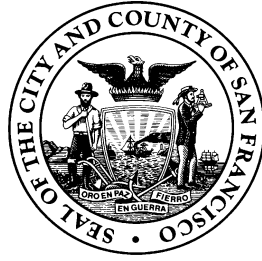


BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

MEMORANDUM

TO: Regina Dick-Endrizzi, Director
Small Business Commission, City Hall, Room 448

FROM: John Carroll, Assistant Clerk, Public Safety and Neighborhood Services
Committee, Board of Supervisors

DATE: June 19, 2018

SUBJECT: REFERRAL FROM BOARD OF SUPERVISORS
Public Safety and Neighborhood Services Committee

The Board of Supervisors' Public Safety and Neighborhood Services Committee has received the following legislation, which is being referred to the Small Business Commission for comment and recommendation. The Commission may provide any response it deems appropriate within 12 days from the date of this referral.

File No. 180646

Ordinance amending the Environment Code to require audits every two years of large refuse generators for compliance with refuse separation requirements, and to establish enforcement measures applicable to large refuse generators that have been noncompliant for nine or more consecutive months; and affirming the Planning Department's determination under the California Environmental Quality Act.

Please return this cover sheet with the Commission's response to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, California 94102.

RESPONSE FROM SMALL BUSINESS COMMISSION - Date: _____

_____ **No Comment**

_____ **Recommendation Attached**

Chairperson, Small Business Commission

1 [Environment Code - Refuse Separation Compliance]

2
3 **Ordinance amending the Environment Code to require audits every two years of large**
4 **refuse generators for compliance with refuse separation requirements, and to establish**
5 **enforcement measures applicable to large refuse generators that have been**
6 **noncompliant for nine or more consecutive months; and affirming the Planning**
7 **Department's determination under the California Environmental Quality Act.**

8 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
9 **Additions to Codes** are in *single-underline italics Times New Roman font*.
10 **Deletions to Codes** are in ~~*italics Times New Roman font*~~.
11 **Board amendment additions** are in Arial font.
12 **Board amendment deletions** are in ~~Arial font~~.
13 **Asterisks (* * * *)** indicate the omission of unchanged Code
14 subsections or parts of tables.

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

16 Section 1. Environmental Findings.

17 The Planning Department has determined that the actions contemplated in this
18 ordinance comply with the California Environmental Quality Act (California Public Resources
19 Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of
20 Supervisors in File No. ___ and is incorporated herein by reference. The Board affirms this
21 determination.

22 Section 2. The Environment Code is hereby amended by revising Section 1902, as
23 follows:

24 (a) Each subsection letter accompanying each defined term in Section 1902 (i.e.,
25 subsection letters (a)-(z)) is deleted.

1 (b) The following definitions of terms are added to Section 1902 and placed therein
2 among the defined terms in correct alphabetical position:

3 “Large Refuse Generator” means a commercial property refuse account holder that has roll-off
4 compactor service or generates 30 cubic yards or more of refuse per week.

5 “Zero Waste Facilitator” means a person or entity in the business of and with demonstrated
6 capacity to manage refuse materials within a given property, including material sorting and transfer, to
7 achieve proper refuse separation in compliance with this Chapter 19.

8
9 Section 3. The Environment Code is hereby amended by revising Sections 1906 and
10 1908, to read as follows:

11 **SEC. 1906. REQUIREMENTS FOR REFUSE COLLECTORS, TRANSFER**
12 **STATIONS, AND PROCESSING FACILITIES.**

13 (a) All collectors must appropriately designate the collection containers they provide to
14 customers for source separation of recyclables, compostables, and trash. The containers
15 must:

16 (1) Bear appropriate signage that allows users to clearly and easily identify
17 which containers to use for recyclables, compostables, or trash;

18 (2) Be color-coded:—blue for recyclables, green for compostables, and black
19 for trash; and,

20 (3) Bear the name of the collector to whom the container belongs.

21 (b) (1) If a collector finds materials that are not the correct type as designated for
22 that container, such as recyclables or compostables in a trash container, or trash in a
23 compostables or recyclables container, the collector then must leave a tag on the container
24 identifying the incorrect materials.

1 (2) If the collector continues to find incorrect materials in a collection container
2 after the collector has left a previous tag for that customer and that type of container, the
3 collector must leave another tag on the container identifying the incorrect materials and send
4 a written notice to the person who subscribes for that collection service.

5 (3) If the collector continues to find incorrect materials in a collection container
6 after the collector has already left two or more tags for that customer and that type of
7 container, the collector may refuse to empty the container, subject to California Code of
8 Regulations Title 14, Section 17331, or as determined by the Director of Public Health or his
9 or her designee. If the container is not emptied, the collector must leave a tag and send a
10 written notice to the person who ~~subscribers~~ subscribes for the collection service, identifying the
11 incorrect materials and describing what action must be taken for the materials to be collected;
12 provided, however, that a collector may not refuse on this basis to empty containers from
13 multifamily or commercial properties with multiple tenants and joint account collection service.

14 (4) The collector shall, upon request, provide to the Director a list of the names
15 and addresses of those persons who have received tags or notices or whose containers have
16 not been emptied due to non-compliance with this Chapter 19, or copies of the tags or notices
17 issued by the collector. The collector shall also provide to the Director, upon request, a list of
18 the names, addresses, and service levels of the collector's customers and any additional
19 information required by the Director.

20 (c) The Director or collector shall audit every Large Refuse Generator for compliance with this
21 Chapter 19 not less than once every two years. Large Refuse Generators may request compliance
22 audits, but are not entitled to more than three audits per collection container in a single 365-day
23 period. A Large Refuse Generator that has failed its most recent audit must provide sufficient evidence
24 of remediation efforts alongside a request for another audit. Provided these requirements are met, the
25 Director or collector shall provide a requested audit within a reasonable time frame. A Large Refuse

1 Generator that fails an audit shall be deemed out of compliance until it passes a subsequent audit and
2 meets requirements as may be imposed under subdivision (e).

3 (d) The Director or collector shall find a Large Refuse Generator is out of compliance with this
4 Chapter 19 pursuant to a visual inspection audit of the contents of its collector-serviced refuse
5 collection containers, if materials are found that do not belong in a designated collection container and
6 are at a contamination level that either significantly impacts the ability to process and market the
7 materials or results in the significant loss of compostables or recyclables found in a collection
8 container. Guidelines for the contamination threshold for compliance with Sec. 1906(c)-(e) shall be set
9 and maintained by the Director based on market conditions and processing capabilities, and as needed
10 to meet the City's progress toward zero waste benchmarks.

11 (e) If the Director or collector determines that a Large Refuse Generator is out of compliance
12 based on an audit, it shall issue a written warning notice to the Large Refuse Generator, and pursue
13 enforcement as specified in this Section 1906(e) and in accordance with Section 1908.

14 (1) The warning notice shall state the provision(s) of this Chapter 19 with which the
15 Large Refuse Generator has failed to comply, the specific audit findings underlying this determination,
16 required remedial steps, the deadline for a response, the deadline for remediation, and contact
17 information for communications required by this Chapter. It shall also include a copy of the relevant
18 provisions of this Chapter. The Director and/or collector may continue outreach, inspection, or other
19 efforts to facilitate compliance after issuing a warning notice, and may issue additional warning
20 notices as the Director and/or collector deems appropriate. A warning notice may require any remedial
21 steps as specified in regulations promulgated by the Director, in furtherance of the purposes of this
22 Chapter 19.

23 (2) If a Large Refuse Generator remains noncompliant with any violation(s) cited in a
24 warning notice nine months after receiving it, the Director may impose an administrative penalty of up
25 to \$1000 per violation. Each day of continued noncompliance with the warning notice past the nine-

1 month mark shall constitute a separate violation. Collection of these penalties shall be held in
2 abeyance for the first 45 days they are imposed.

3 (A) If the Large Refuse Generator hires a Zero Waste Facilitator for a minimum
4 of 24 months, and provides sufficient proof, as may be set forth in regulations, within these 45 days, the
5 Director shall upon receipt of such proof rescind administrative penalties imposed during this period.

6 (B) If upon 45 days the Large Refuse Generator has failed to hire a Zero Waste
7 Facilitator for a minimum of one year and provide the required proof, accrued penalties shall become
8 immediately due. The Director may impose additional penalties for continued noncompliance.

9 (C) If a Large Refuse Generator found noncompliant with cited violations (i)
10 passes an audit demonstrating compliance with all requirements in the notice and cure of all violations
11 cited therein, and (ii) supplies a written attestation with supporting evidence that the Large Refuse
12 Generator has implemented all steps required by a warning notice or order, the Director shall issue a
13 finding of compliance with the cited violations.

14 (D) If a Large Refuse Generator found noncompliant with cited violations at the
15 nine-month mark fails a subsequently requested audit, or any audit thereafter within four years, based
16 on violation(s) cited in the warning notice, the Director shall issue an order mandating additional steps
17 and a timeline for remediation, and may impose an administrative penalty of up to \$1000 per continued
18 violation. Each day of continued noncompliance past the audit failure shall constitute a separate
19 violation. Collection of these administrative penalties shall be held in abeyance for the first 45 days
20 after issuance of an order. If the Large Refuse Generator hires, rehires, or expands service with a Zero
21 Waste Facilitator in a manner adequate to address the order, and provides sufficient proof of having
22 done so within these 45 days, the Director shall upon receipt of such proof rescind administrative
23 penalties imposed during this period, and cease to impose further administrative penalties based on the
24 cited violations. Penalties shall otherwise be due immediately upon expiry of the 45-day period, and the
25 Director may impose additional administrative penalties for continued noncompliance.

1 (E) A Large Refuse Generator that demonstrates proof of good-faith efforts to
2 hire a Zero Waste Facilitator within the 45-day period following a warning notice or order may seek
3 an extension of time, to be granted at the discretion of the Director on a case by case basis in
4 furtherance of the objectives of this Chapter 19.

5 (f) The Director shall list on the Department of Environment's website each Large Refuse
6 Generator found noncompliant at the nine-month mark under Section 1906(e)(2), until the Director
7 issues a finding of compliance with the cited violations.

8 ~~(e)(g)~~ Within 90 days of the end of each calendar year, each collector must submit to
9 the Department, on a form specified by the Director, an annual report of all tons collected by
10 material type and to whom the material was sent. This report shall also detail warning notices
11 issued by the collector under Section 1906(c) in the prior calendar year.

12 ~~(d)(h)~~ No person may deliver recyclables or compostables, including those mixed with
13 trash, to a landfill or transfer station for the purpose of having those materials landfilled,
14 except as follows:

15 (1) A collector may drop off recyclables or compostables at the San Francisco
16 transfer station for landfill if the transfer station has agreed to provide to the Director, upon
17 request, audits of collection vehicles for a specified period going forward in time. The transfer
18 station's audit shall report the quantity of recyclables or compostables, stated as estimated
19 tons per load or as a percentage of the loads, deposited at the transfer station by collection
20 vehicles specifically identified in the request over a reasonable period of time occurring after
21 the request.

22 (2) A processing facility that sorts and reconstitutes recyclables for the purpose
23 of using the altered form in the manufacture of a new product or turns compostables into
24 usable and marketable compost (e.g., soil-conditioning) material may send to a landfill a minor
25 portion of those materials that constitutes unmarketable processing residuals, if the

1 processing facility provides to the Director, upon request, audits of specific collection vehicles
2 for a specific period going forward in time, of the quantities of recyclables or compostables
3 sent to the landfill from the processing facility.

4 ~~(e)~~(i) No person may deliver trash from the city, including trash mixed with recyclables
5 or compostables, to a processing facility, unless the processing facility has agreed to provide
6 to the Director, upon request, audits of collection vehicles for a specified period going forward
7 in time. The processing facility's audit shall report the quantity of trash, stated as estimated
8 tons per load or as a percentage of the loads, deposited at the processing facility by collection
9 vehicles specifically identified in the request over a reasonable period of time occurring after
10 the request.

11
12 **SEC. 1908. ENFORCEMENT.**

13 (a) The Director ~~and his or her designee~~ may administer all provisions of this Chapter 19
14 and enforce those provisions by any lawful means available for such purpose, except as
15 otherwise provided in this Chapter.

16 (b) To the extent permitted by law, the Director and collectors may inspect any
17 collection container, collection vehicle load, or receiving facility, including back-of-house,
18 internal, or front-of-house bins, or refuse chute rooms, for collected trash, recyclables, or
19 compostables, and proper separation thereof, to enforce this Chapter 19.

20 (c) Except as otherwise provided in this Chapter 19, the Director of the Department of
21 Public Health or his or her designee may impose administrative fines for violations of those
22 provisions of this Chapter, or of rules and regulations adopted pursuant to this Chapter, that
23 pertain to the jurisdiction of the Department of Public Health.

24 (d) Except as otherwise provided in this Chapter 19, the Director of Public Works or
25 his or her designee may impose administrative fines for violations of those provisions of this

1 Chapter, or of any rule or regulation adopted pursuant to this Chapter, that pertain to the
2 jurisdiction of the Department of Public Works.

3 (e) *San Francisco* Administrative Code Chapter 100, "Procedures Governing the
4 Imposition of Administrative Fines," as amended, is hereby incorporated in its entirety and
5 shall govern the imposition, enforcement, collection, and review of administrative citations
6 issued to enforce this Chapter 19 and any rule or regulation adopted pursuant to this Chapter;
7 provided, however, that:

8 (1) The Director of Public Works or the Director of Public Health may adopt
9 regulations providing for lesser penalty amounts than those provided in Administrative Code
10 Section 100.5;

11 (2) The fine for any violation at a dwelling or commercial property that
12 generates less than one cubic yard of refuse per week may not initially exceed \$100; and,

13 (3) No person who is the owner, tenant, manager, employee, contractor, or
14 visitor of a multifamily *residential property* or of a multi-tenant commercial property shall be
15 subject to fines or penalties for violation of Section 1903 *except as provided under Section*
16 *1906(e)* (but will remain subject to such enforcement for violations of section 1904 and other
17 sections of ~~the Ordinance~~ *this Chapter 19*), unless and until the Director ~~of the Department of the~~
18 *Environment* has adopted specific regulations setting out the liability of such persons. ~~The~~
19 *Director shall not adopt such regulations prior to July 1, 2011.*

20 (f) The *City Department* shall use administrative *finer and* penalties collected under this
21 Chapter 19, including recovery of enforcement costs, to fund implementation and enforcement
22 of this Chapter. Remedies under this Chapter are in addition to and do not supersede or limit
23 any and all other remedies, civil or criminal.

24
25 Section 4. Effective and Operative Dates.

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

5 (b) This ordinance shall become operative on January 1, 2019.
6

7 Section 5. Scope of Ordinance. Except as stated in Section 2, in enacting this
8 ordinance, the Board of Supervisors intends to amend only those words, phrases,
9 paragraphs, subsections, sections, articles, numbers, punctuation marks, charts, diagrams, or
10 any other constituent parts of the Municipal Code that are explicitly shown in this ordinance as
11 additions, deletions, Board amendment additions, and Board amendment deletions in
12 accordance with the "Note" that appears under the official title of the ordinance.
13
14
15

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

18 By: 
19 NEHA GUPTA
Deputy City Attorney

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21
22
23
24
25

LEGISLATIVE DIGEST

[Environment Code - Refuse Separation Compliance]

Ordinance amending the Environment Code to require audits every two years of large refuse generators for compliance with refuse separation requirements, and to establish enforcement measures applicable to large refuse generators that have been noncompliant for nine or more consecutive months; and affirming the Planning Department's determination under the California Environmental Quality Act.

Existing Law

Chapter 19 of the Environment Code requires source separation of refuse into recyclables, compostables, and trash, and mandates subscription to refuse collection service. Chapter 19 sets forth requirements for owners or managers of multifamily and commercial buildings, and food vendors and events, to provide their tenants, employees, contractors, and/or customers with access to refuse containers and training on source separation. It also sets forth standards for refuse collectors, transfer stations, and processing facilities related to tagging refuse containers of noncompliant customers, and delivery and acceptance of refuse materials. Chapter 19 provides for inspections, administrative enforcement, and issuance of administrative penalties by various Departments for noncompliance.

Amendments to Current Law

This ordinance establishes additional refuse separation compliance and enforcement measures applicable to large refuse generators. Large refuse generators are defined as commercial property refuse account holders that have roll-off compactor service, or generate 30 cubic yards or more of refuse per week. Large refuse generators shall be subject to visual inspection compliance audits not less than every two years. The Director of the Department of Environment shall issue a warning notice to a large refuse generator found noncompliant. If the large refuse generator remains noncompliant after nine months, it shall either face administrative penalties of up to \$1000 per day, or may engage a zero waste facilitator to have collection of such penalties rescinded or held in abeyance. Once the large refuse generator passes a subsequent audit and meets other requirements, the Director shall issue a finding of compliance. Large refuse generators found noncompliant at the nine-month mark shall be listed on the Department of Environment website until the Director issues a finding of compliance with the cited violations.

Introduction Form

By a Member of the Board of Supervisors or Mayor

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I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee. (An Ordinance, Resolution, Motion or Charter Amendment).
- 2. Request for next printed agenda Without Reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning : "Supervisor inquiries"
- 5. City Attorney Request.
- 6. Call File No. from Committee.
- 7. Budget Analyst request (attached written motion).
- 8. Substitute Legislation File No.
- 9. Reactivate File No.
- 10. Topic submitted for Mayoral Appearance before the BOS on

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission
- Youth Commission
- Ethics Commission
- Planning Commission
- Building Inspection Commission

Note: For the Imperative Agenda (a resolution not on the printed agenda), use the Imperative Form.

Sponsor(s):

Subject:

The text is listed:

Signature of Sponsoring Supervisor:

For Clerk's Use Only