

1 [Environment Code - Antibiotic Use in Food Animals]

2

3 **Ordinance amending the Environment Code to require certain retailers of raw meat**
4 **and poultry to report the use of antibiotics in such products to the Department of the**
5 **Environment, and require City departments to report the use of antibiotics in raw meat**
6 **and poultry purchased by the City to the Department of the Environment.**

7 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
8 **Additions to Codes** are in *single-underline italics Times New Roman font*.
9 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
10 **Board amendment additions** are in double-underlined Arial font.
11 **Board amendment deletions** are in ~~strikethrough Arial font~~.
12 **Asterisks (* * * *)** indicate the omission of unchanged Code
13 subsections or parts of tables.

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

15

16 Section 1. The Environment Code is hereby amended by adding Chapter 27, entitled
17 "Antibiotic Use in Food Animals," consisting of Sections 2701 through 2709, to read as
18 follows:

19 **CHAPTER 27: ANTIBIOTIC USE IN FOOD ANIMALS**

20 **SEC. 2701. FINDINGS.**

21 *(a) The overuse of antibiotics, also known as antimicrobial drugs, in human medicine and in*
22 *meat and poultry production poses a pressing environmental and public health threat by allowing*
23 *antibiotic-resistant bacteria to multiply and spread. In 2013, the Centers for Disease Prevention and*
24 *Control ("CDC") identified antibiotic resistance as one of the top five health threats facing the country*
25 *in the near future.*

(b) In a 2013 report on antibiotic resistance threats in the United States, the CDC estimated
that every year at least 2 million people contract antibiotic-resistant infections, and at least 23,000

1 people die as a result of these infections. Some researchers have estimated these infections cost the
2 United States as much as \$55 billion annually due to excess healthcare costs and lost productivity.

3 (c) Increasingly, antibiotic-resistant bacteria are leading to infections that can be difficult to
4 treat, require longer and more expensive hospital stays, and are more likely to be fatal than non-
5 resistant bacterial infections. Without effective antibiotics, procedures such as chemotherapy,
6 dialysis, and many surgeries become much riskier for patients because of the high risk of bacterial
7 infections associated with these procedures.

8 (d) While improper use of antibiotics in the healthcare sector is a contributing factor,
9 organizations such as CDC, the Food and Drug Administration (“FDA”) and the World Health
10 Organization (“WHO”) recognize that the overuse and misuse of antibiotics in food animals is a
11 significant source of the antibiotic-resistant bacteria that affect humans. In a 2015 American
12 Academy of Pediatrics (“AAP”) technical report, the authors stated that the “use of antimicrobial
13 agents in agriculture can harm public health, including child health, through the promotion of
14 resistance.”

15 (e) Scientists recognize a growing “reservoir” of antibiotic resistance in our communities and
16 environment. A significant portion of antibiotics administered to livestock are excreted in urine and
17 manure, which are then spread as fertilizer on agricultural land. From there, antibiotics can run off
18 into waterways and spread in other ways through the environment. This can lead to the proliferation
19 and spread of resistant bacteria.

20 (f) Antibiotic-resistant bacteria have been found in drinking water near livestock facilities, in
21 the top soil of dairies, and in the air downwind from industrial swine facilities and cattle feedlots. In
22 addition to traveling off farms in water, air, and soil, antibiotic-resistant bacteria can be found on
23 fruits and vegetables where manure has been applied to crops. Furthermore, insects and rats can
24 carry resistant bacteria away from farms. Workers can also unwittingly carry antibiotic-resistant
25 bacteria from livestock production facilities or processing plants into their communities. Antibiotic-

1 resistant bacteria can pass their resistant genes on to other bacteria. This allows some bacteria,
2 including bacteria in the human gut, to become resistant to antibiotics that they have never
3 encountered. Several recent studies indicate that living near livestock operations or near fields
4 treated with manure can increase individuals' risk of contracting antibiotic-resistant infections or
5 being colonized by antibiotic-resistant bacteria.

6 (g) In addition, scientists and governmental agencies routinely find antibiotic-resistant
7 bacteria on animals at slaughter and on raw meat in grocery stores. In 12 years of testing through the
8 National Antimicrobial Resistance Monitoring System ("NARMS"), the FDA has identified
9 antibiotic-resistant bacteria that can cause illness on retail pork, chicken, ground beef, and ground
10 turkey every year. For example, in the most recent reported testing in 2012, 33% of Salmonella, 60%
11 of Enterococcus faecium, 30% of E. coli and, 11% of Campylobacter coli found in chicken were
12 multidrug resistant (resistant to at least three antibiotic classes). WHO and CDC have deemed
13 antibiotic-resistant infections from food pathogens a serious threat.

14 (h) A recent example illustrates the risks of injudicious use of antibiotics, which can cause
15 global problems. In 2015, a study in China identified plasmid encoded colistin resistance (mcr-1),
16 which is easily transferable to other bacteria, in a significant fraction of pig samples that had been
17 collected for routine surveillance. Scientists believe the resistance was a result of colistin in animal
18 feeds, which is not allowed for use in the United States. The same colistin resistance was detected in
19 hospital patients. A couple of months later, alarmed scientists around the world had discovered the
20 same colistin resistance in 19 countries, including in child and elderly patients, in the guts of healthy
21 humans, in water, on retail meat, and in animals. Because the colistin gene was detected more often
22 in animals than in people, the authors of the original study say it is likely that this form of colistin
23 resistance originated in animals and spread to people.

24 (i) In January 2017, FDA completed implementation of its Guidance 213, enacting rules
25 requiring veterinary approval for a host of antibiotics that were previously available over the counter

1 for growth promotion purposes. It also announced the withdrawal of approval for a portion of new
2 animal drug applications that indicated the use of antibiotics for growth promotion for animals used to
3 produce meat and poultry. However, antibiotics in every medically important class that was approved
4 for growth promotion in livestock production will remain available for use at similar or the same
5 doses for disease prevention. Even under Guidance 213, antibiotic products could continue to be
6 administered to animals that are not sick in low doses on a routine basis in their feed and/or water
7 prophylactically. Furthermore, Guidance 213 does not require use reduction targets or a means to
8 track progress toward reduction of the use of antibiotics in livestock operations.

9 (j) According to 2009-2014 domestic sales and distribution data collected from
10 pharmaceutical companies by the FDA, sales of medically-important antibiotics for food animals have
11 increased every year and by 23% over the five-year period. From 2013 to 2014, the first year for
12 voluntary implementation of Guidance 213, antibiotic sales of medically-important antibiotics
13 increased by 3%.

14 (k) Both the Netherlands and Denmark have achieved significant reductions in livestock
15 antibiotic use only after both routine disease prevention and growth promotion uses were banned.
16 According to the government of the Netherlands, antibiotic use in the Dutch livestock industry fell by
17 59% between 2009 and 2014. Between 1992 and 2008, Denmark reduced antibiotic use in swine
18 production by almost 50%, while still experiencing a nearly 50% increase in production.

19 (l) There is no federal program in the United States to collect comprehensive and
20 representative data on antibiotic use in livestock or poultry, nor any federal regulatory proposal to do
21 so. The only information available is sales data that does not break down use by species or medical
22 reason for use.

23 (m) In 2015, Governor Brown signed SB 27, a first-in-the nation law, which puts all
24 medically-important antibiotics under veterinary oversight and restricts prophylactic use of antibiotics
25 in livestock so that antibiotics may not be administered routinely. In addition, SB 27, codified at

1 Section 14400 et seq. of the California Food and Agriculture Code, directs the California Department
2 of Food and Agriculture to monitor antibiotic use, sales, and antibiotic resistance. However, the law
3 applies to livestock and poultry produced in California only.

4 (n) The marketplace remains fragmented and confusing for consumers. Other than for
5 products labeled “Organic” or “No Antibiotics Administered,” antibiotic use practices remain
6 opaque or misleading. For example, meat and poultry products may have been produced with regular
7 use of antibiotics yet labeled “natural,” and products may claim to be produced without the use of
8 “growth-promoting antibiotics” while using antibiotics routinely for disease prevention with
9 growth-promoting effects. Should producers choose to label their products as compliant with SB 27,
10 such labels will add to this confusing mix.

11 (o) San Francisco can play a pivotal role in addressing the inappropriate use of antibiotics in
12 meat production by increasing transparency of antibiotic use practices by collecting, analyzing, and
13 explaining the myriad policies on antibiotic use for raising livestock and poultry and the implications
14 of different levels of antibiotic use for environmental health, antibiotic resistance and public health.

15 **SEC. 2702. DEFINITIONS.**

16 For the purposes of this Chapter 27, the following definitions apply:

17 “Antibiotic” means any antimicrobial drug that works against bacteria, is approved by the
18 United States Food and Drug Administration (“FDA”), and is currently marketed for use in or on
19 Meat or Poultry animals as approved in 21 C.F.R. §§ 558.55 et seq. and identified in the FDA’s 2014
20 Summary Report On Antimicrobials Sold or Distributed for Use in Food-Producing Animals and
21 subsequent annual reports.

22 “Antibiotic Not Currently Medically Important” means any antibiotic and its associated class
23 that does not belong to a class that is listed as “important,” “highly important,” or “critically
24 important” in Appendix A of FDA’s Guidance for Industry #152 and subsequent revisions to that list.
25 Antibiotics Not Currently Medically Important are listed in the FDA’s 2014 Summary Report On

1 Antimicrobials Sold or Distributed for Use in Food-Producing Animals, and subsequent FDA annual
2 reports.

3 “Antibiotic Use Policy” means a description of the antibiotic use practices, whether or not
4 written or formalized, of a Producer of each Product Group sold in a Grocer’s stores.

5 “City” means the City and County of San Francisco.

6 “Brand” means a distinguishing symbol, mark, logo, name, word, sentence or a combination
7 of these items that companies use to distinguish their product from others in the market.

8 “Department” means the Department of the Environment.

9 “Director” means the Director of the Department of the Environment or his or her designee.

10 “Disease Control” means metaphylaxis, i.e., the administration of an antibiotic to a group of
11 animals that are in contact with an animal or animals showing clinical signs of illness to protect the
12 group from the spread of the disease.

13 “Disease Prevention” means prophylaxis, i.e., the administration of an antibiotic to animals,
14 none of which are exhibiting clinical signs of disease.

15 “Grocer” means a person, firm, corporation, partnership, or other entity that owns and/or
16 operates in the City a grocery store, whether general or specialty, as defined in Planning Code
17 Section 102, and also owns or operates 25 or more grocery stores anywhere.

18 “Growth Promotion” means the administration of antibiotics to an animal to increase the
19 animal’s weight gain or growth, to increase feed efficiency, or for other production purposes not
20 related to Disease Control, Prevention, or Treatment.

21 “Meat” means the edible part of the carcass of any mammal, such as cattle, calf, sheep, lamb,
22 goat, rabbit, buffalo, or swine.

23 “Medically Important Antibiotic” means any antibiotic that belongs to a class that is listed as
24 “important,” “highly important,” or “critically important” in Appendix A of FDA’s Guidance for
25 Industry #152 and subsequent revisions to that list.

1 “Poultry” means the edible part of the carcass of any bird.

2 “Producer” means a person or entity who establishes management and production standards
3 for the maintenance, care, and raising of Meat and/or Poultry animals, and either: (1) operates a
4 business raising Meat and/or Poultry animals that are used to produce any Product Group sold by a
5 Grocer; or (2) purchases or otherwise obtains live Meat and/or Poultry animals that it slaughters,
6 and/or sells for slaughter, for production of any Product Group sold by a Grocer.

7 “Product Group” means Raw Meat or Poultry of the same species of animal(s), brand, and sub-
8 brand.

9 “Raw” means not cooked or cured.

10 “Routine Use” means regular administration of Antibiotics for Disease Prevention and/or
11 Growth Promotion.

12 “Sub-brand” means a brand whose attributes are distinct, yet related to a broader main
13 brand.

14 “Third-Party Certification” means certification by an organization that is not affiliated with the
15 Grocer and that addresses antibiotic use by producers of a Product Group sold by the Grocer. The
16 following third party certifications are accepted under this Chapter: U.S. Department of Agriculture
17 (“USDA”) Organic, USDA No Antibiotics Administered Process Verified (or equivalent USDA
18 “process verified” claim), Global Animal Partnership, Certified Responsible Antibiotic Use, Humane
19 Certified, and Animal Welfare Approved. The Director may, from time to time via regulations, add to
20 this list of acceptable certifications.

21 “Treatment” means the administration of Antibiotics to animals when they are sick, i.e.,
22 exhibiting clinical signs of bacterial disease.

23 **SEC. 2703. ANTIBIOTIC USE REPORTS—REPORTING AND DOCUMENTATION OF**
24 **ANTIBIOTIC USE POLICIES FOR RAW MEAT PRODUCTS.**

1 (a) Beginning 180 days after enactment of this Chapter 27 and annually thereafter, each
2 Grocer shall report to the Department on a form prescribed by the Director the Antibiotic Use Policy
3 for each Product Group sold in the City during the previous year. The form shall require reporting of
4 information including, but not limited to, the different purposes for which antibiotics are used, whether
5 the use has a Third-Party Certification, the average number of days of antibiotic use per animal, the
6 percentage of animals treated with antibiotics, the number of animals raised, and the total volume of
7 antibiotics administered. The reporting shall distinguish between use of Medically Important
8 Antibiotics, and Antibiotics Not Currently Medically Important. If there is no change to the Antibiotic
9 Use Policy information from the previous year for a Product Group, the Grocer may report that fact in
10 its response on the Department’s form. A Grocer shall fill out a separate form for each distinct retail
11 banner operated and/or owned by the Grocer.

12 (b) Upon a written petition from a Grocer showing, based on substantial evidence, that the
13 reporting of certain required information is not feasible without significant hardship, the Director may
14 exercise reasonable discretion to waive reporting of the relevant information for a period of time
15 specified by the Director. Any waiver shall be crafted as narrowly as possible, to maximize disclosure
16 as required by this Chapter 27. If a petition is granted, in responding to the form for the relevant
17 Product Group, the Grocer shall indicate that it has a waiver for the relevant portions of the form. All
18 petitions the Department receives shall be publicly posted on the Department’s website for a minimum
19 of 30 days. The Department shall, during a designated comment period, receive and post on its website
20 written comments from the public for the Director to take under advisement in ruling on each petition.
21 Where a written petition receives no response from the Director within 60 days, the petition shall be
22 deemed approved to grant a waiver for one year. Once each year, the Director shall provide an
23 opportunity for input on the petition review and approval process at a public meeting, and shall
24 respond to the public input on each waiver for which concerns are raised.

1 (c) Grocery stores and butchers that do not meet the definition of "Grocer" may elect to
2 participate in the reporting process set forth in this Section 2703, and the Department shall encourage
3 such participation.

4 (d) Five years from enactment of this Chapter, the Director shall evaluate whether the
5 reporting program continues to provide useful information to the public. Such review shall occur every
6 two years thereafter.

7 (e) Each Grocer shall retain documentation of the Antibiotic Use Policy for each Product
8 Group sold in its stores. The following shall be sufficient documentation:

9 (1) A written statement from the Producer of each Product Group that provides
10 information sufficient to address the queries in the Department's form;

11 (2) A Third-Party Certification that confirms the Producer's responses to the
12 Department's form; and/or

13 (3) A store-wide Antibiotic Use Policy that applies to all Meat and Poultry products
14 sold in the store, or that applies to all products in a particular category of Meat or Poultry sold in
15 the store, such as chicken, turkey, pork, or beef; and the process, in writing, by which the Grocer
16 enforces this policy, including any Third-Party Certifications used, written statements from
17 Producers, purchasing specifications, or equivalent information that demonstrates enforcement of
18 the store-wide policy.

19 For a Product Group for which there has been no change to the Antibiotic Use Policy from the
20 previous year, the Grocer shall retain documentation establishing that there has been no change.

21 **SEC. 2704. ANTIBIOTIC USE REPORTS—ANALYSIS AND PUBLICATION OF FINDINGS.**

22 The Department shall analyze the antibiotic use reports collected pursuant to Section 2703, to
23 educate the public about the Antibiotic Use Policies associated with different Meat and Poultry Product
24 Groups and their availability in different grocery stores, distinguish between Medically Important
25 Antibiotics and Antibiotics Not Currently Medically Important, and inform the public's purchasing

1 decisions. The Department shall publish its findings on its website, and may disseminate its findings
2 through other means it deems appropriate.

3 **SEC. 2705. ANTIBIOTIC USE REPORTS—ENFORCEMENT AND PENALTIES.**

4 (a) The Director shall administer and enforce this Chapter 27.

5 (b) If the Director determines that a Grocer has violated this Chapter 27 or a regulation
6 adopted pursuant thereto, the Director shall send a written warning, as well as a copy of this Chapter
7 and any regulations adopted pursuant thereto, to the Grocer, specifying the violation. The Grocer
8 shall have 30 days after receipt of the warning to correct the violation.

9 (c) If, after having received a warning in accordance with subsection (b), the Grocer fails to
10 correct the noticed violation within 30 days after receipt of the warning, the Director may impose
11 administrative penalties, including fines for violations of this Chapter 27 and/or of any regulation
12 adopted pursuant thereto, and/or suspension or revocation of any permits held. Administrative
13 Code Chapter 100, "Procedures Governing the Imposition of Administrative Fines," as amended, is
14 hereby incorporated in its entirety and shall govern the imposition, enforcement, collection, and review
15 of administrative fines imposed to enforce this Chapter or any rule or regulation adopted pursuant to
16 this Chapter. Each day a Grocer fails to correct a violation shall constitute a separate violation for
17 these purposes. Grocers and Producers shall be jointly and severally liable for delays in submitting
18 required reports and for false statements made in reports to the Director or in the documentation
19 required to comply with this Chapter.

20 (d) The City Attorney, a Grocer, or any organization with tax exempt status under 26 United
21 States Code Section 501(c)(3) or 501(c)(4) and with a primary mission of protecting human health
22 and/or the environment in the San Francisco Bay Area ("Non-profit"), may bring a civil action to
23 enjoin violations of or compel compliance with any requirement of this Chapter 27 or any rule or
24 regulation adopted pursuant to this Chapter, as well as for payment of civil penalties and any other
25 appropriate remedy. The court shall award reasonable attorney fees and costs to the City Attorney,

1 Grocer, or Non-profit that is the prevailing party in a civil action brought under this subsection (d). A

2 Grocer or Non-profit may institute a civil action under this subsection (d) only if:

3 (1) The Grocer or Non-profit has filed a complaint with the Director containing
4 sufficient information for the Director to assess its accuracy;

5 (2) 90 days have passed since the filing of the complaint without the Director issuing a
6 warning or otherwise initiating remedial action;

7 (3) After the 90-day period referenced in subsection (d)(2) has passed, the Grocer or
8 Non-profit has provided 30-day written notice to the Director and the City Attorney's Office of its intent
9 to initiate civil proceedings;

10 (4) By the end of the 30-day period referenced in subsection (d)(3), the City Attorney's
11 Office has not provided notice to the Grocer or Non-profit of the City's intent to initiate civil
12 proceedings; and,

13 (5) The Grocer or Non-profit has executed an agreement indemnifying and holding
14 harmless the City in connection with the action, in a form approved by the City Attorney's Office.

15 (e) Any Grocer who knowingly and willfully violates the requirements of this Chapter 27 or any
16 rule or regulation adopted pursuant to this Chapter is guilty of a misdemeanor and upon conviction
17 thereof is punishable by a fine of not less than \$50 and not more than \$500 for each day per violation,
18 or by imprisonment in the County Jail for a period not to exceed six months, or by both such fine and
19 imprisonment.

20 (f) Any Grocer in violation of this Chapter 27 or any rule or regulation adopted pursuant to
21 this Chapter shall be liable to the City for a civil penalty in an amount not to exceed \$1,000 per day per
22 violation. Each day in which the violation continues shall constitute a separate violation. A civil
23 penalty shall not be assessed pursuant to this subsection (f) for the same violation for which the
24 Director assessed an administrative penalty pursuant to subsection (c).

1 (g) In determining the appropriate penalties, the court or the Director shall consider the extent
2 of harm caused by the violation, the nature and persistence of the violation, the frequency of past
3 violations, any action taken to mitigate the violation, and the financial burden to the violator.

4 (h) No criminal, civil, or administrative action under this Section 2705 may be brought more
5 than four years after the date of the alleged violation, except where evidence of the violation has been
6 hidden or was otherwise unavailable in the exercise of reasonable diligence.

7 **SEC. 2706. CITY PROCUREMENT OF RAW MEAT—REPORTS OF CURRENT PRACTICES**
8 **AND PUBLICATION OF RECOMMENDATIONS.**

9 (a) No later than 90 days after enactment of this Chapter 27, all City departments procuring
10 Raw Meat and/or Poultry shall both conduct an audit of their Meat and Poultry purchases in the
11 previous calendar year and submit a report to the Department of the Environment with the following
12 information:

13 (1) Percentages of Meat and Poultry procured that were produced with and without the
14 Routine Use of Antibiotics, distinguishing between Meat and Poultry raised without any Antibiotics and
15 Meat and Poultry raised without Routine Use of Medically Important Antibiotics whenever feasible;

16 (2) A list of current suppliers, and whether those suppliers currently offer Meat and/or
17 Poultry raised without the Routine Use of Antibiotics, distinguishing between Meat and/or Poultry
18 raised without any Antibiotics and Meat and/or Poultry raised without Routine Use of Medically
19 Important Antibiotics, and whether the suppliers could cease Routine Use of Medically Important
20 Antibiotics within three years' time;

21 (3) The estimated cost of obtaining Meat and/or Poultry raised without the Routine Use
22 of Antibiotics, distinguishing between Meat and/or Poultry raised without any Antibiotics and Meat
23 and/or Poultry raised without Routine Use of Medically Important Antibiotics; and

24 (4) The expected timeline if the department were to transition to procurement of only
25 Meat and/or Poultry raised without the Routine Use of Medically Important Antibiotics.

1 **(b) No later than 180 days after enactment of this Chapter 27, the Department of the**
2 **Environment shall compile the departmental reports required by this Section 2706 and publish an**
3 **analysis regarding opportunities for and feasibility of a City-wide procurement policy for Meat and**
4 **Poultry raised without the Routine Use of Medically Important Antibiotics. The Department shall**
5 **submit a copy of its analysis to the Board of Supervisors and the Mayor.**

6 **SEC. 2707. RULEMAKING.**

7 **(a) The Director, after a public hearing, shall adopt and may amend guidelines, rules,**
8 **regulations, and/or forms as the Director deems necessary to implement this Chapter 27.**

9 **(b) No later than 90 days after enactment of this Chapter 27, the Department shall issue**
10 **regulations specifying the contents and format for the form required by Section 2703.**

11 **SEC. 2708. UNDERTAKING FOR THE GENERAL WELFARE.**

12 **In enacting and implementing this Chapter 27, the City is assuming an undertaking only to**
13 **promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an**
14 **obligation for breach of which it is liable in money damages to any person who claims that such breach**
15 **proximately caused injury.**

16 **SEC. 2709. SEVERABILITY.**

17 **If any section, subsection, sentence, clause, phrase, or word of this Chapter 27, or any**
18 **application thereof to any person or circumstance, is held to be invalid or unconstitutional by a**
19 **decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining**
20 **portions or applications of the chapter. The Board of Supervisors hereby declares that it would have**
21 **passed this chapter and each and every section, subsection, sentence, clause, phrase, and word not**
22 **declared invalid or unconstitutional without regard to whether any other portion of this chapter or**
23 **application thereof would be subsequently declared invalid or unconstitutional.**

1 Section 2. Effective Date. This ordinance shall become effective 30 days after
2 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
3 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
4 of Supervisors overrides the Mayor's veto of the ordinance.

5
6 APPROVED AS TO FORM:
7 DENNIS J. HERRERA, City Attorney

8 By: _____
9 NEHA GUPTA
 Deputy City Attorney

10 n:\legana\as2017\1700075\01221154.docx