

1 [Resource Conservation - Batteries.]

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3 **Ordinance amending the Resource Conservation Ordinance, Chapter 21A of the**
4 **Administrative Code, to require the purchase and use of rechargeable batteries by City**
5 **departments and to require other practices that will increase battery recycling by the**
6 **City.**

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

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

11 Section 1. Findings. The Board of Supervisors of the City and County of San Francisco hereby
12 finds and declares as follows:

13 A. In 2000, the Board of Supervisors enacted the Resource Conservation Ordinance to
14 require city departments to procure recycled and environmentally preferable products and to reduce
15 the generation of waste.

16 B. On July 9, 2001, the Board of Supervisors adopted Resolution 592-0, urging the City
17 and County of San Francisco to require that City departments purchase and use only rechargeable
18 batteries and urging the City and County of San Francisco to increase battery recycling.

19 C. This ordinance adds provisions to the Resource Conservation Ordinance to require city
20 departments to purchase and use rechargeable batteries and engage in other practices that will
21 increase battery recycling.

22 D. This ordinance also makes minor amendments to existing provisions of the Ordinance.

23 Section 2. The San Francisco Administrative Code is hereby amended by amending
24 Section 21A.2 to read as follows:

25 Sec. 21A.2 Definitions.

1 As used in this Chapter, the following words shall have the following meanings:

2 "Battery" means two or more connected cells that produce a direct current by
3 converting chemical energy to electrical energy. For purposes of this ordinance, "battery" does not
4 include automotive batteries.

5 "Battery charger" means a device that restores anew the active materials in a battery.

6 "Battery pack" means multiple batteries joined together in a single housing.

7 "City department" means any department of the City and County of San
8 Francisco, and does not include any other local agency or any federal or State agency,
9 including but not limited to the San Francisco School District, the San Francisco Community
10 College District, the San Francisco Redevelopment Agency and the San Francisco Housing
11 Authority.

12 "Comprehensive Procurement Guideline" or "CPG" means final guidelines, as
13 periodically promulgated and amended by the U.S. EPA and codified at 40 Code of Federal
14 Regulations Part 247, which designate products that are or can be made with recovered
15 materials in order to assist federal procuring agencies in complying with the requirements of
16 federal law and Executive Order 13101 as they apply to the procurement of items with
17 recovered materials content. As of February 22, 2002 ~~February 14, 2000~~, final CPGs exist for:
18 paper and paper products; vehicle products (including engine coolants, re-refined lubricating
19 oils, and retread tires); construction products (including building insulation products, carpet,
20 cement and concrete containing coal fly ash and ground granulated blast furnace slag,
21 consolidated and reprocessed latex paint, floor tiles, patio blocks, shower and room dividers,
22 structural fiberboard, carpet cushion, flowable fill and railroad grade crossing surfaces),
23 transportation products (including channelizers, delineators, flexible delineators, parking
24 stops, traffic barricades and traffic cones); park and recreational products (including plastic
25 fencing, playground surfaces, running tracks, park benches and picnic tables, and playground

1 equipment); landscaping products (including garden and soaker hoses, hydraulic mulch, lawn
2 and garden edging, yard trimmings compost, food waste compost, and plastic lumber
3 landscaping timbers and posts); non-paper office products (including binders, office recycling
4 containers, office waste receptacles, plastic desktop accessories, plastic envelopes, plastic
5 trashbags, printer ribbons, toner cartridges, solid plastic binders, plastic clipboards, plastic file
6 folders, plastic clip portfolios, and plastic presentation folders); and miscellaneous products
7 (including pallets, sorbents, industrial drums, awards and plaques, mats, signage, including
8 sign supports and posts, and manual-grade strapping).

9 "Contract" means a binding written agreement for the provision of goods and/or
10 services to be provided at the expense of the City or to be paid out of monies deposited in the
11 treasury or out of trust monies under control of the City between a person, firm, corporation or
12 other entity, including a governmental entity, and a City department. This Chapter shall not
13 apply to contracts entered into or amended to extend the term prior to October 1, 2000.

14 "Contractor" means a person, firm, corporation or other entity, including a
15 governmental entity, that enters into a contract with a City department.

16 "Contracting officer" means that officer or employee of the City authorized under
17 the Charter or Municipal Code to enter into a contract on behalf of the City. "Contracting
18 officer" shall include the Mayor, each department head or general manager and other
19 employees of the City authorized to enter into contracts on behalf of the City.

20 "Director" means the Director of the Department of the Environment ~~Solid Waste~~
21 ~~Management Program within the Department of Administrative Services~~ or his or her designee.

22 "Document Imaging" means the conversion of paper documents into electronic
23 images on a computer, thereby reducing the amount of paper used for copying and printing.
24 A document imaging system includes the ability to scan, store, index, retrieve and search
25 documents.

1 "Post-consumer material" means those products generated by a business or
2 consumer which have served their intended end use, and which have been diverted from
3 becoming solid waste for purposes of recycling.

4 "Processed Chlorine Free" means recycled paper in which the recycled content
5 is unbleached or bleached without chlorine or chlorine derivatives. Any virgin material portion
6 of the paper must be totally chlorine free (i.e., unbleached or processed with a sequence that
7 includes no chlorine or chlorine derivatives).

8 "Purchaser" means the Purchaser of the City or his or her designee.

9 "Recovered Materials Advisory Notice" or "RMAN" means the information and
10 recommendations periodically published and amended by the U.S. EPA, based on U.S. EPA's
11 market research concerning the availability, quality, and price of products listed in the CPG.
12 Existing RMANs can be found at 60 Federal Register 21386 (May 1, 1995) (RMAN); 62
13 Federal Register 60976 (November 13, 1997) (RMAN II); 61 Federal Register 26986 (May 29,
14 1996) (Paper RMAN IV); 63 Federal Register 31214 (June 8, 1998) (Paper RMAN II); 63
15 Federal Register 45580 (August 26, 1998) (RMAN III); and 65 Federal Register 3070 (January
16 19, 2000) (RMAN V).

17 "Recyclable material" means any material or product separated or capable of
18 being separated at its point of discard or from the solid waste stream for utilization as a raw
19 material in the manufacture of a new product.

20 "Recycle" or "recycling" means the process of collecting, sorting, cleaning,
21 treating, reusing or reconstituting a material that would otherwise become a solid waste and/or
22 hazardous waste, and returning it to the economic mainstream in the form of a raw material
23 for new, reused or reconstituted products which may be used in the marketplace.

1 "Recycled product" means a product that is or can be made with recovered
2 materials, including those listed in the CPG and which at a minimum, meets the requirements
3 of the federal RMAN.

4 "Reuse" means the secondary use of a product or its packaging for its original
5 intended purpose or another function which does not require the product to be treated or
6 reconstituted in any way.

7 "Solid Waste" or "Waste" has the same meaning as "solid waste" in the
8 California Integrated Waste Management Act of 1989, Public Resources Code Section 40191.

9 "U.S. EPA" means the United States Environmental Protection Agency.

10 "Waste prevention" means discontinuing the use of an unnecessary material
11 rather than disposing of it to the waste stream and shall include: (1) reduced resource use
12 per unit of product; (2) increased product life; and (3) decreased consumption.

13 "Waste Reduction" means the diversion of materials, products and packaging
14 from disposal through waste prevention, reuse, recycling and/or composting, but does not
15 include steps taken after the material becomes solid waste or actions which would transfer the
16 impacts of land disposal to air or water resources, such as transformation, incineration,
17 pyrolysis, distillation, gasification, or biological conversion (other than composting).

18 Section 3. The San Francisco Administrative Code is hereby amended by amending
19 Section 21A.11 to read as follows:

20 SEC. 21A.11. ANNUAL REPORTS.

21 (a) Guidelines. Within thirty (30) days of the effective date of this Chapter and in
22 accordance with Section 21A.12, the Director will adopt a form for annual reporting on solid
23 waste diversion. The form shall account for departments in each phase of development of a
24 Departmental Waste Assessment and Resource Conservation Plan and for transition periods.
25

1 (b) No later than March 1, 2001, and annually thereafter, each City
2 department shall report solid waste diversion information to the Director, on forms provided by
3 the Director, for the prior fiscal year. On and after March 1, 2003, the report shall contain
4 information on the types and amount of batteries purchased, collected from and recycled by that
5 department for the prior fiscal year. The annual report must ~~also~~ contain a copy of any reports
6 made under Subsections 21A.7(c), ~~or~~ 21A.8 (b) or (c) or 21A.13(e) or (f) during the prior 12-month
7 period.

8 (c) No later than June 1, 2001, and annually thereafter, the Director shall prepare
9 and submit a written report to the Board of Supervisors summarizing information provided by
10 City departments pursuant to Subsection (b) and describing the status of the implementation
11 of this Chapter. Among other things, the Director's report shall specifically list each City
12 department that failed to submit an annual report or otherwise conform with the requirements
13 of this Chapter. On and after June 1, 2003, the Director's report shall also contain recommendations
14 regarding batteries and the feasibility of "extended producer responsibility." Extended Producer
15 Responsibility extends the traditional responsibilities that producers and distributors have previously
16 been assigned (i.e. worker safety, prevention and treatment of environmental releases from production,
17 financial and legal responsibility for the sound management of production wastes) to include
18 management at the post-consumer stage.

19 Section 4 The San Francisco Administrative Code is hereby amended by amending
20 Section 21A.13 to read as follows:

21 Sec. 21A.13. Batteries.

22 (a) A City department that purchases or contracts to purchase batteries or products that
23 include or incorporate battery or battery packs, shall purchase and contract to purchase only the
24 following types of batteries and battery packs only from vendors that collect spent batteries and recycle
25 them in accordance with applicable laws:

1 (i) rechargeable alkaline batteries

2 (ii) rechargeable nickel metal hydride batteries, or

3 (iii) another rechargeable battery type identified by the Director pursuant to Section 21A.12.

4 At the request of the City department, a vendor must submit written certification and documentation
5 that collected spent batteries were recycled in accordance with applicable laws.

6 (b) a City department that purchases or contracts to purchase battery chargers shall
7 purchase and contract to purchase battery chargers that recharge Ni-MH batteries as well as other
8 battery types.

9 (c) Each department that purchases batteries must require in the contract that the products
10 be accompanied by detailed recycling instructions and any batteries containing cadmium, mercury,
11 lead, or other hazardous materials include a written explanation of the toxic hazards of these
12 substances in the wastestream.

13 (d) A City department that purchases or contracts to purchase products that include or
14 incorporate battery packs, shall purchase and contract to purchase such products in which the
15 batteries are easily removable.

16 (e) City departments are not required to follow the specifications required in subsections
17 (a)-(d) above in the following circumstances: (i) the product or service is not available in a reasonable
18 period of time; (ii) the product or service would fail to meet reasonable performance standards; or (iii)
19 the product or service is only available at an unreasonable price. "Available in a reasonable period of
20 time" means that the department would receive the product or service within the needed time frame
21 without hindering productivity. "Reasonable performance standards" means a product or service that
22 will perform the desired objective without overriding any City specifications for a project. If a City
23 department relies on one of these exceptions, within two weeks of the purchase, it must file a report
24 with the Director, in a form specified by the Director, explaining the circumstances, the product
25 ultimately purchased and demonstrating a good faith effort to follow the specifications in subsections

1 (a)-(d). If the product purchased was a rechargeable Ni-Cd battery or battery pack, the department
2 must justify why this chemistry was necessary as opposed to rechargeable alkaline or Ni-MH.

3 (f) Each City department, including the Purchaser, shall use its best efforts to incorporate
4 the purchase of rechargeable alkaline batteries and rechargeable nickel metal hydride batteries into
5 existing contracts for these products. If the City department is unable to amend an existing contract,
6 the City department is authorized to enter into another contract to procure these products, provided
7 that the City department complies with all other applicable laws. Nothing in this Chapter is or shall be
8 interpreted to require or authorize any City department to breach the terms of a contract. Each City
9 department shall document its efforts pursuant to this Subsection in a report filed with the Director,
10 explaining the circumstances.

11 (g) The contracting officer shall require all contractors, vendors and suppliers of products
12 subject to this Section to certify that the product meets or exceeds the criteria.

13 ~~SEC. 21A.13. PENALTY.~~

14 ~~— (a) — Whenever any City department finds, after an investigation by the contracting~~
15 ~~officer and the City Attorney, that a person or entity being considered for a contract or under~~
16 ~~contract with the City has, in connection with the bidding, execution or performance of any~~
17 ~~City contract:~~

18 ~~— (1) — Falsely represented to the City the nature or character of the products offered,~~
19 ~~used or supplied under the contract: or~~

20
21 ~~— (2) — Knowingly provided the City with products in violation of this Chapter, the~~
22 ~~guidelines adopted pursuant to this Chapter, or contract provisions pertaining to the required~~
23 ~~use or purchase of recycled products the contracting officer shall have the authority to impose~~
24 ~~such sanctions or take such other actions as are designed to ensure compliance with the~~
25 ~~provisions of this Chapter.~~

1 ~~———— (b) — Measures which are available to a City department to enforce this Chapter upon~~
2 ~~finding a violation pursuant to Section 21A.13(a) include, but are not limited to the following:~~

3 ~~———— (1) — Refusal to certify the award of a contract;~~

4 ~~———— (2) — Suspension of a contract;~~

5 ~~———— (3) — Ordering the withholding of City funds due the contractor under any City~~
6 ~~contract;~~

7 ~~———— (4) — Ordering the recession of a contract based upon a material breach of contract~~
8 ~~provisions or pertaining to representations made in bidding, execution or performance of the~~
9 ~~contract;~~

10 ~~———— (5) — Disqualification of a bidder, proposer or contractor from eligibility for providing~~
11 ~~commodities or services to the City for a period not to exceed five years, with a right to review~~
12 ~~and reconsideration by the contracting City office or department upon a showing of corrective~~
13 ~~action indicating violations are not likely to reoccur.~~

14 ~~———— (c) — Nothing in this Chapter shall be construed to relieve a contractor of responsibility~~
15 ~~for providing a satisfactory product.~~

16 Section 5. The San Francisco Administrative Code is hereby amended by amending
17 Section 21A.14 to read as follows:

18 SEC. 21A.14. PENALTY.

19 ———— (a) — Whenever any City department finds, after an investigation by the contracting officer
20 and the City Attorney, that a person or entity being considered for a contract or under contract with the
21 City has, in connection with the bidding, execution or performance of any City contract:

22 ———— (1) — Falsely represented to the City the nature or character of the products offered, used or
23 supplied under the contract: or

24 ———— (2) — Knowingly provided the City with products in violation of this Chapter, the guidelines
25 adopted pursuant to this Chapter, or contract provisions pertaining to the required use or purchase of

1 recycled products the contracting officer shall have the authority to impose such sanctions or take such
2 other actions as are designed to ensure compliance with the provisions of this Chapter.

3 (b) Measures which are available to a City department to enforce this Chapter upon finding
4 a violation pursuant to Section 21A.14(a) include, but are not limited to the following:

5 (1) Refusal to certify the award of a contract;

6 (2) Suspension of a contract;

7 (3) Ordering the withholding of City funds due the contractor under any City contract;

8 (4) Ordering the recession of a contract based upon a material breach of contract
9 provisions or pertaining to representations made in bidding, execution or performance of the contract;

10 (5) Debarment of a bidder, proposer or contractor from eligibility for providing
11 commodities or services to the City for a period not to exceed five years, with a right to review and
12 reconsideration by the contracting City office or department upon a showing of corrective action
13 indicating violations are not likely to reoccur.

14 (c) Nothing in this Chapter shall be construed to relieve a contractor of responsibility for
15 providing a satisfactory product.

16 SEC. 21A.14. SEVERABILITY.

17 If any part or provision of this Chapter, or the application thereof to any person or circumstance is
18 held invalid, the remainder of this Chapter, including the application of such part or provision to other
19 persons or circumstances, shall not be affected thereby and shall continue in full force and effect,
20 unless enforcement of this Chapter as so modified by and in response to such invalidation would be
21 grossly inequitable under all of the circumstances or would frustrate the fundamental purposes of this
22 Chapter. To this end, provisions of this Chapter are severable.

23 Section 6. The San Francisco Administrative Code is hereby amended by adding
24 Section 21A.15 to read as follows:

25 SEC. 21A.15. SEVERABILITY.

1 If any part or provision of this Chapter, or the application thereof to any person or
2 circumstance is held invalid, the remainder of this Chapter, including the application of such
3 part or provision to other persons or circumstances, shall not be affected thereby and shall
4 continue in full force and effect, unless enforcement of this Chapter as so modified by and in
5 response to such invalidation would be grossly inequitable under all of the circumstances or
6 would frustrate the fundamental purposes of this Chapter. To this end, provisions of this
7 Chapter are severable.

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

10 By: _____
11 Rona H. Sandler
12 Deputy City Attorney

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