

File No. 110114

Committee Item No. _____
Board Item No. 17

COMMITTEE/BOARD OF SUPERVISORS AGENDA PACKET CONTENTS LIST

Committee _____

Date _____

Board of Supervisors Meeting

Date 5/17/11

Cmte Board

- Motion
- Resolution
- Ordinance
- Legislative Digest
- Budget Analyst Report
- Legislative Analyst Report
- Introduction Form (for hearings)
- Department/Agency Cover Letter and/or Report
- MOU
- Grant Information Form
- Grant Budget
- Subcontract Budget
- Contract/Agreement
- Award Letter
- Application
- Public Correspondence

OTHER

(Use back side if additional space is needed)

-
-
-
-
-

Amended in Board 3/29/11

Completed by: Rana Calonsag

Completed by: _____

Date 3/30/11

Date _____

An asterisked item represents the cover sheet to a document that exceeds 20 pages. The complete document is in the file.

11-29-11

[Environment Code - Yellow Pages Distribution Pilot Program]

Ordinance adding Chapter 20 to the Environment Code to establish a three-year pilot program to reduce waste in the distribution of Yellow Pages phone directories to private residences and businesses in San Francisco, and to reduce neighborhood blight, by restricting distribution to circumstances where: 1) there is personal delivery of the directory to a human being, 2) there has been a request for delivery of the directory to the residence or business, or 3) directories are maintained for pick-up at a distribution center or business open to the public; and mandating a public outreach program to educate the public about the environmental harms associated with excessive distribution of Yellow Pages Phone Directories, develop and publicize alternatives to private possession of such directories, and inform the public of the option and means of obtaining such directories; and making environmental findings.

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. The San Francisco Environment Code is hereby amended by adding Chapter 20, to read as follows:

Chapter 20: Yellow Pages Distribution Pilot Program

Sec. 20.1. Findings and Purpose.

Sec. 20.2. Definitions.

Sec. 20.3. Distribution of Commercial Phone Directories.

Sec. 20.4. Public Outreach Program.

1 Sec. 20.5. Promotion of General Welfare.

2 Sec. 20.6. Conflict With State Or Federal Law.

3 Sec. 20.7. Severability.

4 Sec. 20.8. Operative Date; Sunset Provision; Reports.

5
6 **SEC. 20.1. FINDINGS AND PURPOSE.**

7 (a) Every year, private residences and businesses in San Francisco cumulatively receive,
8 unsolicited, hundreds of thousands of Commercial Phone Directories, commonly known as "the Yellow
9 Pages." The best estimate of the number of unsolicited Commercial Phone Directories
10 annually distributed in San Francisco is 1.6 million. These unsolicited Commercial Phone
11 Directories cumulatively weigh thousands of pounds and contain millions of pages.

12 (b) The failure to target deliveries of Commercial Phone Directories to private residences and
13 businesses where an owner or occupant has indicated an interest in receiving one or more Commercial
14 Phone Directories results in gross overproduction and significant wastage. In many cases
15 unsolicited Commercial Phone Directories that have been delivered to private residences and
16 businesses are not used by the recipient, and often are not picked up by the intended recipient. In other
17 cases, they are only rarely used by the recipient. And, even when Commercial Phone Directories are
18 used by the recipient, in many cases the same information is readily available to the recipient through
19 electronic channels of communication.

20 (c) The wastage caused by delivery of unsolicited Commercial Phone Directories to private
21 residences and businesses greatly exacerbates the environmental harms and economic costs inherent in
22 the production and disposal of such directories.

23 (1) The wastage causes substantial and unnecessary depletion of natural resources that go into
24 the production of Commercial Phone Directories, including substantial consumption of energy used in
25

1 the production process. Further, overproduction of Commercial Phone Directories unnecessarily
2 pollutes the environment.

3 (2) The wastage causes substantial and unnecessary environmental harms and economic costs
4 associated with the disposal of Commercial Phone Directories, even if they are recycled, which they
5 often are not. Further, recycling of Commercial Phone Directories poses special difficulties
6 because of their bulk, weight, and composition. While recycling of Commercial Phone Directories
7 is environmentally preferable to their being disposed of without recycling, the better approach from an
8 environmental and economic standpoint is to prevent wastage in the first place, and thereby reduce the
9 need for and costs of recycling, by devising a system tailored to match the production of Commercial
10 Phone Directories with the demand for such directories. Not printing a Commercial Phone Directory
11 reduces greenhouse gases to a far greater extent than printing the directory and eventually recycling it.

12 (d) Delivery of unsolicited Commercial Phone Directories to private residences and businesses
13 also creates neighborhood blight. Unsolicited deliveries often sit on the porch, the steps, in front of the
14 door to a home, or on the sidewalk, for days or even weeks. Piles of Commercial Phone Directories
15 are often left in front of multi-unit residential buildings, to be battered and degraded by the elements
16 rather than picked up by the intended recipients. The size, weight, and bulk of the product operates as
17 a particular disincentive for people to pick it up. And the size and bulk of the product creates a
18 particularly unsightly blight on City streets, especially in more densely populated areas, impeding the
19 aesthetic enjoyment of the neighborhood.

20 (e) The nature and magnitude of the environmental and related harms caused by delivery of
21 unsolicited Phone Directories is unique to Phone Directories. In the experience of San Francisco and
22 other cities, no product or object of similar size, weight, and bulk, whether made of paper or otherwise,
23 and whether containing print or otherwise, is regularly left, unsolicited, at private residences and
24 businesses throughout San Francisco. Commercial Phone Directories comprise a large subset –

1 almost certainly a majority – of the Phone Directories delivered unsolicited to private residences and
2 businesses in San Francisco.

3 (f) The information contained in Commercial Phone Directories is readily available on the
4 Internet or may easily be made available on the Internet. The large majority of private residences and
5 businesses in San Francisco have access to the Internet, and the numbers of private residences and
6 businesses with access to the Internet is expected to become even greater in the future. Access to the
7 Internet has become increasingly common and convenient for residents and businesses in San
8 Francisco with the advent of personal computers, including hand-held devices, and smart phones.

9 (g) The purpose of this Chapter is to significantly reduce the environmental and other harms
10 and related costs caused by delivery of unsolicited Commercial Phone Directories to private residences
11 and businesses in San Francisco. There is a compelling public interest in achieving this objective.

12 (h) The Pilot Program established by this Chapter directly advances the City's interest in
13 significantly reducing the environmental and other harms and related costs caused by delivery of
14 unsolicited Commercial Phone Directories to private residences and businesses in San Francisco. The
15 Pilot Program is narrowly tailored to meet this objective. It does not prohibit the publication or
16 distribution of Commercial Phone Directories but rather focuses on channeling their distribution to
17 Persons and others who find a need to use such directories. And a central feature of the program is its
18 public outreach component, which is designed in part to ensure that Persons and others who seek to
19 obtain a Commercial Phone Directory are able easily to do so. Further, the Pilot Program will be
20 far more effective in meeting the goals of this Chapter than any "opt-out" program permitting
21 unsolicited distribution of Commercial Phone Directories to private residences and businesses
22 unless the resident or business expresses a preference not to receive the directory.

23 **SEC. 20.2. DEFINITIONS:**

24 For purposes of this Chapter, the following definitions apply.

25 (a) "City" means the City and County of San Francisco.

1 (b) "Commercial Phone Directory" means a printed publication (a hard copy) of at least 100
2 pages (counting the front and back of a page as two pages), consisting of nonresidential phone number
3 listings and advertisements for those listed in the publication, with the listings segregated under
4 headings for similar types of businesses. A "Commercial Phone Directory" is commonly, but not
5 necessarily, printed on yellow paper.

6 (c) "Commission" means the Commission on the Environment.

7 (d) "Department" means the Department of the Environment.

8 (e) "Director" means the Director of the Department of the Environment.

9 (f) "Distribute" means to physically deliver Commercial Phone Directories to private
10 residences and/or businesses in San Francisco. "Distribute" does not include storage of Commercial
11 Phone Directories by a Distributor or Phone Company at a site under the control of the Distributor or
12 Phone Company, at which site Persons and others may come to receive Commercial Phone
13 Directories. The act of distribution of a Commercial Phone Directory shall be imputed to all
14 Distributors, as defined in subsection (g), of that directory.

15 (g) "Distributor" means (1) a company, entity, business, or Person contractually obligated to
16 distribute or cause the distribution of Commercial Phone Directories to private residences and/or
17 businesses in San Francisco; (2) a company, entity, business, or Person that enters into a contract with
18 a Distributor as defined in subdivision (g)(1) for the purpose of that Distributor's distributing or
19 causing the distribution of Commercial Phone Directories to private residences and/or businesses in
20 San Francisco; (3) a company, entity, business, or Person that does not contract for the distribution of
21 Commercial Phone Directories to private residences and/or businesses in San Francisco but instead
22 itself distributes the Commercial Phone Directories.

23 Notwithstanding the above definition, "Distributor" does not include a Person or Persons
24 whose sole role in the distribution of Commercial Phone Directories is limited to driving the streets
25 and physically delivering Commercial Phone Directories. In addition, "Distributor" does not include

1 the United States Postal Service, a commercial courier, or a commercial package delivery service that
2 allows a customer to track the status of a shipment by destination, date, and time of delivery.

3 (h) "Person" means a human being.

4 (i) "Phone Company" means a company or other entity that provides telephone service to
5 private residences and/or businesses in San Francisco. "Phone Company" includes a wholly owned
6 subsidiary of a Phone Company, or any other company or entity the ownership or management of
7 which is controlled by a Phone Company.

8 (j) "Phone Directory" includes Commercial Phone Directories but also includes an
9 alphabetical compilation of phone listings for residences, businesses, and government offices,
10 commonly known as "the White Pages." A "Phone Directory" is a printed publication (a hard copy).

11 (k) "Pilot Program" means the Yellow Pages Distribution Pilot Program established by this
12 Chapter.

13 (l) "State law" means the entire corpus of State law, including decisions and regulations of the
14 California Public Utilities Commission.

15 **SEC. 20.3. DISTRIBUTION OF COMMERCIAL PHONE DIRECTORIES.**

16 (a) A Distributor may not distribute or cause to be distributed a Commercial Phone Directory
17 to a private residence or business in San Francisco unless:

18 (1) The Distributor delivers the Commercial Phone Directory to a Person at the private
19 residence or business who is an occupant or authorized representative of the private residence or
20 business and who personally accepts the Commercial Phone Directory; or

21 (2) The Distributor delivers the Commercial Phone Directory to a private residence or
22 business after having received a request from an occupant or authorized representative of the private
23 residence or business for the Commercial Phone Directory to be delivered there.

1 (b) Subsection (a) shall not be construed to prevent the placement of Commercial Phone
2 Directories in a business open to the public, with the consent of the occupant or authorized
3 representative of the business, to be available for pick-up by patrons or other members of the public.

4 (c) For purposes of the exception in subdivision (a)(2), there is no restriction on the manner of
5 making a request for delivery of a Commercial Phone Directory to a private residence or business. But
6 the Distributor has a duty to maintain documentation of requests for a Commercial Phone Directory to
7 be delivered to a private residence or business. The Distributor is permitted but not required to
8 maintain a registry of such requests. In any proceeding to determine whether a Distributor has
9 violated subsection (a) because of not qualifying for the exception in subdivision (a)(2), the absence of
10 documentation of a request shall raise an inference that the request was not made.

11 (d) For purposes of the exception in subdivision (a)(2), a request for delivery of a Commercial
12 Phone Directory shall be construed to continue in effect for the duration of the Pilot Program.

13 (e) A Distributor may not evade the prohibition contained in subsection (a) by:

14 (1) Dividing a Commercial Phone Directory into two or more volumes, when at least one of the
15 volumes does not meet the pages requirement in the definition of Commercial Phone Directory but the
16 volumes combined would meet the pages requirement; or

17 (2) Including in a Commercial Phone Directory listings the distribution of which are required
18 by State law, or other information the distribution of which is required by State law.

19 (f) A Distributor who violates subsection (a) may be subject to administrative penalties, as
20 follows.

21 (1) The Director, a designee of the Director, the Director of Public Works, or a designee of the
22 Director of Public Works, may issue administrative citations for violations of subsection (a). San
23 Francisco Administrative Code Chapter 100, "Procedures Governing the Imposition of Administrative
24 Fines," is hereby incorporated in its entirety and shall govern the amount of fees and the procedure for
25 imposition, enforcement, collection, and administrative review of administrative citations issued under

1 this subsection (f). The Director, a designee of the Director, the Director of Public Works, or a
2 designee of the Director of Public Works, shall impose fines as set forth in Section 100.5(a) of the San
3 Francisco Administrative Code.

4 (2) For the purpose of determining administrative penalties, violations of subsection (a) shall
5 be computed over any period of time not to exceed 12 months and shall be consolidated in increments
6 of fifty Commercial Phone Directories unlawfully distributed. For example, a Distributor's unlawful
7 distribution of 1-50 Commercial Phone Directories shall count as one violation for the purpose of
8 determining an administrative penalty; a Distributor's unlawful distribution of 51-100 Commercial
9 Phone Directories shall count as two violations for the purpose of determining an administrative
10 penalty; and so on. More than one Distributor may be assessed an administrative penalty for the same
11 violation. No Distributor may be assessed twice for the same violation.

12 (g) Distributors have a duty to provide reasonable access to relevant information sought by the
13 Director, a designee of the Director, the Director of Public Works, or a designee of the Director of
14 Public Works, for purposes of enforcing the provisions of this Chapter. A Distributor who violates this
15 subsection (g) may be subject to administrative penalties through the process described in subdivision
16 (f)(1). For purposes of this subsection (g), violations shall be computed on a daily basis. For example,
17 the first day a Distributor fails to provide reasonable access to relevant information sought shall count
18 as one violation for the purpose of determining an administrative penalty; the second day a Distributor
19 fails to provide reasonable access to relevant information sought shall count as a second violation for
20 the purpose of determining an administrative penalty; and so on.

21 (h) The Director is authorized to adopt regulations to implement this Section and other
22 provisions of this Chapter following a public hearing. At the Director's discretion, the Director may
23 delegate this hearing function, but not the authority to adopt regulations, to a designee.

24 (i) This Section shall not preclude a Distributor, Phone Company, or anyone else from using
25 any lawful means to inform Persons or others that they may request delivery of a Commercial Phone

1 Directory to a private residence or business, to publicize the process for making such a request, or to
2 inform Persons or others of the availability of Commercial Phone Directories at a distribution center
3 or business where Commercial Phone Directories are available to members of the public. To the extent
4 permitted by State law, these means of providing information may include but are not limited to:
5 Notices inserted in phone bills sent to phone customers; notices in other communications from Phone
6 Companies to their customers; notices in Phone Directories that are not Commercial Phone
7 Directories and that are distributed to residences and businesses; notices on handbills distributed to
8 residences and businesses in conformity with provisions of local law regarding distribution of
9 handbills; notices posted on doors, similar to notices posted by commercial mail services when no one
10 answers the door; notices sent by U.S. mail or email; phone calls; advertisements on television, radio,
11 or the Internet; and press releases.

12 **SEC. 20.4. PUBLIC OUTREACH PROGRAM.**

13 (a) The City shall develop and implement a public outreach program to educate San Francisco
14 residents and businesses about the environmental harms associated with excessive distribution of
15 Commercial Phone Directories; develop alternatives to private possession of Commercial Phone
16 Directories to obtain the information contained in those directories, and inform the public of those and
17 other alternatives; and inform the public about the option and means of obtaining a Commercial Phone
18 Directory from a Distributor or other source. The public outreach program shall include a special
19 emphasis on outreach to seniors, the disabled, ~~and~~ low-income persons, and persons whose primary
20 language is not English.

21 (b) The Department shall coordinate with other City offices, departments, boards, and
22 commissions the development and implementation of the public outreach program mandated by
23 subsection (a). These other City entities may include but are not limited to the Office of the Mayor,
24 including the Mayor's Office on Immigrant and Civic Engagement, the Office of the City
25 Administrator, the Department of Public Works, and the Department of Technology. All City offices,

1 departments, boards, and commissions shall cooperate with and reasonably assist the Department in its
2 efforts to coordinate the development and implementation of the program.

3 (c) In developing and implementing the public outreach program mandated by subsection (a),
4 the City shall consider the following methods of providing information to the public: Phone calls from
5 the City to private residences and businesses; a notice on the City's website and the Department's
6 website; notices on regular meeting agendas of the Commission and possibly of other City boards and
7 commissions; public service announcements on local television stations including foreign language
8 stations and the City's television station; press releases; and mailings or other communications to
9 private residences and businesses and possibly to centers in the City that house senior citizens or
10 disabled persons, as well as to centers in the City that serve Persons whose primary language
11 is not English. In addition, the City may consider any other methods it concludes may be useful in
12 providing information to the public that will further the goals of the public outreach program as stated
13 in subsection (a).

14 (d) In developing and implementing the public outreach program mandated by subsection (a),
15 the City shall consider the feasibility of making Commercial Phone Directories available for
16 distribution to the public in City buildings such as branches of the San Francisco Public Library.
17 Recreation Centers, and City Hall; the feasibility of making electronic copies of Commercial Phone
18 Directories more accessible to members of the public; and the feasibility of providing a service by
19 which members of the public can call a City phone number and request information in a Commercial
20 Phone Directory.

21 (e) While subsections (c) and (d) require the City to consider various matters in developing and
22 implementing the public outreach program mandated by subsection (a), they do not require that the
23 public outreach program include any particular component.

24 (f) The public outreach program mandated by subsection (a) shall be adopted no later
25 than October 1, 2011, in the manner prescribed in Section 20.8(a). The City's failure to adopt

1 the public outreach program by October 1, 2011 shall not invalidate this Chapter or have any
2 legal effect other than the effect on the Chapter's operative date as specified in Section
3 20.8(a). The content of the public outreach program is within the City's discretion and any alleged
4 insufficiency of the program in meeting its objectives shall not invalidate this Chapter or have any
5 effect on the Chapter's operative date. The content of the public outreach program may evolve
6 during the three-year duration of the Pilot Program.

7 **SEC. 20.5. PROMOTION OF GENERAL WELFARE.**

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

12 **SEC. 20.6. CONFLICT WITH STATE OR FEDERAL LAW.**

13 Nothing in this Chapter shall authorize the City to impose any duties or obligations in conflict
14 with limitations on municipal authority imposed by federal or State law. This Chapter shall be
15 construed so as not to conflict with applicable federal or State law. In adopting regulations pursuant
16 to Section 20.3(h) or engaging in enforcement actions pursuant to Sections 20.3(f), 20.3(g), and 20.8(c),
17 the City is authorized to implement this Chapter so as to avoid a conflict, if any, with applicable federal
18 or State law.

19 **SEC. 20.7. SEVERABILITY.**

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

24 **SEC. 20.8. OPERATIVE DATE; SUNSET PROVISION; REPORTS.**

1 (a) This Chapter shall become operative thirty days after the City adopts the public
2 outreach program mandated by Section 20.4(a). The public outreach program shall be
3 adopted when notice of its adoption is posted on the Department's website and at the Public
4 Library, and a notice of its adoption is transmitted by the Department to the Clerk of the Board
5 of Supervisors. In addition, a Distributor, Phone Company, other company, entity, business,
6 Person, or anyone else may file a written request with the Director or the Director's designee
7 to be notified of the adoption of the public outreach program at the time of its adoption. The
8 Director or designee shall provide such notice upon request; but failure to provide such notice
9 shall not delay or otherwise affect the date this Chapter becomes operative, or have any other
10 legal effect on May 1, 2012.

11 (b) This Chapter shall remain operative for three years following the date that the Chapter
12 becomes operative through June 30, 2016April 30, 2015. At the conclusion of the three-year
13 period, This Chapter shall "sunset" on July 1, 2016May 1, 2015 and no longer have the force of
14 law as of that date.

15 (c) Distributors shall submit a written report to the Director or the Director's designee one
16 year after the operative date of this Chapter, two years after the operative date, and six months prior to
17 the sunset date. These reports shall contain information on the total number of Commercial Phone
18 Directories distributed, and the number of them distributed according to different means of
19 distribution. The Director may require Distributors to submit other information pertaining to
20 distribution of Commercial Phone Directories.

21 Failure of a Distributor to comply with the reporting requirement mandated by this subsection
22 (c) may subject the Distributor to administrative penalties through the process described in Section
23 20.3(f)(1). For purposes of this subsection (c), violations shall be computed on a daily basis, in the
24 manner described in Section 20.3(g).


1 To the extent submission of information from one Distributor would be duplicative of
2 information submitted or to be submitted by another Distributor, the Director may, upon request of a
3 Distributor, waive the reporting requirement mandated by this subsection (c) for that Distributor.

4 (d) The Department shall report to the Board of Supervisors, no later than three months prior
5 to the sunset date of this Chapter, on the efficacy of this Chapter as a means of reducing wastage in the
6 distribution of Commercial Phone Directories in San Francisco, the scope and effectiveness of the
7 public outreach program mandated by Section 20.4(a), and any other matters pertaining to this
8 Chapter. All City offices, departments, boards, and commissions shall cooperate with and reasonably
9 assist the Department in its efforts to prepare the report. This subsection (d) shall not preclude the
10 Board of Supervisors or a committee thereof, or the Commission, or any other City entity or official,
11 from holding hearings at any time on the same subject.

12
13 Section 2. Environmental Findings. The Planning Department has determined that the
14 actions contemplated in this Ordinance are in compliance with the California Environmental
15 Quality Act (California Public Resources Code section 21000 et seq.). Said determination is
16 on file with the Clerk of the Board of Supervisors in File No. 110114 and is incorporated herein
17 by reference.

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

21 By:


22 PAUL ZAREFSKY
23 Deputy City Attorney
24
25

