

1 [Fair Retail Pricing Ordinance]

2

3 **Draft Ordinance amending the San Francisco Police Code to add Article 42C, Section**
4 **4200C.1 to 4200C.8, to require motor fuel refiners over a two year period to divest**
5 **themselves of company-operated service stations in the City and County of San**
6 **Francisco and to preclude refiners from owning service stations in San Francisco in**
7 **the future.**

8 Note: This entire section is new.

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

10 Section 1. The San Francisco Police Code is hereby amended by adding Article 42C
11 thereto, to read as follows:

12 **Sec. 4200C.1. FINDINGS.** The Board of Supervisors finds that motor vehicle
13 transportation is vitally important to the citizens of the City and County of San Francisco for
14 commuting, shopping, recreation, and virtually every other phase of urban life. The cost of
15 motor vehicle transportation is a significant component of the budget of lower and moderate
16 income households and persons living on fixed incomes.

17 The Board finds that consumers pay higher retail prices for motor fuels in San
18 Francisco than in most other California jurisdictions. The Board finds that such higher retail
19 prices are a direct result of artificially high wholesale prices that refiners of motor fuel charge
20 to independent service stations and artificially high prices that refiners charge at their
21 company-franchised service stations.

22 The Board finds that current motor fuel wholesale pricing policies of refiners with regard
23 to San Francisco service stations injure the general health, safety, and welfare. Existing
24 state and federal law does not adequately address this problem.

25

1 The measures contained in this ordinance will promote increased competition, reduced
2 retail prices, and increased consumer protections.

3 **SEC. 4200C.2. DEFINITIONS.**

4 (a) "Affiliate" means any person who directly or indirectly controls, is controlled by, or is
5 under common control with any other person.

6 (b) "Company operated station" means a service station that a refiner owns or controls
7 and operates (i) with company personnel, (ii) through a subsidiary company, (iii) through a
8 commissioned agent, or (iv) through a fee arrangement with the refiner.

9 (c) "Control" means the direct or indirect power to direct or cause the direction of the
10 management and policies of a person, whether through the ownership of voting securities, by
11 contract, or otherwise.

12 (d) "Grade of motor fuel" means motor fuel for a particular quality or class and sold
13 under a particular trademark, trade name, or brand.

14 (e) "Independent service station dealer" means a person including a franchisee of a
15 refiner who is not an affiliate of a refiner and who buys motor fuel primarily for resale to end-
16 users and ultimate consumers at a retail service station.

17 (f) "Motor fuel" means any petroleum product used for the propulsion of motor vehicles,
18 not including airplanes, trains, or marine vessels, and excluding propane.

19 (g) "Person" means a natural person, partnership, corporation, trust, or unincorporated
20 association.

21 (h) "Refiner" means any person, including an affiliate, engaged in the refining of
22 petroleum into motor fuel, whether such refining occurs in the City and county of San
23 Francisco or elsewhere.

1 (i) "Retail service station" or "service station" means a facility, including land and
2 improvements, where the motoring public purchases fuel at retail prices.

3 **SEC. 4200C.3. NEW COMPANY-OPERATED STATIONS.** On or after the first
4 January 1 following the effective date of this ordinance, a motor fuel refiner may not operate a
5 new company-operated service station in the City and County of San Francisco. The City
6 may not grant any permit, license or other authorization for the operation of any service
7 station that would be prohibited by this section.

8 **SEC. 4200C.4. DIVESTMENT OF COMPANY OPERATED STATIONS.**

9 (a) On or after the second January 1 following the effective date of this ordinance, a
10 refiner may not operate more than one-half (1/2) the number of company-operated service
11 stations within the City and County of San Francisco that such refiner lawfully operated on
12 January 1, 1998. The City may not grant any permit, license or other authorization for the
13 operation of any service station that would be prohibited by this section.

14 (b) On or after the third January 1 following the effective date of this ordinance, a
15 refiner may not operate any retail service station in the City and County of San Francisco.
16 The City may not grant any permit, license or other authorization to operate a retail business
17 for any such service station.

18 **SEC. 4200C.5. TEMPORARY OPERATION OF STATION BY REFINER.** Any refiner
19 may open and temporarily operate any retail service station for a period not exceeding ninety
20 (90) days in circumstances where an independent service station dealer voluntarily terminates
21 or declines to renew the motor fuel franchise, or the refiner terminates or declines to renew
22 the franchise in accordance with applicable state and federal laws.

23
24
25

1 **Sec. 4200C.6. NO CHANGE IN USE.** Nothing in this chapter shall rescind, modify, or
2 supersede any of the requirements of Sections 228 through 228.5 of the San Francisco
3 Planning Code regarding conversions of gasoline service stations.

4 **SEC. 4200C.7. PARTIAL INVALIDITY AND SEVERABILITY.** If a court of law rules
5 that any provision of this chapter or its application to any person or circumstance is held
6 invalid, the remainder of the chapter or the application of the provision to other persons or
7 circumstances is not affected.

8 **SEC. 4200C.8. PENALTIES.**

9 **Violations Chargeable as Misdemeanors or Infractions.** Any person violating any
10 Section of this Article shall be deemed guilty of a misdemeanor or an infraction..A person
11 violating the provisions of this chapter shall be guilty of an infraction or a misdemeanor and
12 upon conviction shall be subject to a fine in an amount not to exceed five hundred dollars
13 (\$500.00) or to confinement in the County Jail for a period of not more than six (6) months or
14 by both such fine and confinement.

15 (a) **Misdemeanor Penalties.** Upon conviction of a violation charged as a misdemeanor, the
16 person so convicted shall be subject to a fine of not more than \$500 or incarceration in the County Jail
17 for period of not more than six months, or by both such fine and imprisonment

18 (b) **Infraction Penalties.** Upon conviction of a violation charged as an infraction, the person so
19 convicted shall be punished for the first offense by a fine of not less than \$10 nor more than \$50, and
20 for a second and any additional violation of the same provision within one year by a fine of not less
21 than \$20 and not more than \$100.

22 (b) **Civil Enforcement.** Any private person may bring an action to enjoin any violation
23 of this chapter. Any private person who suffers damages as a result of a violation of this
24 chapter may bring an action to recover such damages. If a refiner has violated any part of this
25

1 chapter in any such action, such refiner shall be liable to any person bringing such action for
2 costs of suit, including expert witness and reasonable attorney fees. Each day during which a
3 refiner violates any provision of this ordinance shall be considered a separate violation
4 thereof. Nothing in this chapter shall preclude any aggrieved person from seeking any other
5 remedy provided by law.

6
7 APPROVED AS TO FORM:
8 DENNIS J. HERRERA, City Attorney

9 By: _____
10 BURK E. DELVENTHAL
11 Deputy City Attorney
12
13
14
15
16
17
18
19
20
21
22
23
24
25