

File No. 100104

Committee Item No. 5

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: City Operations & Neighborhood Ser. Date: May 24 2010

Board of Supervisors Meeting

Date _____

Cmte Board

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OTHER

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Completed by: Victor Young

Date May 20, 2010

Completed by: Victor Young

Date _____

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

1 [Cell Phones; Retailers' Duty to Disclose Specific Absorption Rate Values.]

2
3 **Ordinance amending the San Francisco Environment Code by adding Chapter 11,**
4 **Sections 1100 through 1105, to require retailers to disclose Specific Absorption Rate**
5 **values for cell phones, and making environmental findings.**

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

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

10
11 **Section 1. Findings.**

12 (a) Government agencies and scientific bodies in the European Union (EU) and Israel
13 have recognized the potential harm of long-term exposure to radiation emitted from cell
14 phones and, as a result, have issued warnings about their use, especially their use by
15 children.

16 (b) The United States Federal Communications Commission ("the FCC") has
17 established a maximum allowable Specific Absorption Rate ("SAR") rating that manufacturers
18 must disclose to the government when offering a portable wireless device (cell phone) for
19 sale. The SAR is a value that corresponds to the relative amount of radiofrequency energy
20 absorbed in the head or body of a user of a wireless handset. At the time of adoption of this
21 ordinance, the FCC limit for public exposure from cellular telephones is an SAR level of
22 1.6 watts per kilogram (1.6 W/kg) for spatial peak (local) SAR, such as SAR in the user's
23 head, as averaged over any 1 gram of tissue.

24 (c) The SAR values for different makes and models of cell phones differ widely, but
25 consumers are not able to make informed purchasing decisions because there is no

1 requirement that the retailer provide the applicable SAR values to the consumer at the point
2 when the consumer is deciding between various makes and models.

3 (d) Cell phones are an important communication tool, especially during emergencies,
4 and radiation exposure from cell phones can be reduced by using a speakerphone or a
5 headset, or by sending text messages.

6
7 Section 2. The San Francisco Environment Code is hereby amended by adding
8 Chapter 11, Sections 1100 through 1105, to read as follows:

9
10 **CHAPTER 11: CELL PHONE DISCLOSURE REQUIREMENTS**

11
12 **SEC. 1100. TITLE.**

13 *This Chapter may be known as the "Cell Phone Right-to-Know Ordinance."*

14
15 **SEC. 1101. DEFINITIONS.**

16 *For the purposes of this Chapter, the following terms shall have the following meanings, unless*
17 *the context requires otherwise:*

18 *(a) "Cell phone" means a portable wireless telephone device that is designed to send or receive*
19 *transmissions through a cellular radiotelephone service, as defined in Section 22.99 of Title 47 of the*
20 *Code of Federal Regulations. A cell phone does not include a wireless telephone device that is*
21 *integrated into the electrical architecture of a motor vehicle.*

22 *(b) "Cell phone retailer" means any person or entity within the City which sells or leases cell*
23 *phones to the public or which offers cell phones for sale or lease. "Cell phone retailer" shall include a*
24 *"formula cell phone retailer." "Cell phone retailer" shall not include anyone selling or leasing cell*
25 *phones over the phone, by mail, or over the internet. "Cell phone retailer" shall also not include*

1 anyone selling or leasing cell phones directly to the public at a convention, trade show, or conference,
2 or otherwise selling or leasing cell phones directly to the public within the City for fewer than 10 days
3 in a year.

4 (c) "Cell phone service provider" means a telecommunications common carrier authorized to
5 offer and provide cellular service for hire to the general public.

6 (d) "Director" means the Director of the Department of the Environment, or his or her
7 designee.

8 (e) "Display materials" means informational or promotional materials posted adjacent to a
9 sample phone or phones on display at the retail location that describe or list the features of the phone.
10 "Display materials" shall not include any tag, sticker, or decal attached to a cell phone by the
11 manufacturer, the manufacturer's packaging for a cell phone, or materials that list only the price and
12 an identifier for the phone.

13 (f) "Formula cell phone retailer" means a cell phone retailer which sells or leases cell phones
14 to the public, or which offers cell phones for sale or lease, through a retail sales establishment located
15 in the City which, along with eleven or more other retail sales establishments located in the United
16 States, maintains two or more of the following features: a standardized array of merchandise; a
17 standardized facade; a standardized decor and color scheme; a uniform apparel; standardized
18 signage; or, a trademark or service mark.

19 (g) "SAR value" means the maximum whole-body and spatial peak Specific Absorption Rate for
20 a particular make and model of cell phone as registered with the Federal Communications
21 Commission. (See, generally, Section 2.1093 of Title 47 of the Code of Federal Regulations.)

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23 / / /
24 / / /
25 / / /

1 **SEC. 1102. REQUIREMENTS FOR CELL PHONE SERVICE PROVIDERS.**

2 (a) Beginning September 1, 2010, any cell phone service provider that sells its service through
3 a retailer in the City must provide a list of those retail locations to the Department of the Environment
4 in a form determined by the Department. The service provider must update the list annually. The
5 Department shall adopt regulations governing the form and submission of the lists.

6 (b) Beginning November 1, 2010, any cell phone service provider that sells its service through
7 a retailer in the City must provide those retailers with the SAR value for each make and model of cell
8 phone sold or leased at that location in connection with cell phone service from the provider. The
9 service provider must update the information it provides to retailers whenever new makes and models
10 of cell phones covered by the service provider are added or old makes and models dropped, or
11 whenever the service provider receives new information on the SAR values of any of the phones.

12 (c) If a cell phone service provider is unable to provide this information (in subsection b) to
13 retailers in the City, then the Department of Environment upon the request of the service provider shall
14 provide assistance in procuring that information.

15
16
17 **SEC. 1103. REQUIREMENTS FOR CELL PHONE RETAILERS.**

18 (a) If a cell phone retailer posts display materials in connection with sample phones or phones
19 on display, the display materials must include these three elements:

20 (1) The SAR value of that phone and the maximum allowable SAR value for cell phones
21 set by the FCC;

22 (2) A statement explaining what a SAR value is; and,

23 (3) A statement that additional educational materials regarding SAR values and cell
24 phone use are available from the cell phone retailer.

1 The Department of the Environment shall adopt regulations specifying the content and format
2 for the elements required by this subsection (a), and shall develop a template for those elements. The
3 elements shall be printed in a space no smaller than 1 inch by 2.625 inches. The SAR values and
4 header text shall be printed in type no smaller than the size and readability equivalent of "Arial" 11
5 point, and the copy text shall be printed in type no smaller than the size and readability equivalent of
6 "Arial" 8 point.

7 Formula cell phone retailers must comply with the requirements of this subsection (a) beginning
8 February 1, 2011. All other cell phone retailers must comply by February 1, 2012.

9 (b) If a cell phone retailer does not post display materials in connection with sample phones or
10 phones on display, the retailer must display, in a prominent location within the retail location visible to
11 the public, a poster that includes these three elements:

12 (1) The SAR value of each make and model of cell phone offered for sale or lease at that
13 retail location and the maximum allowable SAR value for cell phones set by the FCC;

14 (2) A statement explaining what a SAR value is; and,

15 (3) A statement that additional educational materials regarding SAR values and cell
16 phone use are available from the cell phone retailer.

17 The Department of the Environment shall adopt regulations specifying the content and format
18 for the elements required by this subsection (b), and shall develop a template for those elements. The
19 store poster shall be no smaller than 8.5 inches by 11 inches.

20 Formula cell phone retailers must comply with the requirements of this subsection (b) beginning
21 February 1, 2011. All other cell phone retailers must comply by February 1, 2012.

22 (c) The Director may, in his or her discretion, authorize a retailer to use alternate means to
23 comply with the requirements of subsections (a) and (b). The Director shall authorize such alternate
24 means through the adoption of a regulation after a noticed hearing, and no retailer may sell or lease
25 cell phones to the public or offer to sell or lease cell phones to the public using any alternate means of

1 compliance with this Chapter unless specifically authorized to do so in advance in writing by the
2 Director.

3
4 **SEC. 1104. DEPARTMENTAL FACTSHEETS; ASSISTANCE WITH COMPLIANCE.**

5 (a) Following a public hearing, the Department of the Environment, in consultation with the
6 Department of Public Health, shall develop a supplemental factsheet regarding SAR values and the use
7 of cell phones, as well as templates for display materials and store posters required by this Chapter.
8 The Department of the Environment shall hold the initial public hearing by September 1, 2010, and
9 complete the supplemental factsheet by November 1, 2010. The supplemental factsheet shall be no
10 larger than 8.5 inches by 11 inches.

11 (b) By November 1, 2010, the Department of the Environment shall issue regulations specifying
12 the contents and format for the elements required by Section 1103, subsections (a) and (b), for display
13 materials and store posters, respectively. By that date, the Department of the Environment shall also
14 adopt templates for display materials and store posters.

15 (c) The Department shall develop content for all of these materials that is based on and
16 consistent with the relevant information provided by the FCC or other federal agencies having
17 jurisdiction over cell phones, explaining the significance of the SAR value and potential effects of
18 exposure to cell phone radiation. The materials shall also inform customers of actions that can be
19 taken by cell phone users to minimize exposure to radiation, such as turning off cell phones when not in
20 use, using a headset and speaker phone, or texting.

21
22 **SEC. 1105. IMPLEMENTATION AND ENFORCEMENT.**

23 (a) Notwithstanding those provisions of Section 1103(a) and (b) applicable to formula cell
24 phone retailers, requiring them to make certain disclosures and statements in connection with cell
25 phone sales and leases, the City shall not enforce those provisions until May 1, 2011. During the

1 period between the operative date for those requirements, February 1, 2011, and May 1, 2011, the
2 Department of the Environment shall conduct an education and assistance program for formula cell
3 phone retailers, and shall visit the retailers and assist them with meeting the requirements of the
4 subsections.

5 (b) Notwithstanding those provisions of Section 1103(a) and (b) applicable to all cell phone
6 retailers other than formula cell phone retailers, requiring them to make certain disclosures and
7 statements in connection with cell phone sales and leases, the City shall not enforce those provisions
8 until August 1, 2012. During the period between the operative date for those requirements,
9 February 1, 2012, and August 1, 2012, the Department of the Environment shall conduct an education
10 and assistance program for those cell phone retailers, and shall visit the retailers and assist them with
11 meeting the requirements of the subsections.

12 (c) The City Administrator shall issue a written warning to any person he or she determines is
13 violating provisions of this Chapter or any regulation issued under this Chapter. If 30 days after
14 issuance of the written warning the City Administrator finds that the person receiving the warning has
15 continued to violate the provisions of the Chapter or any regulation issued under this Chapter, the City
16 Administrator may impose administrative fines as provided below in subsections (d), (e), and (f).

17 (d) Violation of this Chapter or any regulation issued under this Chapter shall be punishable
18 by administrative fines in the amount of:

19 (1) Up to \$100.00 for the first violation;

20 (2) Up to \$250.00 for the second violation within a twelve-month period; and,

21 (3) Up to \$500 for the third and subsequent violations within a twelve-month period.

22 (e) Except as provided in subsection (d), setting forth the amount of administrative fines,
23 Administrative Code Chapter 100, "Procedures Governing the Imposition of Administrative Fines," as
24 may be amended from time to time, is hereby incorporated in its entirety and shall govern the
25

1 imposition, enforcement, collection, and review of administrative citations issued by the City
2 Administrator to enforce this Chapter or any regulation issued under this Chapter.

3 (f) For purposes of this Chapter, each individual item that is sold or leased, or offered for sale
4 or lease, contrary to the provisions of this Chapter or any regulation issued under this Chapter shall
5 constitute a separate violation.

6
7 **Section 3. Additional Provisions.**

8 (a) **Disclaimer.** In adopting and implementing this Chapter, the City and County of
9 San Francisco is assuming an undertaking only to promote the general welfare. It is not
10 assuming, nor is it imposing on its officers and employees, an obligation for breach of which it
11 is liable in money damages to any person who claims that such breach proximately caused
12 injury.

13 (b) **Conflict with State or Federal Law.** This Chapter shall be construed so as not to
14 conflict with applicable federal or State laws, rules or regulations. Nothing in this Chapter
15 shall authorize any City agency or department to impose any duties or obligations in conflict
16 with limitations on municipal authority established by State or federal law at the time such
17 agency or department action is taken.

18 (c) **Severability.** If any of the provisions of this Chapter or the application thereof to
19 any person or circumstance is held invalid, the remainder of those provisions, including the
20 application of such part or provisions to persons or circumstances other than those to which it
21 is held invalid, shall not be affected thereby and shall continue in full force and effect. To this
22 end, the provisions of this Chapter are severable.

23 / / /

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1 (d) **Environmental Findings.** The Planning Department has determined that the
2 actions contemplated in this ordinance are in compliance with the California Environmental
3 Quality Act (Cal. Pub. Res. Code §§ 21000 et seq.). Said determination is on file with the
4 Clerk of the Board of Supervisors in File No. 100104 and is incorporated herein by
5 reference.

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7
8
9 APPROVED AS TO FORM:
10 DENNIS J. HERRERA, City Attorney

11
12 By: Tom Owen by BSW
13 THOMAS J. OWEN
14 Deputy City Attorney

LEGISLATIVE DIGEST
(Substitute legislation, dated 5/18/2010)

[Cell Phones; Retailers' Duty to Disclose Specific Absorption Rate Values.]

Ordinance amending the San Francisco Environment Code by adding Chapter 11, Sections 1100 through 1105, to require retailers to disclose Specific Absorption Rate values for cell phones, and making environmental findings.

Existing Law

Current City law does not address the disclosure of cell phone radiation levels by retailers.

Amendments to Current Law

The proposal is an ordinance that would amend the Environment Code to require retailers to disclose Specific Absorption Rate values for cell phones.

The proposal would require retailers to list the Specific Absorption Rate—a numerical measure of cell phone radiation registered with the Federal Communications Commission—for each make and model of cell phone offered at the store. The proposal would require the retailer to include the SAR number on any tag, sticker, or display material posted alongside a sample phone that described or listed the features of the phone. The proposal would require a retailer who did not display sample phones to post a chart of SAR values for the cell phones sold or leased at the store.

The statement of the SAR value for a cell phone would also have to include a notice that additional educational materials, to be developed by the Department of the Environment, were available from the retailer explaining what the SAR value means and recommending ways to minimize exposure to radiation from cell phones.

The proposal would require cell phone service providers to give the City a list of the company's retailers in the City, and require the providers to tell their retailers the SAR value of each make and model of cell phone covered by the service and offered for sale or lease in the City.

The proposal includes provisions for phasing in implementation and enforcement over time:

- Beginning February 1, 2011, the proposal would require formula or "chain store" cell phone retailers to include the SAR values on display materials or post the chart of SAR values, although there would be no penalties for failure to comply with these requirements until May 1, 2011; and,
- Beginning February 1, 2012, the proposal would require all other cell phone retailers to include the SAR values on display materials or post the chart of SAR values, but there would be no penalties for failure to comply with these requirements until August 1, 2012.

During the period between the operative date for any of these requirements and the date the City began actual enforcement, the Department of the Environment would conduct an education, outreach, and assistance program for retailers.

Under the proposal, the City would first give persons who violated the ordinance a written warning and 30 days to correct their violations. The proposal would then subject violators to a series of administrative fines—up to \$100 for a first violation, up to \$250 for a second violation of the same requirement within a year, and up to \$300 for a third and subsequent violations in a year. The proposal will also require that the Department of Environment to assist service providers to procure the information where they are unable to do so.

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

May 17, 2010

File No. 100104

Bill Wycko
Environmental Review Officer
Planning Department
1650 Mission Street, 4th Floor
San Francisco, CA 94103

Dear Mr. Wycko:

On May 11, 2010, Mayor Newsom introduced the following substitute legislation:

File No. 100104 Retailers' Duty to Disclose Radiation Levels for Cell Phones

The legislation is being transmitted to you for environmental review, pursuant to Planning Code Section 306.7(c).

Angela Calvillo, Clerk of the Board

A handwritten signature in black ink, appearing to read "Victor Young".

By: Victor Young, Committee Clerk
City Operations and Neighborhood

Services

Attachment

cc: Nannie Turrell, Major Environmental Analysis
Brett Bollinger, Major Environmental Analysis

*Not a project per CEQA Guidelines
Section 15060(c)(2).
Nannie R. Turrell
May 18, 2010*



SMALL BUSINESS COMMISSION
OFFICE OF SMALL BUSINESS



CITY AND COUNTY OF SAN FRANCISCO
GAVIN NEWSOM, MAYOR

April 14, 2010

Ms. Angela Calvillo, Clerk of the Board
Board of Supervisors
City Hall room 244
1 Carlton B. Goodlett Place
San Francisco, CA 94102-4694

RE: File No. 100104 [Cell Phones; Retailers' Duty to Disclose Radiation Levels.]

Ordinance amending the San Francisco Environment Code by adding Chapter 11, Sections 1100 through 1104, to require retailers to disclose Specific Absorption Rate values for cell phones, and making environmental findings.

Small Business Commission Recommendation: **Take no action at this time**

Dear Ms. Calvillo:

On April 12, 2010, the Small Business Commission heard and voted to not to approve or oppose File No. 100104.

The Commission commends the Department of the Environment for working with staff in areas such as phasing rollout to affect formula retail first, as well as working to clarify enforcement and labeling guidelines. However, with similar State legislation pending (SB 1212 Leno,) the Commission feels that the Board of Supervisors should delay action until the final outcome of that bill is determined. Should SB 1212 fail to pass and not be enacted, the Commission will consider re-hearing this ordinance at a later date.

At this time, the Commission recommends that the Department of the Environment instead provide retailers with information on SAR value to post inside their establishment and to undertake an education campaign.

Sincerely,

Regina Dick-Endrizzi
Executive Director, Office of Small Business

cc. Starr Terrell
Victor Young, Clerk of the City Operations and Neighborhood Services Committee
Debbie Rafael, Department of the Environment

