

1 [Administrative Code - Healthy Food Retailer Incentives Program]

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3 **Ordinance amending the Administrative Code, by adding Chapter 59, Sections 59.1-**
4 **59.9, to establish a Healthy Food Retailer Incentives Program to oversee and**
5 **coordinate the City’s incentive and assistance programs for Healthy Food Retailers.**

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

9

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

11 Section 1. The San Francisco Administrative Code is hereby amended by adding
12 Chapter 59, to read as follows:

13 CHAPTER 59: HEALTHY FOOD RETAILER ORDINANCE.

14 SEC. 59.1. TITLE.

15 SEC. 59.2. FINDINGS.

16 SEC. 59.3. DEFINITIONS.

17 SEC. 59.4. HEALTHY FOOD RETAILER INCENTIVES PROGRAM.

18 SEC. 59.5. RULES AND REGULATIONS.

19 SEC. 59.6. FUNDING POLICY.

20 SEC. 59.7. ANNUAL PROGRESS REPORTS.

21 SEC. 59.8. CITY UNDERTAKING LIMITED TO PROMOTION OF GENERAL WELFARE.

22 SEC. 59.9. SEVERABILITY.

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24 SEC. 59.1. TITLE.

25 This Chapter shall be entitled “the Healthy Food Retailer Ordinance.”

1 **SEC. 59.2. FINDINGS.**

2 1. The City and County of San Francisco has a substantial interest in protecting public health
3 by ensuring that healthy, fresh, sustainable, and affordable food is accessible to all residents of the
4 City, particularly those living in neighborhoods with high rates of obesity, poverty and chronic disease,
5 a high concentration of seniors and families with children, and/or a relative lack of public transit.

6 2. More than two in five adult San Franciscans are overweight or obese. Over half of San
7 Francisco residents do not eat five servings of fruits and vegetables daily. Nearly one third of San
8 Franciscans eat fast food in a typical week.

9 3. Sedentary lifestyle and poor diet are risk factors for four of the leading contributors to
10 mortality in San Francisco. Age adjusted death rates for three of these causes – ischemic heart
11 disease, cerebrovascular disease, and hypertensive heart disease – are among the five causes with the
12 highest death rates for both men and women. One key protective factor for diabetes and
13 cardiovascular disease is a healthy, nutritious diet emphasizing whole grains, fresh fruits, and
14 vegetables, and the local food environment can have a strong impact on residents’ dietary choices,
15 especially if access to healthy food is limited.

16 4. In certain parts of the City, there is a lack of quality full service neighborhood markets with
17 fresh produce, and an overabundance of corner stores selling alcohol, tobacco, and highly processed
18 foods that are high in salt, fat, and sugar and low in nutrients. In communities that lack supermarkets,
19 families depend on corner stores for food purchases, and the choices at those stores are often limited to
20 packaged food and very little, if any, fresh produce. For example, a 2011 assessment of 19 corner
21 stores in the City’s Bayview Hunters Point neighborhood found that only 20% of the stores stocked a
22 variety of fresh fruits and vegetables, only 11% stocked whole grain bread, and only 37% stocked low
23 fat milk.

24 5. The presence of a large number of stores selling low quality foods in a community can
25 undermine public efforts to promote health and send a message that normalizes the use of unhealthy

1 products in that neighborhood, placing these communities at greater risk for obesity and chronic
2 disease. A high number of convenience stores per capita is associated with higher rates of mortality,
3 diabetes, and obesity. Proximity to convenience stores within a neighborhood is associated with higher
4 rates of obesity and diabetes. The impact of convenience stores on health is even greater in low-
5 income neighborhoods.

6 6. Research shows that people who live closer to stores that sell healthy food have better diets.
7 Specifically, the amount of shelf space dedicated to fruits and vegetables at neighborhood food stores is
8 positively associated with greater consumption of fruits and vegetables among nearby residents. Food
9 stamp participants who live more than five miles from their primary grocery store consume
10 significantly less fruit than those who live within one mile of a grocery store.

11 7. Small retailers face a variety of challenges to increasing their offerings of fresh and healthy
12 foods. The retail environment is often saturated with tobacco, alcohol and highly processed food
13 subsidies and products, and advertising for these products. Small retailers also lack access to
14 necessary technical assistance, incentives, training and sourcing systems to stock healthy foods and
15 fresh produce and shift their business plans.

16 8. Bringing a healthy food retailer into a neighborhood that lacks access to healthy food not
17 only promotes good nutrition, it can provide economic benefits such as supplying living-wage jobs,
18 raising the value of surrounding property, and anchoring and attracting additional businesses to the
19 neighborhood. Small food stores promote foot traffic, which can increase sales for existing
20 surrounding businesses. These sorts of stores also attract new residents to neighborhoods, as food
21 stores are an essential service that people may consider important when deciding where to live.

22 9. The Southeast Food Access Coalition (“SEFA”) has developed a pilot program for
23 sustainable healthy retail in the Bayview Hunters Point neighborhood that is being implemented with
24 SEFA Food Guardians in the community, is based on lessons learned and best practices in health
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1 promotion and prevention, and has influenced healthy retail efforts in other underserved
2 neighborhoods in the City.

3 10. City agencies including the Department of Public Health and the Economic and Workforce
4 Development Department are undertaking various efforts to increase healthy food retail in underserved
5 parts of the City.

6 11. While the City has taken important steps forward to promote healthy food retail, there is
7 little coordination of these efforts, and there is a need to centralize and coordinate City-wide strategies
8 to recruit and maintain new healthy food businesses, and ensure that existing food businesses are fully
9 utilizing economic incentives and technical support.

10 **SEC. 59.3. DEFINITIONS.**

11 “Department” means the Economic and Workforce Development Department.

12 “Healthy Food Retailer” means a food retailer operating in a fixed location, including a
13 grocery store, corner store, convenience store, farmer’s market, and any other retailer whose business
14 is primarily comprised of sales of food and non-food grocery products intended for preparation, use or
15 consumption off the retailer’s premises that (1) devotes at least 35 percent of its Selling Area to fresh
16 produce, whole grains, lean proteins, and low-fat dairy products, (2) devotes no more than 20 percent
17 of its Selling Area to tobacco and alcohol products, and (3) satisfies the minimum wage requirements
18 for employees set forth in Administrative Code Chapter 12R. Notwithstanding the previous sentence,
19 “Healthy Food Retailer” does not include (1) a Supermarket, as defined in Section 440(h) of the Health
20 Code, (2) a Restaurant, as defined in Section 471.3(f) of the Health Code, (3) a store that, at the time it
21 seeks to access the incentives and assistance available through the Program, already devotes at least
22 35 percent of its Selling Area to fresh produce, whole grains, lean proteins, and low-fat dairy products,
23 or (4) a Formula Retail Use, as defined in Section 303(i) of the Planning Code.

24 “Program” means the Healthy Food Retailer Incentives Program.

25 “Selling Area” means the combined floor area and shelf space of a food retailer’s premises.

1 **SEC. 59.4. HEALTHY FOOD RETAILER INCENTIVES PROGRAM.**

2 (a) Establishment. There is hereby created a Healthy Food Retailer Incentives Program for
3 the City and County of San Francisco to be administered by the Department.

4 (b) Purpose. The purpose of the Program shall be to increase access to healthy food; reduce
5 unhealthy influences such as tobacco, alcohol and processed foods high in salt, fat, and sugar in
6 underserved parts of the City; and stimulate economic development and job creation by creating
7 incentives for Healthy Food Retailers to open or expand in those underserved areas.

8 (c) Duties. In administering the Program, the Department shall:

9 (1) Coordinate efforts to promote and support Healthy Food Retailers with other public
10 agencies in the City, including, but not limited to, the Department of Public Health, the Office of Small
11 Business, the Planning Department, and the Human Services Agency.

12 (2) Develop strategic partnerships and meet regularly with community based
13 organizations, schools and others for the purpose of promoting community engagement and Healthy
14 Food Retailers in the City, and seek feedback from these community partners in major policy decisions.

15 (3) Coordinate and centralize City-wide incentives and technical assistance to promote
16 the establishment and expansion of Healthy Food Retailers in areas of the City that the Department
17 identifies as having a lack of access to Healthy Food Retailers. Towards that end, the Department
18 shall, among other things, perform the following:

19 (A) Identify “underserved areas” of the City that lack access to Healthy Food
20 Retailers.

21 (B) Identify obstacles deterring new and existing retailers from offering fresh,
22 healthy foods and locating in the designated underserved areas, and develop strategies to address
23 them.

24 (C) Coordinate existing incentives and develop new incentives to recruit,
25 maintain, and develop new Healthy Food Retailers in the designated underserved areas, and ensure

1 that existing food retailers in those areas are fully utilizing economic incentives and technical
2 assistance. Such incentives and assistance to be made available to Healthy Food Retailers may
3 include, but are not be limited to, technical support, training, assistance with permits and licensing,
4 store redesign assistance, retail assessment, façade improvement, and access to grants and loans. In
5 providing such incentives and assistance, the Department will engage community-based partners to
6 promote the Program and engage local businesses and the surrounding community.

7 (4) Create, by December 1, 2013, a centralized resource center to provide information
8 and technical assistance to persons, businesses, and organizations seeking to become Health Food
9 Retailers.

10 (5) Explore how Healthy Food Retailers can enhance existing job training programs
11 and provide new job training and employment opportunities for San Francisco residents, including low
12 income individuals and youth, and create incentives for Healthy Food Retailers to hire San Francisco
13 residents.

14 **SEC. 59.5. RULES AND REGULATIONS.**

15 The Director of the Department is authorized to adopt such rules and regulations, following any
16 public hearing or notice that may be required by law, as the Director deems necessary and proper for
17 the administration of the Program.

18 **SEC. 59.6. FUNDING POLICY.**

19 It shall be City policy that for Fiscal Year 2013-14, the City shall maintain current staffing
20 levels so as to ensure that there is at least the equivalent of a total of one full-time staff person in the
21 Department and/or the Department of Public Health to support coordination of Healthy Food Retail
22 programs among City agencies and community stakeholders.

23 **SEC. 59.7. ANNUAL PROGRESS REPORTS.**

24 By January 1, 2014, and every year thereafter, the Department shall submit a written report to
25 the Mayor and Board of Supervisors providing a summary of key Program achievements and

1 challenges from the previous year, an accounting of all City funding for Healthy Food Retailer
2 initiatives, and an inventory of City resources and programs relevant to Healthy Food Retailers in San
3 Francisco.

4 **SEC. 59.8. CITY UNDERTAKING LIMITED TO PROMOTION OF GENERAL WELFARE.**

5 In undertaking the adoption and enforcement of this Chapter, the City is undertaking only to
6 promote the general welfare. The City is not assuming, nor is it imposing on its officers and employees,
7 an obligation for breach of which it is liable in money damages to any person who claims that such
8 breach proximately caused injury. This Chapter does not create a legally enforceable right by any
9 member of the public against the City.

10 **SEC. 59.9. SEVERABILITY.**

11 If any part or provision of this Chapter, or the application of this Chapter to any person or
12 circumstance, is held invalid, the remainder of this Chapter, including the application of such part or
13 provision to other persons or circumstances, shall not be affected by such a holding and shall continue
14 in full force and effect. To this end, the provisions of this Chapter are severable.

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16 Section 2. Effective Date. This ordinance shall become effective 30 days from the
17 date of passage.

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

21 By: _____
22 FRANCESCA GESSNER
23 Deputy City Attorney

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