

PROPOSED INITIATIVE ORDINANCE TO BE SUBMITTED BY FOUR OR MORE SUPERVISORS TO THE VOTERS AT THE JUNE 7, 2022 ELECTION.

[Under Charter Section 2.113(b), this measure must be submitted to the Board of Supervisors and filed with the Department of Elections no less than *45 days prior* to deadline for submission of such initiatives to the Department of Elections set in Municipal Elections Code Section 300(b).]

[Initiative Ordinance - Health Code - Refuse Collection and Disposal Ordinance]

Ordinance amending the Refuse Collection and Disposal Ordinance (“the Refuse Ordinance”) to restructure the refuse rate-setting process to replace hearings before the Department of Public Works with a requirement that the Controller, as Refuse Rate Administrator, regularly monitor the rates and appear before the Refuse Rate Board to recommend rate adjustments; establish an appointed Ratepayer Representative to replace the Controller on the Refuse Rate Board; authorize the Refuse Rate Board to set commercial rates; require a competitive process for all existing and future route permits; authorize the Board of Supervisors on recommendation of the Refuse Rate Administrator, Refuse Rate Board, and Mayor to amend the Refuse Ordinance by supermajority vote; and fully codifying the Refuse Ordinance in the Health Code.

NOTE: **Unchanged Code text and uncodified text** are in plain font.
Additions to Codes are in *single-underline italics Times New Roman font*.
Deletions to Codes are in *strikethrough italics Times New Roman font*.
Asterisks (* * * *) indicate the omission of unchanged Code subsections or parts of tables.

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

Section 1. Title.

This ordinance shall be known as “The Refuse Rate Reform Ordinance Of 2022.”

Section 2. Background and Purpose.

(a) The City regulates the collection and disposal of refuse via the Refuse Collection and Disposal Ordinance, an uncodified ordinance that the voters adopted in 1932 and have not amended since 1960. Starting in 2020, a series of public reports revealed that the City's refuse collection system was in need of reform, as evidenced by Recology, the City's sole permittee, overcharging San Francisco residents and businesses by almost \$100 million. The City corrected this error, but even afterwards continued to have significant concerns that Recology's expenses may have been inflated and had difficulty ascertaining answers because of the lack of transparency in the current regulatory structure.

(b) The purpose of this ordinance is to reform and modernize the City's process for setting residential refuse rates to be more fair, transparent, and accountable; and to help the City continue to pursue its Zero-Waste goals. To achieve these multiple purposes, the People of the City and County of San Francisco hereby establish the following principles to govern this process:

- Residential refuse service shall be cost-effective and meet established service standards and environmental goals;
- The residential refuse rate structure shall encourage rate stability and ensure rates are reasonable and fair;
- The process used to establish and monitor rates shall be transparent, accountable, and publicly accessible;
- The work of the Refuse Rate Board and the City Controller, who shall act as Refuse Rate Administrator, shall be conducted in line with high professional ethical standards.

(c) This ordinance also directs the City to develop procedures to terminate and re-issue refuse collection permits following an open and competitive process; and authorizes the Board of Supervisors, on recommendation of the Refuse Rate Administrator and the Refuse Rate Board and the Mayor, to update the Refuse Collection and Disposal Ordinance, as codified in Health Code Section 290 by this ordinance, from time to time, so that the Ordinance can continue to meet the above standards well into the future.

Section 3. Article 6 of the Health Code is hereby amended by revising Section 290, to read as follows:

SEC. 290. REFUSE COLLECTION AND DISPOSAL ORDINANCE NO. 17.083.

This Section 290 (encompassing Sections 290.1 through 290.17, collectively referred to as "Section 290") is enacted to set forth portions of the Refuse Collection and Disposal Ordinance No. 17.083 (adopted as Proposition 6, November 8, 1932, and reprinted in the Appendix A to the Administrative Code) of the San Francisco City Charter, as it has been amended via Ordinance No. 16 (November 5, 1946), Proposition C (June 8, 1954), and Proposition F (June 7, 1960), and as it may be further amended from time to time. heretofore has been adopted to read as follows

"Section 290.1. The term "refuse" as used in this ~~ordinance~~ Section 290 shall ~~be taken to~~ mean all waste and discarded materials from dwelling places, households, apartment houses, stores, office buildings, restaurants, hotels, institutions, and all commercial establishments, including waste or discarded food, animal and vegetable matter from all kitchens thereof, waste paper, cans, glass, ashes, and boxes and cutting from trees, lawns, and gardens. "Refuse" as used herein does not include debris and waste construction materials, including, wood, brick, plaster, glass, cement, wire, and other ferrous materials, derived from the construction of or the partial or total demolition of buildings or other structures.

"Section 290.2. It shall be unlawful for any person, firm, or corporation to dispose of refuse as defined in Section 290.1 ~~this ordinance~~ except as ~~herein~~ provided in this Section 290.; ~~save that the provisions of this ordinance shall not include refuse which may be incinerated by an owner of a building for himself or for his tenants on the premises where produced; provided, however, that such incineration shall be subject to inspection and control by the Director of Public Health and the Fire Department.~~ Failure of any householder producing refuse to subscribe to and pay for refuse collection, unless such householder is a tenant for whom refuse collection service is provided by ~~his~~their landlord, shall be prima facie evidence that such householder is disposing of refuse in violation of this Section 290~~ordinance~~.

"Section 290.3. Refuse ~~consisting of waste or discarded food, animal and vegetable matter, discharged containers, of food, animal and vegetable matter and ashes~~ shall be collected and placed in ~~suitable metal cans of such capacity as the Director of Public Works~~ secure containers in a manner as may be prescribed by law ~~(but not to exceed 32 gallons in the case of a can serving one single family dwelling unit) by the producer or landlord who by reason of contract or lease with an occupant is obligated to care for such refuse,~~ for collection by a refuse collector to be disposed of as provided in this Section 290~~as herein provided.~~ ~~Waste paper and boxes and other refuse materials not subject to putrefaction or decay, and cuttings from trees, lawns and gardens may be placed in any suitable container and delivered by the producer or landlord, who by reason of contract or lease with the occupant is obligated to care for such refuse and deliver same to a refuse collector, to be disposed as herein provided;~~ provided, however, that it shall be optional with the producer or landlord to deliver waste paper or other refuse having a commercial value to a refuse collector, and the producer or landlord may dispose of the same in any manner ~~he~~they may see fit. ~~(Refuse which under the provisions hereof must be deposited in a metal can of suitable capacity shall be removed daily from the place where the same is created.)~~

"Section 290.4. *(a) It shall be unlawful for any person, firm, or corporation, other than a refuse collector licensed by the Director of Public Health as ~~in the ordinance~~ provided in this Section 290, to transport through the streets of the City and County of San Francisco any refuse ~~as in this ordinance defined~~, or to collect or to dispose of the same, except waste paper, or other refuse having a commercial value."* *It is provided, however, that a license for a refuse collector, as provided in Section 290.8, shall be distinguished from a permit to operate in the City and County of San Francisco on a certain designated route, under this Section 290.4.*

(b) It shall be unlawful for any person, firm or corporation to transport through the streets of the City and County of San Francisco any refuse, or to collect or dispose of the same, without first obtaining a permit from the Department of Public Health.

(c) Ordinance No. 17-083 divided the City and County of San Francisco into routes for the collection of refuse, as designated on a map of the City, each route to include only the side of the street or streets bounding each route as designated by a number on said map, said routes being numbered 1 to 97, inclusive. Said map and said routes were marked Exhibit A and are attached to and were made a part of Ordinance No. 17-083, and permits for said routes were originally issued under the authority of Ordinance No. 17-083. The Department of Public Health shall, consistent with this Section 290.4, develop a process for terminating the permits for the 97 routes by operation of law, soliciting proposals from interested applicants (including but not limited to the existing permitted refuse collectors), and issuing new route permits. By no later than November 1, 2022, the Department of Public Health shall advertise on its website the opportunity to apply for said permits and shall provide information regarding the procedures that shall govern the review of any applications received. Applications shall be submitted to the Director of Public Health, and shall include the name of the applicant; any of the particular routes that the applicant proposes to serve; a statement that the applicant will abide by all the provisions of this Section 290 and will not charge a greater rate for the collection and disposition of said refuse than that fixed in or pursuant to this Section 290; evidence regarding the applicant's

ability to minimize disruptions in service; and any other information that the Director of Public Health may reasonably require to ensure that refuse service remains cost-effective, consistent with established service standards and environmental goals, and promotes stability and fairness in the rates.

(c) Following review of the applications, and subject to any required environmental review and approval by the Health Commission, the Director of Public Health shall issue permits no later than April 1, 2023, to take effect on July 1, 2023. The existing permits for the 97 routes shall cease to be effective as of July 1, 2023, and shall be superseded by the new route permits, notwithstanding any language in the existing permits or in Ordinance No. 17-083, as amended, to the contrary. The new permits, and any additional permits, shall be non-exclusive in that more than one refuse collector may be given a permit to operate within the same route, in the Director's discretion.

(d) The Director of Public Health may revoke or modify a permit upon seven days' written notice to the permittee, if the permittee has violated this Section 290, or in the event of inadequate service. The permit must be revoked or modified, however, and it is mandatory on the Director to revoke or modify the permit, after providing seven days' notice, if 20% or more of the householders, businesses, apartment house owners, hotel keepers, institutions, or residents in said route or routes, using refuse service, and paying for same, or obligated to do so, have signed a petition or contract in which they have stated that they are inadequately served by the refuse collector who is then collecting refuse on said route or routes, provided that the Director finds upon substantial evidence that such statement is correct. Inadequate service is defined as the failure, on the part of any refuse collector to properly collect, handle, or transport refuse on said route, or the overcharging for the collection of same, or insolence towards persons whose refuse has been collected, or the collection by any refuse collector whose license has been revoked as provided in Section 290.9 hereof. In either case, the permittee shall have 30 days to appeal the Director's decision to the Health Commission.

(e) Further, upon the conviction of any person, firm, or corporation for any violation of the provisions of this Section 290, the permit of such person, firm, or corporation shall be forthwith and immediately terminated and canceled by operation of law as of the date of conviction.

* *

"Persons, firms or corporations desiring to transport through the streets of the City and County of San Francisco only waste paper or other refuse having commercial value, and to collect and dispose of same need not obtain a permit therefor under the provisions of this ~~ordinance~~Section 290."

Section 290.5. Refuse collected by refuse collectors shall be disposed of by such persons, firms, or corporations and in such manner or by such method or methods as from time to time designated by law. The maximum rate or charge for the disposal of refuse to be charged the refuse collector by any person, firm, or corporation authorized by the Board of Supervisors to dispose of refuse shall be set by the Refuse Rate Board, and those rates or charges may be adjusted from time to time, in the same manner and in accordance with the same procedures as is provided for the adjustment of rates and charges for the collection of refuse in Section 290.6.

Section 290.6. (a) The maximum rates or charges for the collection and disposition of refuse by refuse collectors from residences, flats, and apartment houses of not more than 600 rooms, and the regulations relating to such rates or charges, shall be set by order of the Refuse Rate Board. In determining the number of rooms of any household, building or apartment in order to ascertain the rate for the collection and disposition of refuse therefrom, halls, alcoves, storerooms, bathrooms, closets, and toilets shall not be considered as rooms, nor shall basements or attics be considered as rooms unless the same be occupied as living quarters.

(b) Procedure for Adjustment.

(1) There is hereby created a Refuse Rate Board consisting of the City Administrator, who shall act as chairperson, the General Manager of the San Francisco Public Utilities Commission,

and a Ratepayer Representative who shall be appointed pursuant to Section 3.100(18) of the Charter of the City and County of San Francisco. The Ratepayer Representative shall be recommended by The Utility Reform Network or any other entity that is dedicated to protecting ratepayers that the Board of Supervisors has designated by resolution, and shall have professionally relevant experience in operations, finance, utilities regulation, the refuse industry, or other related fields. The City Administrator and General Manager of the San Francisco Public Utilities Commission may from time to time designate a subordinate from their own departments to act in their place and stead as members of the Refuse Rate Board.

(2) The Refuse Rate Board shall convene upon call of the chairperson or the other two members, and two members shall constitute a quorum. The Refuse Rate Board shall act by majority vote. The Refuse Rate Board shall adopt and adhere to a code of conduct, including limitations on ex parte communications during the rate setting process.

(3) The Refuse Rate Board shall receive assistance from the Refuse Rate Administrator. The Controller shall serve as the Refuse Rate Administrator and may designate staff from the Controller's Office to perform or assist with this function. The Refuse Rate Administrator shall be responsible for proposing new rates (including adjustments to existing rates) to the Refuse Rate Board on the timeline established by the Refuse Rate Board in its prior rate order, monitoring the financial and operational performance of refuse collectors, performing studies and investigations, and advising the Refuse Rate Board as may be deemed necessary to ensure the rates are just and reasonable. The Refuse Rate Administrator shall present information to the Commission on the Environment and the Sanitation and Streets Commission, at separate or joint public hearing(s), the time and place of which shall be noticed not less than 20 days in advance at least once in an official newspaper of the City and County of San Francisco, to solicit comment from the commissions and interested members of the public, before submitting proposed rates to the Refuse Rate Board. The Refuse Rate Administrator may also consult with the refuse collector(s), the Department of the Environment, the Department of

Sanitation and Streets, and other City agencies and others, and may conduct public hearings, as the Refuse Rate Administrator deems appropriate.

(4) Any person, firm, or corporation (including any holder of a permit to collect and dispose of refuse) affected by the rates, or by the proposed rates, and desiring an increase, decrease, or other adjustment or change in, or addition to, such rates or schedules or the regulations appertaining, may also file a written objection with the Refuse Rate Administrator. The Refuse Rate Administrator shall consider all objections, and shall address them at the hearing of the Refuse Rate Board on the proposed rates.

(5) The Refuse Rate Board shall commence the public hearing within 30 days after receipt of the Refuse Rate Administrator's rate proposal. The time and place of the hearing shall be noticed not less than 20 days in advance at least once in an official newspaper of the City and County of San Francisco. The Refuse Rate Board shall be empowered to make or cause to be made such studies and investigations as it may deem pertinent, and to introduce the results of such studies and investigations in evidence. Any person, firm, or corporation affected by the proposed rates shall be entitled to appear at the hearing and be heard. Any such person, firm, or corporation desiring notice of further proceedings or action upon the application may file with the Refuse Rate Board a written request for such notice, setting forth their name and contact information.

(6) The Refuse Rate Board is recommended to obtain financial audits of regulated revenues and expenses of the refuse collector(s), performed by an external auditor selected by the Refuse Rate Board in accordance with the Charter. The Refuse Rate Board shall also adopt performance standards for refuse collectors, and shall endeavor to maintain rate stability and accountability and an annual accounting of actual versus projected expenditures and revenues of the refuse collectors, through means such as the establishment of balancing accounts, rate stabilization funds, or similar features.

(7) Upon conclusion of the hearing, the Refuse Rate Board shall adopt an order setting forth the facts based on the evidence taken and record made at the hearing. The order, if it provides for any change in the rates, schedules of rates, or regulations then in effect, shall set forth the date that the change is to take effect, which date shall be not less than 15 days from the date of the order. The order shall remain in effect for a term of at least two years but not to exceed five years, as specified by the Refuse Rate Board. Any revised rates, schedules of rates, or regulations placed in effect pursuant hereto shall be just and reasonable.

(8) The Refuse Rate Administrator shall publish the order in an official newspaper of the City and County of San Francisco, and shall provide notice of the order to all who shall have filed written requests for notice as set forth in subsection (b)(5). After the order takes effect, the Refuse Rate Administrator shall monitor the rates and shall update the Refuse Rate Board at least once per year, or more frequently as directed by the Refuse Rate Board.

(9) Nothing in this Section 290 shall prohibit the Refuse Rate Administrator, a refuse collector, or any member of the public from petitioning the Refuse Rate Board to adjust the rates during the term of an existing order; provided, however, that it shall be the policy of the Refuse Rate Board not to adjust the rates during the term of an existing rate order unless necessary due to extraordinary or unforeseen circumstances.

(c) The Refuse Rate Board may also use the procedures for adjustment in subsection (b) to adopt orders regarding the maximum rates or charges for establishments other than residences, flats, and apartment houses of not more than 600 rooms, except as prohibited by state or federal law, and provided that all rates set under this Section 290.6 remain reasonable and fair.

Section 290.7. It shall be unlawful for any refuse disposer or refuse collector to charge a greater rate for the disposal of refuse or for the collection and disposition of refuse than that fixed in, or pursuant to, Sections 290.5 and 290.6. Nothing in this Section 290 shall be taken or construed as preventing a refuse disposer or a refuse collector from charging a lesser rate or charge for the disposal

of refuse or for the collection and disposition of refuse than that fixed in, or pursuant to, Sections 290.5 and 290.6.

Section 290.8. Each refuse collector shall be licensed by the Director of Public Health. The fees for said licenses shall be governed by Business and Tax Regulations Code Section 249.6, as it may be amended from time to time. Each vehicle in which refuse is transported through the streets shall be assigned a number by the Director of Public Health and the number thereof shall be plainly marked thereon.

Section 290.9. The license, as distinguished from a permit herein, of any refuse collector, may be revoked by the Director of Public Health for failure on the part of the refuse collector to properly collect refuse, or for overcharging for the collection of same, or for insolence towards persons whose refuse they are collecting, and it shall be unlawful for any person whose license is so revoked to collect refuse in the City and County of San Francisco. No license of a refuse collector shall be revoked except upon a hearing of which the refuse collector has been given a notice of at least three days.

Section 290.10. Upon the payment of the rate fixed in or pursuant to Section 290.6, the person paying the same shall receive a receipt from the refuse collector identifying the name of the collector, the amount paid, the date of payment, the premises for which the payment was made, and such other information as the Department of Public Health may require to ensure accuracy with respect to the imposition and collection of charges for refuse.

Section 290.11. Disputes over charges made by collectors or as to the character of the service performed shall be decided by the Director of Public Health. Any charges made in excess of rates fixed pursuant to this Section 290ordinance, when determined by the Director of Public Health, shall be refunded to the person or persons who paid the excess charge.

"Section 290.12. A refuse collector shall be entitled to payment for the collection of refuse at the end of each month from each householder or landlord served by him and from whom the payment is due."

"Section 290.13~~14~~. Any person, firm, or corporation who shall violate any of the provisions of this ~~ordinance~~ Section 290 shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine not to exceed \$500 or by imprisonment in the County Jail for not more than six months, or by both such fine and imprisonment.

Section 290.14. (a) The Refuse Rate Administrator shall furnish the Director of Public Health with such financial data, including data as to the cost of refuse collections, as may be required to enable the Director to perform the Director's functions under this Section 290.

(b) Each refuse collector holding a permit shall keep such records and render such reports as may be required by the Refuse Rate Administrator to enable the Refuse Rate Administrator to develop the above-mentioned data, and the Refuse Rate Administrator shall have access to such records.

Section 290.15. On recommendation of the Refuse Rate Administrator and the Refuse Rate Board and the Mayor, and by supermajority of at least seven votes, the Board of Supervisors may by ordinance amend any portion of this Section 290, except that the Board of Supervisors may not alter the composition of the Refuse Rate Board or eliminate the requirement that refuse rates shall be approved by order of the Refuse Rate Board. Further, any such amendments must further one or more of the following purposes: (1) to ensure that refuse service remains cost-effective and can meet established service standards and environmental goals; (2) to promote stability in the rate structure and enable rates that are reasonable and fair; (3) to ensure the process for setting and monitoring rates is transparent, accountable, and publicly-accessible; or (4) to ensure the Refuse Rate Board and Refuse Rate Administrator conduct their duties under this Section 290 in line with high professional ethical standards. The foregoing grant of authority to the Board of Supervisors does not affect the

ability of the voters of the City and County of San Francisco to adopt future initiative ordinances to amend any portion of this Section 290.

Section 290.16. If any section, subsection, sentence, clause, phrase, or word of this Section 290, or any application thereof to any person or circumstance, is held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or applications of this Section 290. The People of the City and County of San Francisco hereby declare that they would have adopted this Section 290 and each and every section, subsection, sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to whether any other portion of this Section 290 or application thereof would be subsequently declared invalid or unconstitutional.

Section 290.17. In enacting and implementing this Section 290, the City and County of San Francisco is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury.

Section 4. Nature of Ordinance.

(a) Health Code Section 290 currently contains portions of the City's Refuse Collection and Disposal Ordinance ("Refuse Ordinance") (Ordinance No. 17-083), which the People of the City and County of San Francisco adopted via Proposition 6 (November 8, 1932). The People subsequently amended the Refuse Ordinance three times, via Ordinance No. 16 (November 5, 1946), Proposition C (June 8, 1954), and Proposition F (June 7, 1960). The entire Refuse Ordinance has not heretofore been codified in Health Code Section 290.

(b) In enacting this ordinance, the People of the City and County of San Francisco intend to codify the entire Refuse Ordinance, including the three amendments referenced in subsection (a), at Health Code Section 290. But the People also intend to further amend the

Section 5. Conflicting Ballot Measures. In the event that this measure and another measure relating to refuse collection shall appear on the same municipal election ballot, the provisions of such other measure shall be deemed in conflict with this measure. In the event that this measure shall receive a greater number of affirmative votes, the provisions of this measure shall prevail in their entirety and each and every provision of the other measure that conflicts, in whole or in part, with this measure shall be null and void in its entirety.

SUBMITTED.

_____ Date: _____
Member, Board of Supervisors

_____ Date: _____
Member, Board of Supervisors

_____ Date: _____
Member, Board of Supervisors

_____ Date: _____
Member, Board of Supervisors