

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 1105, 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.
9 Board amendment deletions are ~~strikethrough normal~~.

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

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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 1105, to read as follows:

9
10 **CHAPTER 11: CELL PHONE DISCLOSURE REQUIREMENTS**

11
12 **SEC. 1100. TITLE.**

13 *This Chapter may be known as the "Cell Phone Right-to-Know Ordinance."*

14
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) "Cell phone retailer" means any person or entity within the City which sells or leases cell*
23 *phones to the public or which offers cell phones for sale or lease. "Cell phone retailer" shall include a*
24 *"formula cell phone retailer." "Cell phone retailer" shall not include anyone selling or leasing cell*
25 *phones over the phone, by mail, or over the internet. "Cell phone retailer" shall also not include*

1 anyone selling or leasing cell phones directly to the public at a convention, trade show, or conference,
2 or otherwise selling or leasing cell phones directly to the public within the City for fewer than 10 days
3 in a year.

4 (c) "Cell phone service provider" means a telecommunications common carrier authorized to
5 offer and provide cellular service for hire to the general public.

6 (d) "Director" means the Director of the Department of the Environment, or his or her
7 designee.

8 (e) "Display materials" means informational or promotional materials posted adjacent to a
9 sample phone or phones on display at the retail location that describe or list the features of the phone.
10 "Display materials" shall not include any tag, sticker, or decal attached to a cell phone by the
11 manufacturer, the manufacturer's packaging for a cell phone, or materials that list only the price and
12 an identifier for the phone.

13 (f) "Formula cell phone retailer" means a cell phone retailer which sells or leases cell phones
14 to the public, or which offers cell phones for sale or lease, through a retail sales establishment located
15 in the City which, along with eleven or more other retail sales establishments located in the United
16 States, maintains two or more of the following features: a standardized array of merchandise; a
17 standardized facade; a standardized decor and color scheme; a uniform apparel; standardized
18 signage; or, a trademark or service mark.

19 (g) "SAR value" means the maximum whole-body and spatial peak Specific Absorption Rate for
20 a particular make and model of cell phone as registered with the Federal Communications
21 Commission. (See, generally, Section 2.1093 of Title 47 of the Code of Federal Regulations.)

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1 **SEC. 1102. REQUIREMENTS FOR CELL PHONE SERVICE PROVIDERS.**

2 (a) Beginning September 1, 2010, any cell phone service provider that sells its service through
3 a retailer in the City must provide a list of those retail locations to the Department of the Environment
4 in a form determined by the Department. The service provider must update the list annually.

5 (b) Beginning November 1, 2010, any cell phone service provider that sells its service through
6 a retailer in the City must provide those retailers with the SAR value for each make and model of cell
7 phone sold or leased at that location in connection with cell phone service from the provider. The
8 service provider must update the information it provides to retailers whenever new makes and models
9 of cell phones covered by the service provider are added or old makes and models dropped, or
10 whenever the service provider receives new information on the SAR values of any of the phones.

11
12 **SEC. 1103. REQUIREMENTS FOR CELL PHONE RETAILERS.**

13 (a) Beginning November 1, 2010, every cell phone retailer must display in a prominent location
14 within the retail location visible to the public the educational poster regarding SAR values and cell
15 phone use to be developed by the Department of the Environment under Section 1104. The retailer
16 must also provide to the public, if requested, the Department's supplemental factsheet.

17 (b) If a cell phone retailer posts display materials in connection with sample phones or phones
18 on display, the display materials must include these three elements:

19 (1) The SAR value of that phone and the maximum allowable SAR value for cell phones
20 set by the FCC;

21 (2) A statement explaining what a SAR value is; and,

22 (3) A statement that additional educational materials regarding SAR values and cell
23 phone use are available from the cell phone retailer.

24 The Department of the Environment shall adopt regulations specifying the content and format
25 for the elements required by this subsection (b), and shall develop a template for those elements. The

1 elements shall be printed in a space no smaller than 1 inch by 2.625 inches. The SAR values and
2 header text shall be printed in type no smaller than the size and readability equivalent of "Arial" 11
3 point, and the copy text shall be printed in type no smaller than the size and readability equivalent of
4 "Arial" 8 point.

5 Formula cell phone retailers must comply with the requirements of this subsection (b) beginning
6 February 1, 2011. All other cell phone retailers must comply by February 1, 2012. A cell phone
7 retailer who meets the requirements of this subsection shall not be required to post the educational
8 poster required by subsection (a).

9 (c) If a cell phone retailer does not post display materials in connection with sample phones or
10 phones on display, the retailer must display, in a prominent location within the retail location visible to
11 the public, a poster ("store poster") that includes these three elements:

12 (1) The SAR value of each make and model of cell phone offered for sale or lease at that
13 retail location and the maximum allowable SAR value for cell phones set by the FCC;

14 (2) A statement explaining what a SAR value is; and,

15 (3) A statement that additional educational materials regarding SAR values and cell
16 phone use are available from the cell phone retailer.

17 The Department of the Environment shall adopt regulations specifying the content and format
18 for the elements required by this subsection (c), and shall develop a template for those elements. The
19 store poster shall be no smaller than 8.5 inches by 11 inches.

20 Formula cell phone retailers must comply with the requirements of this subsection (c) beginning
21 February 1, 2011. All other cell phone retailers must comply by February 1, 2012. A cell phone
22 retailer who meets the requirements of this subsection shall not be required to post the educational
23 poster required by subsection (a).

24 (d) The Director may, in his or her discretion, authorize a retailer to use alternate means to
25 comply with the requirements of subsections (b) and (c). The Director shall authorize such alternate

1 means through the adoption of a regulation after a noticed hearing, and no retailer may sell or lease
2 cell phones to the public or offer to sell or lease cell phones to the public using any alternate means of
3 compliance with this Chapter unless specifically authorized to do so in advance in writing by the
4 Director.

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6 **SEC. 1104. EDUCATIONAL MATERIALS; ASSISTANCE WITH COMPLIANCE.**

7 (a) Following a public hearing, the Department of the Environment, in consultation with the
8 Department of Public Health, shall develop an educational poster and supplemental factsheet
9 regarding SAR values and the use of cell phones, as well as templates for display materials and store
10 posters required by this Chapter. The Department of the Environment shall hold the initial public
11 hearing by September 1, 2010, and complete the educational poster and supplemental factsheet by
12 November 1, 2010. The educational poster shall be no larger than 12 inches by 16 inches, and the
13 supplemental factsheet no larger than 8.5 inches by 11 inches.

14 (b) By November 1, 2010, the Department of the Environment shall issue regulations specifying
15 the contents and format for the elements required by Section 1103, subsections (b) and (c), for display
16 materials and store posters, respectively. By that date, the Department of the Environment shall also
17 adopt templates for display materials and store posters.

18 (c) The Department shall develop content for all of these materials that is based on and
19 consistent with the relevant information provided by the FCC or other federal agencies having
20 jurisdiction over cell phones, explaining the significance of the SAR value and potential effects of
21 exposure to cell phone radiation. The materials shall also inform customers of actions that can be
22 taken by cell phone users to minimize exposure to radiation, such as turning off cell phones when not in
23 use, using a headset and speaker phone, or texting.

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1 **SEC. 1105. IMPLEMENTATION AND ENFORCEMENT.**

2 (a) Notwithstanding the provisions of Section 1103(a), requiring cell phone retailers to display
3 the educational poster and provide copies of the supplemental factsheet, the City shall not enforce the
4 provisions of that subsection until February 1, 2011. During the period between the operative date for
5 those requirements, November 1, 2010, and February 1, 2011, the Department of the Environment shall
6 conduct an education and assistance program for cell phone retailers, and shall visit retailers and
7 assist them with meeting the requirements of the subsection.

8 (b) Notwithstanding those provisions of Section 1103(b) and (c) applicable to formula cell
9 phone retailers, requiring them to make certain disclosures and statements in connection with cell
10 phone sales and leases, the City shall not enforce those provisions until May 1, 2011. During the
11 period between the operative date for those requirements, February 1, 2011, and May 1, 2011, the
12 Department of the Environment shall conduct an education and assistance program for formula cell
13 phone retailers, and shall visit the retailers and assist them with meeting the requirements of the
14 subsections.

15 (c) Notwithstanding those provisions of Section 1103(b) and (c) applicable to all cell phone
16 retailers other than formula cell phone retailers, requiring them to make certain disclosures and
17 statements in connection with cell phone sales and leases, the City shall not enforce those provisions
18 until August 1, 2012. During the period between the operative date for those requirements,
19 February 1, 2012, and August 1, 2012, the Department of the Environment shall conduct an education
20 and assistance program for those cell phone retailers, and shall visit the retailers and assist them with
21 meeting the requirements of the subsections.

22 (d) The City Administrator shall issue a written warning to any person he or she determines is
23 violating provisions of this Chapter or any regulation issued under this Chapter. If 10 days after
24 issuance of the written warning the City Administrator finds that the person receiving the warning has
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1 continued to violate the provisions of the Chapter or any regulation issued under this Chapter, the City
2 Administrator may impose administrative fines as provided below in subsections (e), (f), and (g).

3 (e) Violation of this Chapter or any regulation issued under this Chapter shall be punishable by
4 administrative fines in the amount of:

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

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

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

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

13 (g) For purposes of this Chapter, each individual item that is sold or leased, or offered for sale
14 or lease, contrary to the provisions of this Chapter or any regulation issued under this Chapter shall
15 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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19 By: _____
20 THOMAS J. OWEN
21 Deputy City Attorney

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