

1 [Cell Phones; Retailers' Duty to Disclose Radiation Levels.]

2  
3 **Ordinance amending the San Francisco Environment Code by adding Chapter 11,**  
4 **Sections 1100 through 1104, to require retailers to disclose Specific Absorption Rate**  
5 **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.  
Board amendment deletions are ~~strikethrough normal~~.

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

10  
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 1104, 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) "Director" means the Director of the Department of the Environment, or his or her*  
23 *designee.*

24 *(c) "Retailer" means any person or entity which sells or leases cell phones to the public, or*  
25 *which offers cell phones for sale or lease. "Retailer" shall not include anyone selling or leasing cell*

1 phones over the phone, by mail, or over the internet. "Retailer" shall also not include anyone selling or  
2 leasing cell phones directly to the public at a convention, trade show, or conference, or otherwise  
3 selling or leasing cell phones directly to the public within the City for fewer than 10 days in a year.

4 (d) "SAR value" means the maximum whole-body and spatial peak Specific Absorption Rate for  
5 a particular make and model of cell phone as registered with the Federal Communications Commission  
6 (see, generally, Section 2.1093 of Title 47 of the Code of Federal Regulations) and publicly available  
7 on the Federal Communications Commission website.

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9 **SEC. 1102. REQUIRING RETAILERS TO DISCLOSE SPECIFIC SAR VALUES FOR CELL**  
10 **PHONES.**

11 (a) No retailer within the City may sell or lease, or offer to sell or lease, any cell phone to the  
12 public without disclosing the SAR value for that phone as required by this Chapter and any regulations  
13 promulgated pursuant to this Chapter.

14 (b) The SAR value shall be listed on any tag, sticker, or decal attached to a cell phone that lists  
15 the price or features of the phone, and on any display material posted immediately adjacent to a  
16 sample phone or phones on display at the retail location that lists the price or features of the phone.  
17 This requirement shall not apply to any tag, sticker, or decal attached to a cell phone by the  
18 manufacturer, or to the manufacturer's packaging for a cell phone.

19 (c) The statement of the SAR value shall be printed in a font size no smaller than that used to  
20 state the price or features. The SAR value listing shall also include a statement that explanatory  
21 materials are available from the retailer. A retailer who does not display sample cell phones to  
22 customers must prominently post a chart, approved by the Department of the Environment, listing the  
23 all makes and models of cell phones available for sale or lease at that location and their respective  
24 SAR values.

1           (d) The Director may, in his or her discretion, authorize a retailer to use alternate means of  
2 disclosing SAR values to customers. The Director shall authorize such alternate means through the  
3 adoption of a regulation after a noticed hearing, and no retailer may sell or lease cell phones to the  
4 public or offer to sell or lease cell phones to the public using any alternate means of compliance with  
5 this Chapter unless specifically authorized to do so in advance in writing by the Director.

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7           **SEC. 1103. DISTRIBUTION OF EDUCATIONAL MATERIALS.**

8           (a) The Department of the Environment, in consultation with the Department of Public Health  
9 shall develop educational materials, based on and consistent with the relevant information provided by  
10 the FCC or other federal agency having jurisdiction, explaining the significance of the SAR value and  
11 potential effects of exposure to cell phone radiation. The materials shall also inform customers of  
12 actions that can be taken by cell phone users to minimize exposure to radiation, such as turning off cell  
13 phones when not in use, using a headset and speaker phone, and texting.

14           (b) Retailers shall provide copies of educational materials regarding SAR values, approved by  
15 Department of the Environment, to customers who request them at no charge, as provided in  
16 Section 1102(b).

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18           **SEC. 1104. IMPLEMENTATION AND ENFORCEMENT; OPERATIVE DATE.**

19           (a) By July 2, 2010, the Department of the Environment shall issue regulations specifying the  
20 requirements for implementation of this ordinance.

21           (b) By September 24, 2010, the Department of the Environment shall develop materials that  
22 will be available for retailers as provided in Section 1103.

23           (c) Beginning December 17, 2010, retailers shall be required to comply with requirements of  
24 Sections 1102 and 1103. Beginning on that date, the City Administrator shall issue a written warning  
25 to any Retailer he or she determines is violating provisions of the Chapter. If after issuance of the

1 written warning the City Administrator finds that the person receiving the warning has continued to  
2 violate the provisions of the Chapter, the City Administrator may impose administrative fines as  
3 provided below in subsections (d), (e), and (f).

4 (d) Violation of this Chapter or of any regulations promulgated pursuant to this Chapter shall  
5 be punishable by administrative fines in the amount of:

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

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

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

9 (e) Except as provided in subsection (c) setting forth the amount of administrative fines,  
10 Administrative Code Chapter 100, "Procedures Governing the Imposition of Administrative Fines," as  
11 may be amended from time to time, is hereby incorporated in its entirety and shall govern the  
12 imposition, enforcement, collection, and review of administrative citations issued by the Department of  
13 the Environment to enforce this Chapter and any rule or regulation adopted pursuant to this Chapter.

14 (f) For purposes of this Chapter, each individual item that is sold or leased, or offered for sale  
15 or lease, contrary to the provisions of this Chapter shall constitute a separate violation.

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17 **Section 3. Additional Provisions.**

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

23 (b) **Conflict with State or Federal Law.** This Chapter shall be construed so as not to  
24 conflict with applicable federal or State laws, rules or regulations. Nothing in this Chapter  
25 shall authorize any City agency or department to impose any duties or obligations in conflict

1 with limitations on municipal authority established by State or federal law at the time such  
2 agency or department action is taken.

3 (c) **Severability.** If any of the provisions of this Chapter or the application thereof to  
4 any person or circumstance is held invalid, the remainder of those provisions, including the  
5 application of such part or provisions to persons or circumstances other than those to which it  
6 is held invalid, shall not be affected thereby and shall continue in full force and effect. To this  
7 end, the provisions of this Chapter are severable.

8 (d) **Environmental Findings.** The Planning Department has determined that the  
9 actions contemplated in this ordinance are in compliance with the California Environmental  
10 Quality Act (Cal. Pub. Res. Code §§ 21000 et seq.). Said determination is on file with the  
11 Clerk of the Board of Supervisors in File No. \_\_\_\_\_ and is incorporated herein by  
12 reference.

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

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By: \_\_\_\_\_  
THOMAS J. OWEN  
Deputy City Attorney

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