papers and records and the
4 attendance of all persons as parties or witnesses. The refusal to submit to such
5 examination or production by any employer or person subject to the provisions
6 of this chapter shall be deemed a violation of this chapter, and administrative
7 subpoenas shall be enforced pursuant to applicable state law.

8 **Sec. 2307. Special Fund.**

9 Excess Litter Fees and any corresponding penalties and interest shall be
10 deposited into the Excess Litter Fee Fund. The Fund, shall be expended solely
11 for clean-up and disposal of litter in the neighborhoods of Eligible Businesses or
12 caused by the Eligible Businesses and the administration of this program.

13 **Sec 2308. Violations And Fines.**

- 14 (a) Failure to file any required declaration or to pay the owed as determined by
15 the Treasurer in a timely manner shall constitute a violation of this
16 Ordinance.
- 17 (b) Such a violation shall result in a fine or penalty, as stated in the Master Fee
18 Schedule.
- 19 (c) Failure to pay the fine in a timely manner will result in an additional penalty
20 with interest.

21 **Sec. 2309. Appeal Process.**

- 22 (a) A hearing officer designated by the Treasurer will review any appeal and
23 provide a decision based on the facts of the case. The hearing officer shall
24 determine the validity of the fee and issue written findings. The hearing
25 officer may issue any orders or impose conditions consistent with the

1 purposes of this ordinance, including requiring periodic reports or
2 reapplication for any reduction in fees. The determination of the hearing
3 officer shall be final.

4 (b) Reductions in Fee. Any Eligible Business may file an appeal with the
5 hearing officer to have the fee levied on the business reduced by
6 demonstrating to the satisfaction of the hearing officer that either (1) the
7 business is improperly classified; or (2) the business has a program to
8 reduce litter originating from the business within a 1,000 foot radius of the
9 business and that the program actually decreases the burden of the
10 corresponding litter clean up of the City in that 1,000 foot radius.

11 (c) The Board of Supervisors may establish any appropriate fee for filing an
12 appeal.

13 (d) All costs either directly or indirectly incurred by the agency, including but not
14 limited to court costs, collection costs and the handling charges, in collecting
15 unpaid and delinquent accounts shall be owed by the responsible party or
16 parties.

17 **Sec. 2310. Severability.**

18 If any section, subsection, clause sentence or phrase of this Ordinance is
19 for any reasons held to be invalid or unconstitutional by a decision of a Court of
20 competent jurisdiction, such decision shall not affect the validity of the remaining
21 portions of this Ordinance. The Board of Supervisors of the City and County of
22 San Francisco hereby declares that it would have passed this Ordinance, any
23 section, subsection, sentence clause or phrase thereof without said sections,
24 subsections, sentences, clauses or phrases.