

1 [Environment Code - Suspending Yellow Pages Distribution Pilot Program]

2

3 **Ordinance amending the San Francisco Environment Code by adding Section 2109 to**
4 **suspend the Yellow Pages Distribution Pilot Program.**

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

8

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

10

11 Section 1. Background

12

13 (a) On May 17, 2011, the Board of Supervisors passed Ordinance 78-11, which
14 created the Yellow Pages Distribution Pilot Program ("Pilot Program"), regulating the
15 distribution of Commercial Phone Directories for a three-year period beginning May 1, 2012.
16 At the time the legislation was passed, only one federal court decision had addressed whether
17 Commercial Phone Directories were commercial speech subject to lesser speech protections
18 by the First Amendment of the United States Constitution or whether they were speech
19 entitled to full First Amendment protection. That decision determined that Commercial Phone
20 Directories were commercial speech. See *Dex Media West, Inc. v. City of Seattle*, No. C10-
21 1857, 2011 WL 1869330 (W.D. Wash. May 16, 2011.)

22

23 (b) According to Ordinance 78-11, codified at Environment Code Sections 2101 to
24 2108, the Pilot Program was to take effect on May 1, 2012. On February 9, 2012, a three-
25 judge panel of the United States Court of Appeals for the Ninth Circuit heard argument in *Dex
Media West, Inc. v. City of Seattle* (Nos. 11-35399 & 11-35787) and cast doubt upon whether
Commercial Phone Directories are commercial speech. To allow the Ninth Circuit to render

1 its determination, the Department of the Environment has suspended implementation or
2 enforcement of the Pilot Program until May 1, 2013.

3 (c) On October 15, 2012, the Ninth Circuit, in a ruling issued by the three-judge panel,
4 decided that Commercial Phone Directories are not commercial speech but are instead
5 subject to full First Amendment protection. *Dex Media West, Inc. v. City of Seattle*, 2012 WL
6 4857200, -- F.3d -- (9th Cir. Oct. 15, 2012). The Board of Supervisors has determined in light
7 of this ruling to suspend the Pilot Program as specified below.

8 (d) Ordinance 78-11 stated that its provisions would be codified at Environment Code
9 Chapter 20, Sections 20.1 through 20.8. Because Chapter 20 of the Environment Code
10 already existed at the time Ordinance 78-11 was enacted, the Pilot Program has been
11 codified as Chapter 21 of the Environment Code, Sections 2101 through 2108. To avoid
12 confusion, this suspension ordinance refers to the Pilot Program as Chapter 21, Sections
13 2101 through 2108.

14
15 Section 2. The San Francisco Environment Code is hereby amended by adding
16 Section 2109, to read as follows:

17 **SEC. 2109. SUSPENSION OF YELLOW PAGES DISTRIBUTION PILOT PROGRAM.**

18 (a) Chapter 21 of the San Francisco Environment Code, Sections 2101 through 2108, is
19 suspended. During the period of suspension, Chapter 21 shall have no force or effect and shall not be
20 enforced.

21 (b) In the event that, upon further proceedings in *Dex Media West, Inc. v. City of Seattle*, the
22 United States Court of Appeals for the Ninth Circuit or the Supreme Court of the United States finally
23 holds that the City of Seattle's restrictions on the distribution of Commercial Phone Directories are
24 consistent with the First Amendment to the United States Constitution, then the suspension of Chapter
25 21 shall be lifted one year from the date the mandate issues in that case.

1 (c) In the event that the suspension of Chapter 21 is lifted as described in the foregoing
2 subsection (b), then Chapter 21 shall be in force and effect for three years following the date the
3 suspension is lifted, notwithstanding any conflicting sunset date set forth in Section 2108.

4
5 Section 3. Effective Date. This ordinance shall become effective 30 days from the
6 date of passage. The Board of Supervisors acknowledges that before this ordinance
7 becomes effective the Department of the Environment will continue its suspension of
8 implementation and enforcement of Chapter 21.

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

12 By: _____
13 CHRISTINE VAN AKEN
14 Deputy City Attorney