

BOARD of SUPERVISORS



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MEMORANDUM

TO: Tyrone Jue, Interim Director, Department of the Environment

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

DATE: February 21, 2023

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Land Use and Transportation Committee has received the following proposed legislation, introduced by Mayor Breed on February 14, 2023.

File No. 230156

Ordinance amending the Environment Code to eliminate the requirement that certain drugs ("covered drugs") be disposed of at either a permitted hazardous waste disposal facility or permitted large municipal waste combustor, as those terms are defined by Environmental Protection Agency regulations, or at a facility that provides equivalent or superior environment and human health protection to such facilities, and to instead require that covered drugs be disposed of at a waste disposal facility operating in compliance with all local, state, and federal requirements applicable to that waste disposal facility; to require regular reporting of the compliance status of disposal facilities used; to change drug wholesalers' obligation to update the City's list of covered drug producers from an annual update to an update on request of the Environment Department's Director; to remove the requirement that operators of a drug stewardship plan receive prior approval of a change in manufacturers, and instead add a requirement that such operators receive prior approval of a change in disposal facilities used; and affirming the Planning Department's determination under the California Environmental Quality Act.

If you have comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102 or by email at: Erica.Major@sfgov.org.

cc: Peter Brastow, Department of the Environment
Charles Sheehan, Department of the Environment

1 [Environment Code - Safe Drug Disposal]

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3 **Ordinance amending the Environment Code to eliminate the requirement that certain**
4 **drugs (“covered drugs”) be disposed of at either a permitted hazardous waste disposal**
5 **facility or permitted large municipal waste combustor, as those terms are defined by**
6 **Environmental Protection Agency regulations, or at a facility that provides equivalent**
7 **or superior environment and human health protection to such facilities, and to instead**
8 **require that covered drugs be disposed of at a waste disposal facility operating in**
9 **compliance with all local, state, and federal requirements applicable to that waste**
10 **disposal facility; to require regular reporting of the compliance status of disposal**
11 **facilities used; to change drug wholesalers’ obligation to update the City’s list of**
12 **covered drug producers from an annual update to an update on request of the**
13 **Environment Department’s Director; to remove the requirement that operators of a**
14 **drug stewardship plan receive prior approval of a change in manufacturers, and**
15 **instead add a requirement that such operators receive prior approval of a change in**
16 **disposal facilities used; and affirming the Planning Department’s determination under**
17 **the California Environmental Quality Act.**

18 **NOTE:** **Unchanged Code text and uncodified text** are in plain Arial font.
19 **Additions to Codes** are in *single-underline italics Times New Roman font*.
20 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
21 **Board amendment additions** are in double-underlined Arial font.
22 **Board amendment deletions** are in ~~strikethrough Arial font~~.
23 **Asterisks (* * * *)** indicate the omission of unchanged Code
24 subsections or parts of tables.

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

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1 Section 1. CEQA findings. The Planning Department has determined that the actions
2 contemplated in this ordinance comply with the California Environmental Quality Act
3 (California Public Resources Code Sections 21000 et seq.). Said determination is on file with
4 the Clerk of the Board of Supervisors in File No. ____ and is incorporated herein by reference.
5 The Board affirms this determination.

6
7 Section 2. Chapter 22, Division I, of the Environment Code is hereby amended by
8 revising Sections 2207, 2209, 2210, and 2212, to read as follows:

9 **SEC. 2207. STEWARDSHIP PLANS – DISPOSAL OF COVERED DRUGS.**

10 ~~(a) Covered Drugs collected under a Stewardship Plan must be disposed of at a~~
11 ~~permitted *hazardous* waste disposal facility *as defined by the United States Environmental*~~
12 ~~*Protection Agency under 40 C.F.R. parts 264 and 265, operating in compliance with all local, state, and*~~
13 ~~*Federal requirements applicable to that waste disposal facility. For purposes of this Section, the*~~
14 ~~*Director shall determine that a waste disposal facility is in compliance with all local, state, and federal*~~
15 ~~*requirements applicable to that waste disposal facility if no local, state, or federal agency with*~~
16 ~~*jurisdiction over that facility has issued a notice finding a violation by the facility in the preceding 12-*~~
17 ~~*month period.*~~

18 ~~—(b) The Director may grant approval for a Stewardship Plan to dispose of some or all~~
19 ~~collected Covered Drugs at a permitted large municipal waste combustor, as defined by the United~~
20 ~~States Environmental Protection Agency under 40 C.F.R. parts 60 and 62, if the Director deems the use~~
21 ~~of a hazardous waste disposal facility described under subsection (a) of this Section 2207 to be~~
22 ~~infeasible for the Stewardship Plan based on cost, logistics or other considerations.~~

23 ~~—(c) A Stewardship Plan may petition the Director for approval to use final disposal~~
24 ~~technologies that provide superior environmental and human health protection than provided by the~~
25 ~~disposal technologies in subsections (a) and (b) of this Section 2207, or equivalent protection at lesser~~

1 ~~cost. The proposed technology must provide equivalent or superior protection in each of the following~~
2 ~~areas: (1) monitoring of any emissions or waste; (2) worker health and safety; (3) reduction or~~
3 ~~elimination of air, water or land emissions contributing to persistent, bioaccumulative, and toxic~~
4 ~~pollution; and (4) overall impact on the environment and human health.~~

5 **SEC. 2209. STEWARDSHIP PLANS – REPORTING REQUIREMENTS.**

6 (a) Within six months after the end of the first 12-month period of operation, and
7 annually thereafter, the plan operator of a Stewardship Plan shall submit a report to the
8 Director on behalf of participating Producers describing their plan's activities during the
9 previous reporting period. The report must include:

- 10 (1) A list of Producers participating in the Stewardship Plan;
- 11 (2) The amount, by weight, of Covered Drugs collected, including the amount
12 by weight from each collection method and disposal facility used;
- 13 (3) A list of drop-off sites;
- 14 (4) The number of mailers provided for disabled and/or home-bound residents;
- 15 (5) The locations where mailers were provided, if applicable;
- 16 (6) The dates and locations of collection events held, if applicable;
- 17 (7) The transporters used and the disposal facility or facilities used for all
18 Covered drugs and the compliance status of each disposal facility used;
- 19 (8) Whether any safety or security problems occurred during collection,
20 transportation, or disposal of Unwanted Covered Drugs during the reporting period and, if so,
21 what changes have been or will be made to policies, procedures, or tracking mechanisms to
22 alleviate the problem and to improve safety and security in the future;
- 23 (9) A description of the public education, outreach, and evaluation activities
24 implemented during the reporting period;
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1 (10) A description of how collected packaging was recycled to the extent
2 feasible, including the recycling facility or facilities used;

3 (11) A summary of the Stewardship Plan's goals, the degree of success in
4 meeting those goals in the past year, and, if any goals have not been met, what effort will be
5 made to achieve the goals in the next year; and

6 (12) The total expenditures of the Stewardship Plan during the reporting period.

7 * * * *

8 **SEC. 2210. STEWARDSHIP PLANS – LIST OF PRODUCERS OF COVERED**
9 **DRUGS.**

10 Beginning 60 days after the effective date of this Division I, each Drug Wholesaler that
11 sells any Covered Drug in the City must provide a list of the Producers of those Covered
12 Drugs to the Director in a form prescribed by the Director. Wholesalers must update and
13 resubmit the list in response to a request from the Director, within 15 days of receiving such
14 request by January 15 each year.

15 **SEC. 2212. STEWARDSHIP PLANS – PRIOR APPROVAL FOR CHANGE.**

16 (a) Proposed changes to an approved Stewardship Plan that substantively alter plan
17 operations, including, but not limited to, changes to ~~participating Manufacturers~~ disposal facilities,
18 collection methods, achievement of the service convenience goal, policies and procedures for
19 handling Unwanted Covered Drugs, or education and promotion methods or disposal facilities,
20 must be approved in writing by the Director before the changes are implemented.

21 * * * *

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23 Section 3. Effective Date. This ordinance shall become effective 30 days after
24 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
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1 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
2 of Supervisors overrides the Mayor's veto of the ordinance.

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4 Section 4. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
5 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
6 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
7 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
8 additions, and Board amendment deletions in accordance with the "Note" that appears under
9 the official title of the ordinance.

10
11 Section 5. Undertaking for the General Welfare. In enacting and implementing this
12 ordinance, the City is assuming an undertaking only to promote the general welfare. It is not
13 assuming, nor is it imposing on its officers and employees, an obligation for breach of which it
14 is liable in money damages to any person who claims that such breach proximately caused
15 injury.

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17 Section 6. Severability. If any section, subsection, sentence, clause, phrase, or word
18 of this ordinance, or any application thereof to any person or circumstance, is held to be
19 invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision
20 shall not affect the validity of the remaining portions or applications of the ordinance. The
21 Board of Supervisors hereby declares that it would have passed this ordinance and each and
22 every section, subsection, sentence, clause, phrase, and word not declared invalid or
23 unconstitutional without regard to whether any other portion of this ordinance or application
24 thereof would be subsequently declared invalid or unconstitutional.

1 Section 7. No Conflict with Federal or State Law. Nothing in this ordinance shall be
2 interpreted or applied so as to create any requirement, power, or duty in conflict with any
3 federal or state law.

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5 APPROVED AS TO FORM:
6 DAVID CHIU, City Attorney

7 By: /s/ Sarah Crowley
8 SARAH CROWLEY
9 Deputy City Attorney

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LEGISLATIVE DIGEST

[Environment Code - Safe Drug Disposal]

Ordinance amending the Environment Code to eliminate the requirement that certain drugs (“covered drugs”) be disposed of at either a permitted hazardous waste disposal facility or permitted large municipal waste combustor, as those terms are defined by Environmental Protection Agency regulations, or at a facility that provides equivalent or superior environment and human health protection to such facilities, and to instead require that covered drugs be disposed of at a waste disposal facility operating in compliance with all local, state, and federal requirements applicable to that waste disposal facility; to require regular reporting of the compliance status of disposal facilities used; to change drug wholesalers’ obligation to update the City’s list of covered drug producers from an annual update to an update on request of the Environment Department’s Director; to remove the requirement that operators of a drug stewardship plan receive prior approval of a change in manufacturers, and instead add a requirement that such operators receive prior approval of a change in disposal facilities used; and affirming the Planning Department’s determination under the California Environmental Quality Act.

Existing Law

Existing law requires that drugs covered by the Safe Drug Disposal Ordinance (Covered Drugs) be disposed of at permitted hazardous waste disposal facility, as defined in Environmental Protection Agency (“EPA”) regulations or, with the Director’s approval, at either a large municipal waste combustor, as defined in EPA regulations, or a facility that provides equivalent or superior environment and human health protection to hazardous waste disposal facilities and large municipal waste combustors.

Existing law requires operators of drug Stewardship Plans to report annually on various aspects of their operations, including the disposal facilities used for Covered Drugs, but does not require reporting on the compliance status of disposal facilities used.

Existing law requires that wholesalers selling Covered Drugs in the City provide an updated list of Covered Drugs sold on an annual basis.

Existing law specifies that changes in drug manufacturers participating in a Stewardship Plan is a substantive change requiring prior approval by the Environment Department Director, but does not specify that changes in disposal facilities used is a substantive change requiring such prior approval.

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Amendments to Current Law

This ordinance would eliminate the requirement that Covered Drugs be disposed of at a permitted hazardous waste disposal facility, as defined in EPA regulations or, with the Director's approval, at either a large municipal waste combustor, as defined in EPA regulations, or a facility that provides equivalent or superior environment and human health protection to hazardous waste disposal facilities and large municipal waste combustors. The ordinance would instead require that Covered Drugs be disposed of at a disposal facility that is in compliance with all local, state, and federal laws that are applicable to that disposal facility, as reflected by the absence of any notice of violation issued by a local, state, or federal agency with jurisdiction over that facility in the preceding 12-month period.

This ordinance would add a requirement that annual reports submitted by operators of Stewardship Plans include the compliance status of disposal facilities used for Covered Drugs.

This ordinance would eliminate the requirement that wholesalers selling Covered Drugs in the City provide an updated list of Covered Drugs sold on an annual basis, and would instead require such updates only in response to a request from the Environment Department Director, within 15 days of such request.

This ordinance would eliminate the provision specifying that a change in drug manufacturers participating in a Stewardship Plan is a substantive change requiring prior approval by the Environment Department Director, and would add a provision specifying that a change in disposal facilities used for Covered Drugs is a substantive change requiring such prior approval.

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