

BOARD of SUPERVISORS



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MEMORANDUM

TO: Regina Dick-Endrizzi, Director
Small Business Commission, City Hall, Room 448

FROM: Erica Major, Assistant Clerk
Land Use and Transportation Committee

DATE: September 14, 2018

SUBJECT: REFERRAL FROM BOARD OF SUPERVISORS
Land Use and Transportation Committee

The Board of Supervisors' Land Use and Transportation Committee has received the following legislation, which is being referred to the Small Business Commission for comment and recommendation. The Commission may provide any response it deems appropriate within 12 days from the date of this referral.

File No. 180646-2

Ordinance amending the Environment Code to require audits every 30 months of large refuse generators for compliance with refuse separation requirements; to establish enforcement measures applicable to large refuse generators found noncompliant; and affirming the Planning Department's determination under the California Environmental Quality Act.

Please return this cover sheet with the Commission's response to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

RESPONSE FROM SMALL BUSINESS COMMISSION - Date: _____

No Comment

Recommendation Attached

Chairperson, Small Business Commission

1 [Environment Code - Refuse Separation Compliance]

2
3 **Ordinance amending the Environment Code to require audits every 30 months of large**
4 **refuse generators for compliance with refuse separation requirements; to establish**
5 **enforcement measures applicable to large refuse generators found noncompliant; and**
6 **affirming the Planning Department's determination under the California Environmental**
7 **Quality Act.**

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

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

16 Section 1. Environmental Findings.

17 The Planning Department has determined that the actions contemplated in this
18 ordinance comply with the California Environmental Quality Act (California Public Resources
19 Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of
20 Supervisors in File No. 180646 and is incorporated herein by reference. The Board affirms
21 this determination.

22 Section 2. Findings.

23 (a) The San Francisco Board of Supervisors adopted the Mandatory Recycling and
24 Composting Ordinance #100-09 that became operative as Chapter 19 of the Environment
25 Code in October 2009. Section 1903 requires that all persons source separate their refuse

1 into recyclables, compostables and trash, and refrain from mixing those material refuse
2 streams in collection containers designated for another type of refuse. Section 1904 provides
3 requirements for owners and managers of multifamily or commercial properties to provide
4 adequate refuse service and effective source separation, including working with on-site
5 janitors, to achieve compliance with the source separation requirement.

6 (b) Chapter 19 has led to the provision of adequate refuse service at 99% of San
7 Francisco properties. But the Department of Environment has nevertheless found that 60% of
8 all disposed material from the City is recyclable or compostable. San Francisco must address
9 this gap in waste diversion if it is to achieve its adopted goal of zero waste.

10 (c) While source separation must improve across all sectors and property types,
11 buildings that generate large amounts of refuse—including multifamily, multi-tenant
12 commercial, and mixed-use properties, and those with roll-off refuse compactors—contribute
13 significantly to refuse contamination, subsequent loss in recovery of recyclables/
14 compostables, and reduced ability to process and market these materials. When audited,
15 large refuse generators are often found to have significant refuse cross-contamination of
16 recyclable and compostable materials in their trash designated for landfill. These large refuse
17 generators face unique compliance challenges, and also present unique regulatory
18 challenges, because contamination is difficult to identify in large-volume refuse containers and
19 in refuse that has been compacted.

20 (d) At least 85 large commercial or multifamily refuse collection accounts in San
21 Francisco are currently engaging the onsite services of persons or entities known as Zero
22 Waste Facilitators to help sort and manage refuse for proper separation and placement in
23 designated collection containers.

24 (e) Zero Waste Facilitators have helped these accounts improve compliance with
25 Chapter 19, achieve refuse rate discounts, and contribute to improved waste diversion

1 Citywide. A detailed analysis of the results from 9 accounts that employ Zero Waste
2 Facilitators found that on average, these accounts reduced trash service by 66%, increased
3 their recycling and composting by over 150%, increased diversion by 30%, up to an average
4 75% diversion rate, and procured refuse rate discounts resulting in a net cost savings of 25%.

5 (f) Compliance with San Francisco's source separation mandate requires a sustained
6 commitment and, especially for large refuse generators, a robust source separation system.
7 Many large refuse generators have achieved significant progress in developing and executing
8 such systems through voluntary engagement of Zero Waste Facilitators.

9 (g) Heightened enforcement aimed at identifying compliance problems for large refuse
10 generators, coupled with a mandate to dedicate resources to sustainable solutions to these
11 problems, is critical to a zero-waste San Francisco.

12
13 Section 3. The Environment Code is hereby amended by revising Section 1902, as
14 follows:

15 (a) Each subsection letter accompanying each defined term in Section 1902 (i.e.,
16 subsection letters (a)-(z)) is deleted.

17 (b) The following definitions of terms are added to Section 1902 and placed therein
18 among the defined terms in correct alphabetical position:

19 "Audit" means a thorough and systematic visual inspection of the contents of refuse collection
20 container(s) upon their removal from the container that results a finding of the approximate
21 percentages of contaminants or materials not appropriate for that type of container (i.e., recyclables,
22 compostables, or trash).

23 "Large Refuse Generator" means a commercial property refuse account holder, or a City-
24 owned and operated facility, that has roll-off compactor service or generates 30 cubic yards or more of
25

1 uncompacted refuse per week. Where a roll-off or other compactor is used, the volume of compacted
2 refuse shall be multiplied times three to account for its compaction.

3 “Zero Waste Facilitator” means a person or entity serving exclusively in the business of and
4 with demonstrated capacity to manage refuse materials within a given property, including material
5 sorting and transfer, and who meets criteria as may be specified in regulations promulgated by the
6 Director, to achieve proper refuse source separation in compliance with this Chapter 19.

7
8 Section 3. The Environment Code is hereby amended by revising Sections 1906,
9 1908, and 1909, to read as follows:

10 **SEC. 1906. REQUIREMENTS FOR REFUSE COLLECTORS, TRANSFER**
11 **STATIONS, AND PROCESSING FACILITIES.**

12 (a) All collectors must appropriately designate the collection containers they provide to
13 customers for source separation of recyclables, compostables, and trash. The containers
14 must:

15 (1) Bear appropriate signage that allows users to clearly and easily identify
16 which containers to use for recyclables, compostables, or trash;

17 (2) Be color-coded:—blue for recyclables, green for compostables, and black
18 for trash; and,

19 (3) Bear the name of the collector to whom the container belongs.

20 (b) (1) If a collector finds materials that are not the correct type as designated for
21 that container, such as recyclables or compostables in a trash container, or trash in a
22 compostables or recyclables container, the collector then must leave a tag on the container
23 identifying the incorrect materials.

24 (2) If the collector continues to find incorrect materials in a collection container
25 after the collector has left a previous tag for that customer and that type of container, the

1 collector must leave another tag on the container identifying the incorrect materials and send
2 a written notice to the person who subscribes for that collection service.

3 (3) If the collector continues to find incorrect materials in a collection container
4 after the collector has already left two or more tags for that customer and that type of
5 container, the collector may refuse to empty the container, subject to California Code of
6 Regulations Title 14, Section 17331, or as determined by the Director of Public Health or his
7 or her designee. If the container is not emptied, the collector must leave a tag and send a
8 written notice to the person who ~~subscribers~~ subscribes for the collection service, identifying the
9 incorrect materials and describing what action must be taken for the materials to be collected;
10 provided, however, that a collector may not refuse on this basis to empty containers from
11 multifamily or commercial properties with multiple tenants and joint account collection service.

12 (4) The collector shall, upon request, provide to the Director a list of the names
13 and addresses of those persons who have received tags or notices or whose containers have
14 not been emptied due to non-compliance with this Chapter 19, or copies of the tags or notices
15 issued by the collector. The collector shall also provide to the Director, upon request, a list of
16 the names, addresses, and service levels of the collector's customers and any additional
17 information required by the Director.

18 **(c) Periodic Large Refuse Generator Audits.** *The Director or collector shall complete an*
19 *Audit of every Large Refuse Generator for compliance with this Chapter 19 not less than once every*
20 *thirty months.*

21 **(d) Audit Findings.** *The Director shall find that a Large Refuse Generator is out of*
22 *compliance with this Chapter 19 pursuant to an Audit of the contents of its collector-serviced refuse*
23 *collection containers, if materials are found that do not belong in a designated collection container and*
24 *are at a contamination level that either significantly impacts the ability to process and market the*
25 *materials, or results in the significant loss of compostables or recyclables found in a collection*

1 container. The report for each failed audit shall include photographs of the contamination and a
2 description of how the contamination exceeds the Director's compliance threshold. Guidelines for the
3 contamination threshold for Large Refuse Generators' compliance with this Chapter 19 shall be set
4 and maintained by the Director based on market conditions and processing capabilities, and as needed
5 to meet the City's progress toward zero-waste benchmarks. The Director shall review and revise these
6 guidelines on an annual or more frequent basis in furtherance of the objectives of this Chapter.

7 **(e) Notice of Noncompliance and Order to Comply.** Upon a finding of noncompliance under
8 Sec. 1906(d), the Director shall promptly issue to the Large Refuse Generator a notice of
9 noncompliance and order to comply ("notice and order").

10 (1) The notice and order shall state the provision(s) of this Chapter 19 with which the
11 Large Refuse Generator has failed to comply, the specific Audit findings underlying this
12 determination, and contact information for communications required by this Chapter. The
13 notice and order shall also include a copy of the relevant provisions of this Chapter and related
14 regulations.

15 (2) The notice and order shall state the requirements and 45-day deadline in Section
16 1906(f), and prescribe an adequate capacity of Zero Waste Facilitator(s) based on the Audit
17 findings and in accordance with regulations.

18 (3) The notice and order may also mandate additional remedial steps and a timeline for
19 response and/or compliance as the Director deems appropriate, in his or her lawful discretion
20 and in furtherance of the objectives of this Chapter 19.

21 **(f) Zero Waste Facilitator Requirement.** A Large Refuse Generator who fails an Audit under
22 Section 1906(c) must, within 45 days of receipt of a Director's notice and order, and for a duration of a
23 minimum of 24 consecutive months, designate staff or otherwise engage person(s) whose exclusive
24 function is to serve as Zero Waste Facilitator(s). Such person(s) must meet minimum criteria, and be
25 engaged at sufficient capacity to address the Audit findings, in accordance with regulations

1 promulgated by the Director and as specified in the Director's notice and order. The Large Refuse
2 Generator must notify the Director in writing by the 45-day deadline of its plan for compliance, and
3 include supporting documentation, as described in regulations. The Large Refuse Generator shall be
4 subject to a follow-up Audit upon expiry of the 24-month period if no earlier compliance Audit is
5 conducted. The Director or collector shall conduct inspections, monitor compliance with the notice
6 and order, and pursue enforcement in the intervening period, as permitted under this Chapter 19.

7 (g) **Compliance Audits.** Notwithstanding the 24-month requirement described in Section
8 1906(f), after 12 consecutive months of compliance with all aspects of a notice and order issued under
9 Section 1906(e), a Large Refuse Generator may request a follow-up Audit to demonstrate compliance.
10 Such compliance Audits shall be conducted at the Large Refuse Generator's own expense. A Large
11 Refuse Generator that has failed its most recent Audit must provide sufficient evidence of remediation
12 efforts alongside a request for a compliance Audit. Provided these requirements are met, the Director
13 or collector shall complete a requested compliance Audit within a reasonable time frame. No Large
14 Refuse Generator is entitled to more than three Audits per collection container in a single 365-day
15 period. Where the Large Refuse Generator passes a compliance Audit and has implemented mandated
16 remedial measures, the Director shall issue an order finding compliance and resolving the underlying
17 notice and order. Where the Large Refuse Generator fails a compliance Audit, the Director may order
18 additional remedial measures and/or administrative penalties in accordance with Section 1906(h).

19 (h) **Enforcement of Notices of Noncompliance and Orders to Comply, and Audit Failure.**
20 The Director may impose an administrative penalty of up to \$1000 for each violation of any aspect of a
21 Director's order issued to a Large Refuse Generator under this Chapter 19. Each day of continued
22 noncompliance may constitute a separate violation. The Director may hold such imposed
23 administrative penalties in abeyance, pending completion of ordered remedial steps or based on other
24 conditions, in accordance with his or her lawful discretion and in furtherance of the objectives of this
25 Chapter 19.

1 ~~(e)(i)~~ Within 90 days of the end of each calendar year, each collector must submit to
2 the Department, on a form specified by the Director, an annual report of all tons collected by
3 material type and to whom the material was sent.

4 *(j) Upon one year from the operative date of this ordinance and annually thereafter, the*
5 *Director shall report to the Board of Supervisors on notices and orders issued to Large Refuse*
6 *Generators under this Chapter 19 within the prior 12-month period.*

7 ~~(d)(k)~~ No person may deliver recyclables or compostables, including those mixed with
8 trash, to a landfill or transfer station for the purpose of having those materials landfilled,
9 except as follows:

10 (1) A collector may drop off recyclables or compostables at the San Francisco
11 transfer station for landfill if the transfer station has agreed to provide to the Director, upon
12 request, audits of collection vehicles for a specified period going forward in time. The transfer
13 station's audit shall report the quantity of recyclables or compostables, stated as estimated
14 tons per load or as a percentage of the loads, deposited at the transfer station by collection
15 vehicles specifically identified in the request over a reasonable period of time occurring after
16 the request.

17 (2) A processing facility that sorts and reconstitutes recyclables for the purpose
18 of using the altered form in the manufacture of a new product or turns compostables into
19 usable and marketable compost (e.g., soil-conditioning) material may send to a landfill a minor
20 portion of those materials that constitutes unmarketable processing residuals, if the
21 processing facility provides to the Director, upon request, audits of specific collection vehicles
22 for a specific period going forward in time, of the quantities of recyclables or compostables
23 sent to the landfill from the processing facility.

24 ~~(e)(l)~~ No person may deliver trash from the city, including trash mixed with recyclables
25 or compostables, to a processing facility, unless the processing facility has agreed to provide

1 to the Director, upon request, audits of collection vehicles for a specified period going forward
2 in time. The processing facility's audit shall report the quantity of trash, stated as estimated
3 tons per load or as a percentage of the loads, deposited at the processing facility by collection
4 vehicles specifically identified in the request over a reasonable period of time occurring after
5 the request.

6
7 **SEC. 1908. ENFORCEMENT.**

8 (a) The Director ~~and his or her designee~~ may administer all provisions of this Chapter 19
9 and enforce those provisions by any lawful means available for such purpose, including
10 through imposition of administrative penalties for violations of those provisions of this Chapter, or of
11 rules and regulations adopted pursuant to this Chapter, except as otherwise provided in this
12 Chapter.

13 (b) To the extent permitted by law, the Director and collectors may inspect any
14 collection container, collection vehicle load, or receiving facility, including back-of-house
15 facilities, and the Director may also inspect internal facilities, front-of-house bins, or refuse chute
16 rooms, for collected trash, recyclables, or compostables, and proper separation thereof, to enforce
17 this Chapter 19.

18 (c) Except as otherwise provided in this Chapter 19, the Director of the Department of
19 Public Health or his or her designee may impose administrative fines for violations of those
20 provisions of this Chapter, or of rules and regulations adopted pursuant to this Chapter, that
21 pertain to the jurisdiction of the Department of Public Health.

22 (d) Except as otherwise provided in this Chapter 19, the Director of Public Works or
23 his or her designee may impose administrative fines for violations of those provisions of this
24 Chapter, or of any rule or regulation adopted pursuant to this Chapter, that pertain to the
25 jurisdiction of the Department of Public Works.

1 (e) *San Francisco* Administrative Code Chapter 100, "Procedures Governing the
2 Imposition of Administrative Fines," as amended, is hereby incorporated in its entirety and
3 shall govern the imposition, enforcement, collection, and review of administrative citations and
4 penalties issued to enforce this Chapter 19 and any rule or regulation adopted pursuant to this
5 Chapter; provided, however, that:

6 (1) The Director of Public Works or the Director of Public Health may adopt
7 regulations providing for lesser penalty amounts than those provided in Administrative Code
8 Section 100.5;

9 (2) The fine for any violation at a dwelling or commercial property that
10 generates less than one cubic yard of refuse per week may not initially exceed \$100; and

11 (3) The Director may impose administrative penalties as set forth in Section 1906(h).
12 ~~No person who is the owner, tenant, manager, employee, contractor, or visitor of a multifamily or of a~~
13 ~~multi-tenant commercial property shall be subject to fines or penalties for violation of Section 1903~~
14 ~~(but will remain subject to such enforcement for violations of section 1904 and other sections of the~~
15 ~~Ordinance), unless and until the Director of the Department of the Environment has adopted specific~~
16 ~~regulations setting out the liability of such persons. The Director shall not adopt such regulations prior~~
17 ~~to July 1, 2011.~~

18 (f) The *City Department* shall use administrative penalties collected under this Chapter
19 19, including recovery of enforcement costs, to fund implementation and enforcement of this
20 Chapter. Remedies under this Chapter are in addition to and do not supersede or limit any
21 and all other remedies, civil or criminal.

22 **SEC. 1909. FORMS, REGULATIONS AND GUIDELINES.**

23 (a) After public notice and a public hearing, the Director may adopt necessary forms,
24 and regulations, ~~and guidelines~~ to implement this Chapter.
25

1 (b) The Department shall provide assistance regarding compliance with this Chapter.

2 (c) The Department shall provide information on its website regarding what materials
3 are accepted as recyclables, compostables, and trash under this Chapter.

4
5 Section 4. Effective and Operative Dates.

6 (a) This ordinance shall become effective 30 days after enactment. Enactment occurs
7 when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not
8 sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the
9 Mayor's veto of the ordinance.

10 (b) This ordinance shall become operative on January 1, 2019.

11
12 Section 5. Scope of Ordinance. Except as stated in Section 2, in enacting this
13 ordinance, the Board of Supervisors intends to amend only those words, phrases,
14 paragraphs, subsections, sections, articles, numbers, punctuation marks, charts, diagrams, or
15 any other constituent parts of the Municipal Code that are explicitly shown in this ordinance as
16 additions, deletions, Board amendment additions, and Board amendment deletions in
17 accordance with the "Note" that appears under the official title of the ordinance.

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

22 By: 
23 NEHA GUPTA
24 Deputy City Attorney

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REVISED LEGISLATIVE DIGEST

(Substituted, 9/11/2018)

[Environment Code - Refuse Separation Compliance]

Ordinance amending the Environment Code to require audits every thirty months of large refuse generators for compliance with refuse separation requirements; to establish enforcement measures applicable to large refuse generators found noncompliant; and affirming the Planning Department's determination under the California Environmental Quality Act.

Existing Law

Chapter 19 of the Environment Code requires source separation of refuse into recyclables, compostables, and trash, and mandates subscription to refuse collection service. Chapter 19 sets forth requirements for owners or managers of multifamily and commercial buildings, and food vendors and events, to provide their tenants, employees, contractors, and/or customers with access to refuse containers and training on source separation. It also sets forth standards for refuse collectors, transfer stations, and processing facilities related to tagging refuse containers of noncompliant customers, and delivery and acceptance of refuse materials. Chapter 19 provides for inspections, administrative enforcement, and issuance of administrative penalties by various Departments for noncompliance. It incorporates Administrative Code Section 100, governing the imposition, enforcement, and appeal of administrative citations, in its entirety, except as otherwise provided in Chapter 19.

Amendments to Current Law

This ordinance would establish additional refuse separation compliance and enforcement measures applicable to large refuse generators and administered by the Director of the Department of Environment and his or her designees. Large refuse generators are defined as commercial property refuse account holders and City-owned and operated facilities that have roll-off compactor service, or generate 30 cubic yards or more of refuse per week. Large refuse generators would be subject to visual inspection audits of their refuse not less than every thirty months. The Director of the Department of Environment would issue to those large refuse generators found noncompliant a notice and order to comply.

This ordinance would require such noncompliant large refuse generators to appoint or otherwise engage staff or contractors whose exclusive function is to serve as zero waste facilitators, for a minimum of 24 consecutive months, upon receiving a Director's notice and order. A zero waste facilitator is a person in the business of and with experience managing refuse material sorting and transfer, who must also meet criteria set by the Director of the Department of Environment. After 24 consecutive months of compliance with the Director's notice and order, a large refuse generator would be subject to a follow-up audit. A finding of compliance at this audit would result in a Director's order lifting the prior notice and order,

while failure of a compliance audit could result in additional mandated remedial steps and/or imposition of administrative penalties.

Notwithstanding the 24-month minimum requirement for engagement of zero waste facilitator(s), a large refuse generator who has engaged zero waste facilitator(s) for 12 consecutive months and taken all other ordered remedial steps may request a compliance audit from the Department of Environment at its own expense. Under this ordinance, the Director of the Department of Environment would have authority to impose, and hold in abeyance at his or her lawful discretion, administrative penalties at a maximum of \$1000 per violation of each aspect of a Director's order. Each day of continued noncompliance may constitute a separate violation.

This ordinance's operative date would be January 1, 2019.

Background

This legislation reflects a substitute ordinance introduced at the Board of Supervisors on September 11, 2018. The ordinance was initially introduced at the Board of Supervisors on June 12, 2018.

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