

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

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3 **Ordinance amending the San Francisco Environment Code by adding Chapter 11,**
4 **Sections 1100 through 1106 ~~1105~~, to require retailers to disclose Specific Absorption**
5 **Rate values for cell phones, and making environmental findings.**

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

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

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11 Section 1. **Findings.**

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

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

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

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

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

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7 Section 2. The San Francisco Environment Code is hereby amended by adding
8 Chapter 11, Sections 1100 through 1106 1105, to read as follows:

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

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12 **SEC. 1100. TITLE.**

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

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15 **SEC. 1101. DEFINITIONS.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 The Department of the Environment shall adopt regulations specifying the content and format
25 for the elements required by this subsection (a), and shall develop a template for those elements. The

1 elements shall be printed in a space no smaller than 1 inch by 2.625 inches. The SAR values and
2 header text shall be printed in type no smaller than the size and readability equivalent of "Arial" 11
3 point, and the copy text shall be printed in type no smaller than the size and readability equivalent of
4 "Arial" 8 point.

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

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

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

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

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

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

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

20 (c) The Director may, in his or her discretion, authorize a retailer to use alternate means to
21 comply with the requirements of subsections (a) and (b). The Director shall authorize such alternate
22 means through the adoption of a regulation after a noticed hearing, and no retailer may sell or lease
23 cell phones to the public or offer to sell or lease cell phones to the public using any alternate means of
24 compliance with this Chapter unless specifically authorized to do so in advance in writing by the
25 Director.

1 **SEC. 1104. DEPARTMENTAL FACTSHEETS; ASSISTANCE WITH COMPLIANCE.**

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

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

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

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19 **SEC. 1105. IMPLEMENTATION AND ENFORCEMENT.**

20 (a) Notwithstanding those provisions of Section 1103(a) and (b) applicable to formula cell
21 phone retailers, requiring them to make certain disclosures and statements in connection with cell
22 phone sales and leases, the City shall not enforce those provisions until May 1, 2011. During the
23 period between the operative date for those requirements, February 1, 2011, and May 1, 2011, the
24 Department of the Environment shall conduct an education and assistance program for formula cell
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1 phone retailers, and shall visit the retailers and assist them with meeting the requirements of the
2 subsections.

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

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

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

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

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

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

20 (e) Except as provided in subsection (d), setting forth the amount of administrative fines,
21 Administrative Code Chapter 100, "Procedures Governing the Imposition of Administrative Fines," as
22 may be amended from time to time, is hereby incorporated in its entirety and shall govern the
23 imposition, enforcement, collection, and review of administrative citations issued by the City
24 Administrator to enforce this Chapter or any regulation issued under this Chapter. Violation of this

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1 Chapter is not a misdemeanor, and the Board of Supervisors intends that the requirements of
2 this Chapter be enforced only through administrative fines as provided in this Section.

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

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7 **SEC. 1106. DISCLAIMER.**

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

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13 **Section 3. Additional Provisions.**

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

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

23 (b) (e) Severability. If any of the provisions of this Chapter or the application thereof
24 to any person or circumstance is held invalid, the remainder of those provisions, including the
25 application of such part or provisions to persons or circumstances other than those to which it

1 is held invalid, shall not be affected thereby and shall continue in full force and effect. To this
2 end, the provisions of this Chapter are severable.

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

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

By: _____
THOMAS J. OWEN
Deputy City Attorney