

1 [Environmentally Preferable Purchasing for Commodities.]  
 2 **Ordinance repealing Chapter 2 of the Environment Code which established an**  
 3 **environmentally preferable purchasing pilot program and sections 507, 508 and**  
 4 **512 of Chapter 5 and Chapter 9 of the Environment Code which pertain to**  
 5 **purchasing certain environmentally preferable commodities and enacting a new**  
 6 **Chapter 2 of the Environment Code to establish a comprehensive City-wide**  
 7 **Environmentally Preferable Purchasing Program for purchases of commodities;**  
 8 **and making conforming changes in Environment Code sections 501, 506 and 511**  
 9 **and Administrative Code sections 21.16 and 21.30.**

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 11 Note: Additions are *single-underline italics Times New Roman*;  
 12 deletions are ~~*strikethrough italics Times New Roman*~~.  
 13 Board amendment additions are double underlined.  
 14 Board amendment deletions are ~~strikethrough normal~~.

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

16 Section 1. The San Francisco Environment Code Chapter 2 is hereby repealed  
 17 in its entirety.

18 Section 2. The San Francisco Environment Code is hereby amended by adding  
 19 Chapter 2, to read as follows:

20 SEC. 200. FINDINGS.

21 A. Under this Chapter, the City and County of San Francisco wishes to exercise its  
 22 power to make economic decisions involving its own funds as a participant in the marketplace  
 23 and to conduct its own business as a municipal corporation to ensure that purchases of  
 24 commodities and expenditures of public money are made in a manner consistent with its human  
 25 health and environmental policies.

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B. The results of a three year pilot study implementing environmentally preferable purchasing for City departments demonstrated the feasibility of developing relevant human health and environmental selection criteria for products used to maintain City buildings and vehicle fleets. The pilot program further demonstrated that products meeting these criteria are available, cost competitive, and effective at meeting the City's performance standards. It is the City's intention that ultimately there will be environmentally preferable alternatives for each commodity regularly purchased by the City.

C. The Precautionary Principle calls for full disclosure by manufacturers and suppliers so the most protective standard can be applied in the comparison of potential alternatives. Only the full disclosure of ingredients and impacts of the products and services will allow the City to make informed and protective decisions. For example, suppliers of pesticides should disclose the "inert" ingredients in products used on City property instead of limiting disclosure to the legal requirement of "active" ingredients which may make up less than 1% of the product.

D. The Precautionary Principle calls for a participatory and transparent process in the evaluation and selection of potential alternatives. Participation in decision-making by impacted communities is a basic tenet of the Precautionary Principle.

Citizens of San Francisco enacted the Sunshine Ordinance to ensure transparency in City government; the Commission on the Environment operates under the mandates of the Sunshine Ordinance in addition to the requirements of the Brown Act and Public Records Act. Above and beyond that, deliberations and decisions under this ordinance made in accordance with the Public Participation Guidelines shall be made in concert with affected community members; community involvement is as central to the process as data gathering and expert advice.

1           E. Purchases of commodities made by the City and County of San Francisco that are  
2 consistent with the Precautionary Principle will encourage market development of new, healthy,  
3 environmentally preferable technologies and products and will demonstrate the efficacy of this  
4 approach to other government agencies, residents and businesses which will help generate  
5 regional demand for healthy products, a healthy way of doing business, product innovation, and  
6 business development and competition.

7           F. Implementing the Precautionary Principle is both good science and good economics.  
8 Precautionary action benefits workers, stimulates innovation and supports timely action to avoid costs to  
9 public health and the environment. Precautionary business practice leads to expanded local production,  
10 job creation and the development of technologies that support job creation in the arena of  
11 environmentally preferable products. To this end, the Department of the Environment, the Small  
12 Business Commission, the Office of Contract Administration and the Human Rights Commission will  
13 work together to ensure that there is sufficient outreach, education and training provided to  
14 disadvantaged businesses in order to create equitable access and competition for city contracts affected  
15 by precautionary purchasing.

16           G. Many of the City's purchasing decisions have impacts across departmental boundaries.  
17 Therefore, interdepartmental cooperation is a key element to a successful precautionary purchasing  
18 program. City staff must work closely together to create opportunities for the exchange of ideas and the  
19 flow of information between departments and the larger community.

20           SEC. 201. GOALS. The purpose of this Chapter is to reduce negative impacts to human  
21 health and the environment through the development of specifications for City purchases that:

22           1. Reduce occupational health hazards for City staff as well as reduce exposure of  
23 City residents and visitors to potentially toxic chemicals by purchasing products for use in City  
24 operations that do not harm human health or the environment;

1 2. Reduce San Francisco's contribution to global climate change by purchasing  
2 products that lead to a reduction in greenhouse gas emissions from Commodities;

3 3. Improve the air quality for San Francisco residents and visitors by purchasing  
4 vehicles and motorized equipment that minimize emissions of air pollutants;

5 4. Protect the quality of San Francisco's ground and surface waters by eliminating  
6 the use of chemicals known to contaminate local water resources through toxicity,  
7 bioaccumulation or persistence; and

8 5. Preserve resources locally and globally through purchasing practices that  
9 include:

10 (i) Maximizing water and energy efficiency and favoring renewable energy  
11 sources;

12 (ii) Maximizing post consumer recycled content and readily recyclable or  
13 compostable materials;

14 (iii) Favoring long-term use through product durability, repairability, and  
15 reuse; and

16 (iv) Considering life cycle economics of a product that includes manufacture,  
17 transportation, use and disposal.

18 SEC. 202. DEFINITIONS. Unless otherwise defined below, words in this Chapter shall  
19 have the same meanings as those words in Chapter 21 of the Administrative Code.

20 (a) "Approved Alternatives List" shall mean the list of alternatives to a product in a  
21 Targeted Product Category identified, evaluated and approved by the Director. Products on an  
22 Approved Alternatives List will have a lesser impact on human health and the environment  
23 compared to other similar products, consistent with the Precautionary Principle as defined in  
24 Chapter 1 of the Environment Code.

1 (b) "Commission" shall mean the Commission on the Environment established by  
2 Charter section 4.118.

3 (c) "Contract" shall mean an agreement with a nongovernmental entity for the  
4 purchase of Commodities at the expense of or to be paid out of moneys deposited in the treasury  
5 or out of trust moneys under the control or collected by the City and County of San Francisco.  
6 The term "Contract" shall include a purchase order or other written instrument for the purchase  
7 of Commodities.

8 (d) "Contractor or Contracting Party" shall mean a person that enters into a  
9 Contract with the City.

10 (e) "Department" shall mean the Department of the Environment established by  
11 Charter section 4.118.

12 (f) "Director" shall mean the Director of the Department of the Environment.

13 (g) "Targeted Product Category" shall mean a broad category of products routinely  
14 purchased by the City which have been identified by the Commission as having undesirable  
15 environmental health impacts for which alternative products should be identified and substituted.

16 SEC. 203. COMMISSION AND DEPARTMENT OF THE ENVIRONMENT DUTIES.

17 (a) Public Participation Guidelines. In order to promote meaningful public  
18 participation, after consultation with technical experts, individuals with expertise in  
19 environmental protection or environmental health, community groups and the public, and not  
20 later than 90 days from the effective date of this Chapter, the Director shall, at a public meeting,  
21 adopt Public Participation Guidelines for use in making designated decisions under this  
22 Chapter. Amendments to the Public Participation Guidelines may be made by the Director in  
23 the same manner.

24 (b) Targeted Product Categories.  
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1 (i) Not later than 210 days from the effective date of this Chapter and  
2 regularly thereafter, the Director, in accordance with the Public Participation Guidelines, will  
3 consult with the Director of the Department of Public Health, the City Purchaser, City  
4 department users, technical experts, individuals with expertise in environmental protection or  
5 environmental health, community groups, labor representatives and the public to develop and  
6 present recommendations for Targeted Product Categories to the Commission on the  
7 Environment.

8 (ii) Not later than 270 days from the effective date of this Chapter and  
9 regularly thereafter, the Commission on the Environment will designate Targeted Product  
10 Categories at a public meeting.

11 (c) Approved Alternatives List for Targeted Product Categories.

12 (i) Criteria. For each Targeted Product Category, the Director, in  
13 accordance with the Public Participation Guidelines, will consult with the Director of the  
14 Department of Public Health, the City Purchaser, City department users, technical experts,  
15 including individuals with expertise in environmental protection or environmental health,  
16 community groups, other governmental entities, and the public to develop a comprehensive set of  
17 substantive and qualitative human health and environmental criteria by which to evaluate  
18 products in a Targeted Product Category. Criteria will be designed to effectuate the goals stated  
19 in Section 201 and will take into account non-local impacts for which information is available.  
20 The following factors may be considered in establishing the criteria: human health impacts and  
21 environmental impacts and threats of harm to human health or the environment. This includes,  
22 but is not limited to: greenhouse gas and air pollution emissions; transportation impacts;  
23 groundwater and surface water contamination, water and energy efficiency; renewable energy  
24 sources; recycled content; durability; and ability to recycle, reuse or compost. The Director will  
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1 adopt criteria for each Target Product Category. The Director will post the criteria for each  
2 Target Product Category on the Department's website.

3 The Director, in accordance with the Public Participation Guidelines, will regularly  
4 review and revise the criteria to reflect the current state of scientific knowledge regarding health  
5 and environmental effects.

6 (ii) Evaluation and Adoption. The Director shall create an Approved  
7 Alternatives List for each Targeted Product Category either by: objectively evaluating each  
8 potential alternative within a targeted product category based on the criteria or through a bid or  
9 solicitation based on the criteria issued by the Office of Contract Administration or other  
10 relevant department. The Director will present the Approved Alternatives List and any  
11 subsequent revisions to the Commission at a public meeting and shall notify all City departments  
12 of adoption or revision of an Approved Alternatives List.

13 (iii) The Director shall respond within 90 days to any written request to  
14 include a particular product on the Approved Alternatives List.

15 (d) Rules and Regulations. After a public hearing, the Director, in consultation with  
16 the Purchaser, may promulgate rules, regulations or guidelines as required by this Chapter or as  
17 necessary or appropriate to carry out the purposes and requirements of this Chapter and may  
18 adopt forms necessary to implement this Chapter.

19 (e) Training. The Director shall implement ongoing training for City employees and  
20 contractors for the purpose of compliance with this Chapter and provide ongoing training to  
21 industrial health and safety officers, environmental staff, contracting officers and others involved  
22 in purchasing decisions and product use.

23 (f) Presentation to Board of Supervisors. Not later than 15 months from the effective  
24 date of this Chapter, the Director will prepare a status presentation for the Board of  
25 Supervisors. The Director will notify the Clerk of the Board of Supervisors that the Department

1 is prepared to deliver its presentation and ask the Clerk to work with the President of the Board  
2 of Supervisors to calendar the presentation for the appropriate Board committee.

3 (g) Annual Review and Report to Commission and Board of Supervisors. Not later  
4 than twenty-four months from the effective date of this Chapter, and annually thereafter in  
5 February, the Director shall submit a report to the Commission and the Board of Supervisors on  
6 the progress of City departments towards full compliance with this Chapter. The annual report  
7 shall include:

8 (i) an evaluation of the progress in meeting the goals in Section 201;

9 (ii) the status and effectiveness of current efforts by City departments to  
10 implement this Chapter and additional specific actions, including legislation, needed to  
11 effectively implement this Chapter;

12 (iii) a summary of the annual reports submitted by City departments pursuant  
13 to section 205(b) and a list of waivers granted by the Director during the previous period  
14 organized by Department;

15 (iv) an update on the extent and efficacy of training programs for users and  
16 purchasers of Targeted Products;

17 (v) a workplan for the next reporting period with specific goals, actions and  
18 timelines necessary to implement this Chapter; and

19 (vi) The annual report required by this section shall include a  
20 recommendation by the Director, after consultation with City Departments and the public, on  
21 how to expand this chapter to city contractors.

22 SEC. 204. APPLICABILITY. This Chapter applies only to Contracts for the  
23 procurement of Commodities as governed by Chapter 21 of the Administrative Code. Once the  
24 Director has adopted an Approved Alternatives List for a product within a Targeted Product  
25 Category, each City department entering into a new Contract or extending the term of an



1 existing Contract for the purchase of that product shall only purchase products from the  
2 Approved Alternatives List.

3 SEC. 205. DUTIES OF CITY DEPARTMENTS.

4 (a) Each City department, board and commission subject to this Chapter shall  
5 cooperate with and provide in writing to the Director all information necessary for the Director  
6 to carry out her or his duties under this Chapter. Appropriate City department personnel will  
7 attend training offered by the Director.

8 (b) Not later than twenty months from the effective date of this Chapter, and annually  
9 thereafter in December, each City department that purchases Target Products shall provide a  
10 report to the Director including the following information:

11 (i) A list of Contracts, including the amount spent and actual quantities  
12 purchased (to the extent feasible), issued for products in each Targeted Product Category in the  
13 prior period.

14 (ii) A summary of any waivers from this Chapter in the prior period.

15 (c) In addition to these obligations, each City department shall use its best efforts to  
16 incorporate Commodities from the Approved Alternatives List into existing Contracts. If the City  
17 department is unable to amend an existing Contract, the City department is authorized to enter  
18 into another Contract to procure such products, provided that the City department complies with  
19 all other applicable laws. Nothing in this Chapter is or shall be interpreted to require or  
20 authorize any City department to breach the terms of a Contract. Each City department shall  
21 document its efforts pursuant to this Section in the annual report filed under subsection (b),  
22 explaining the circumstances.

23 SEC. 206. WAIVERS. The application for a waiver shall be filed on a form specified by  
24 the Director. The waiver application will be sent electronically to any person who requests such  
25 notification. The Director shall respond to the requesting department within 5 days of receipt of

1 a waiver application. Waivers may be issued for up to the term of the Contract. Waivers from  
2 the requirements of this Chapter are available under the following circumstances:

3 (a) Emergency. A City department may grant itself a waiver from this Chapter when  
4 the purchase of a Commodity is necessary to respond to an emergency which meets the criteria  
5 set forth in section 21.15(a) of the Administrative Code. In such case, the Director of the City  
6 department shall within two business days notify the Director in writing of the emergency that  
7 prevented compliance with this Chapter, disclose the use and intensity of use of the product,  
8 describe steps being taken to safeguard public and City employee health during the emergency  
9 use and explain how such an emergency will be avoided in the future.

10 (b) Performance Standards. A City department may request a waiver from this  
11 Chapter from the Director when no product on the Approved Alternatives List meets  
12 departmental performance standards. The Director shall grant a waiver upon a showing that  
13 the requesting department has:

14 (i) thoroughly tested each product on the Approved Alternatives List and  
15 none meet the department's performance standards (including timely availability); and

16 (ii) disclosed the use and intensity of use for the product and developed a  
17 reasonable plan to minimize use of the selected product and/or protect employees and public  
18 from exposure; and

19 (iii) provided a written memorandum detailing all attempts to explore and  
20 utilize listed alternatives to the selected product within the waiver period.

21 (c) Cost Prohibitive. A City department may request a waiver from this Chapter from  
22 the Director when every product on the Approved Alternatives List is cost prohibitive. The  
23 Director shall grant a waiver upon a showing that the requesting department has:

24 (i) demonstrated that each product on the Approved Alternatives List is cost  
25 prohibitive while taking into account the goals set forth in Section 201; and

1 (ii) disclosed the use and intensity of use for the product and developed a  
2 reasonable plan to minimize use of the selected product and/or protect employees and public  
3 from exposure; and

4 (iii) provided a written memorandum detailing all attempts to explore and  
5 utilize listed alternatives to the selected product within the waiver period.

6 (d) Other. The Director may determine that a waiver should be granted upon a  
7 showing that the requesting department has demonstrated a reasonable basis for a waiver and  
8 developed a reasonable plan to minimize use of the selected product and/or protect employees  
9 and public from exposure and to investigate alternatives to the selected product during the  
10 waiver period.

11 (e) The Director shall report to the Commission at its next public meeting on:

12 (i) the product for which a City department obtained a waiver;

13 (ii) the proposed use and intensity of the product being used and the reason  
14 for the waiver;

15 (iii) steps being taken to safeguard public and City employee health during the  
16 waiver period; and

17 (iv) other waivers granted to that department.

18 (f) The Director shall maintain and post a list of all waivers on the Department's  
19 website organized by Department and shall mail the list to any person who requests such list.

20 SEC. 207. TRADE SECRETS.

21 (a) If a person believes that any information required to be reported or disclosed by this  
22 Chapter contains a trade secret, the person shall provide the information to the Director, the Purchaser  
23 (Office of Contract Administration) and other City departments requiring such information and shall  
24 notify the City in writing of that belief, detailing the basis of the belief as to each specific item of  
25 information the person claims is a trade secret and identifying the specific statute or judicial authority

1 under which the claim is made. The person submitting the trade secret shall submit two forms of  
2 information: one with the trade secret information clearly marked and one prominently marked "public"  
3 with the trade secrets redacted. For purposes of this Chapter, "trade secret" shall have the same  
4 meaning as it has under state law. The person designating information as a trade secret shall specify a  
5 name and street address for notification purposes and shall be responsible for updating such  
6 information. The City shall not disclose any properly substantiated trade secret which is so designated  
7 by a person except as required by this Chapter or as otherwise required by law.

8 (b) Information designated as trade secret may be disclosed to an officer or employee of the  
9 City and County of San Francisco, the State of California, or the United States of America for use in  
10 connection with the official duties of such officer or employee acting under authority of law for the  
11 protection of health, without liability on the part of the City.

12 (c) When the Director or other City official or employee receives a request for information  
13 that has been designated as, or which the City determines may be, a trade secret, the City shall notify the  
14 person or business of the request. The City may request further evidence or explanation from the person  
15 as to why the information requested is a trade secret. If the City determines that the information does not  
16 constitute a trade secret, the City shall notify the person or business of that conclusion and that the  
17 information will be released by a specified date in order to provide the person or business the  
18 opportunity to obtain a court order prohibiting disclosure.

19 (d) In adopting this Chapter, the Board of Supervisors does not intend to authorize or require  
20 the disclosure to the public of any trade secrets protected under the laws of the State of California.

21 (e) This Section is not intended to empower a person or business to refuse to disclose any  
22 information, including but not limited to trade secrets, to the Director or other City Departments  
23 required under this Chapter.

24 (f) Notwithstanding any other provision of this Chapter, any officer or employee of the City  
25 and County of San Francisco, or former officer or employee or contractor with the City or employee

1 thereof, who by virtue of such employment of official position has obtained possession or has had access  
2 to information, the disclosure of which is prohibited by this Section, and who, knowing that disclosure of  
3 the information is prohibited, knowingly and willfully discloses the information in any manner to any  
4 person or business not entitled to receive it, shall be guilty of a misdemeanor.

5 SEC. 208. ENFORCEMENT.

6 Whenever any City department finds, after an investigation by the contracting officer and the City  
7 Attorney, that a person or entity being considered for a Contract or under Contract with the City has, in  
8 connection with the bidding, execution or performance of any Contract:

9 (1) Falsely represented to the City the nature or character of the Commodities offered, used  
10 or supplied under the Contract; or

11 (2) Knowingly provided the City with Commodities in violation of this Chapter or the rules or  
12 regulations adopted pursuant to this Chapter,

13 the contracting officer shall have the authority to impose such sanctions or take such other  
14 actions as are designed to ensure compliance with the provisions of this Chapter. For purposes of this  
15 subsection, knowingly has the same meaning as in Chapter 6, section 6.83 of the Administrative Code.

16 The City may take any enforcement action authorized by Chapters 21 or 28 of the Administrative  
17 Code, including, without limitation, debarment.

18 Nothing in this Chapter shall be construed to relieve a Contractor of responsibility for  
19 providing a satisfactory product.

20 SEC. 209. PREEMPTION. Nothing in this Chapter shall be interpreted or applied so as  
21 to create any power or duty in conflict with any federal or state law.

22 SEC. 210. SEVERABILITY. In the event that a court or agency of competent jurisdiction  
23 holds that a federal or state law, rule or regulation invalidates any clause, sentence, paragraph  
24 or section of this ordinance or the application thereof to any person or circumstances, it is the  
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1 intent of the Board of Supervisors that the court or agency sever such clause, sentence,  
2 paragraph or section so that the remainder of this ordinance shall remain in effect.

3 Section 3. Chapter 5, The Resource Conservation Ordinance, and Chapter 9,  
4 Prohibiting Purchase of MTBE-Containing Motor Vehicle Fuel, of the Environment Code  
5 establish criteria for the purchase of certain commodities, including vehicle fuel, paper and  
6 writing products, batteries and numerous other products. In order to consolidate environmental  
7 purchasing requirements for commodities under Chapter 2 of the Environment Code, the Board  
8 of Supervisors is repealing those provisions of Chapters 5 and 9 which address commodities  
9 and directs the Director of the Department of the Environment to immediately adopt those  
10 requirements, including the supporting findings and definitions, as regulations effective on the  
11 effective date of this ordinance. Any subsequent modification of such requirements shall be  
12 subject to Section 203(e) of the Environment Code.

13 Section 4. The San Francisco Environment Code is hereby amended by  
14 amending Section 501 to read as follows:

15 SEC. 501. DEFINITIONS.

16 As used in this Chapter, the following words shall have the following meanings:

17 ~~“Battery” means two or more connected cells that produce a direct current by converting~~  
18 ~~chemical energy to electrical energy. For purposes of this ordinance, “battery” does not include~~  
19 ~~automotive batteries.~~

20 ~~“Battery charger” means a device that restores anew the active materials in a battery.~~

21 ~~“Battery pack” means multiple batteries joined together in a single housing.~~

22 “City department” means any department of the City and County of San Francisco, and  
23 does not include any other local agency or any federal or State agency, including but not limited  
24 to the San Francisco School District, the San Francisco Community College District, the San  
25 Francisco Redevelopment Agency and the San Francisco Housing Authority.

1 ~~————“Comprehensive Procurement Guideline” or “CPG” means final guidelines, as periodically~~  
2 ~~promulgated and amended by the U.S. EPA and codified at 40 Code of Federal Regulations Part 247,~~  
3 ~~which designate products that are or can be made with recovered materials in order to assist federal~~  
4 ~~procuring agencies in complying with the requirements of federal law and Executive Order 13101 as they~~  
5 ~~apply to the procurement of items with recovered materials content. As of February 22, 2002, final~~  
6 ~~CPGs exist for: paper and paper products; vehicle products (including engine coolants, re-refined~~  
7 ~~lubricating oils, and retread tires); construction products (including building insulation products, carpet,~~  
8 ~~cement and concrete containing coal fly ash and ground granulated blast furnace slag, consolidated and~~  
9 ~~reprocessed latex paint, floor tiles, patio blocks, shower and room dividers, structural fiberboard, carpet~~  
10 ~~cushion, flowable fill and railroad grade crossing surfaces); transportation products (including~~  
11 ~~channelizers, delineators, flexible delineators, parking stops, traffic barricades and traffic cones); park~~  
12 ~~and recreational products (including plastic fencing, playground surfaces, running tracks, park benches~~  
13 ~~and picnic tables, and playground equipment); landscaping products (including garden and soaker~~  
14 ~~hoses, hydraulic mulch, lawn and garden edging, yard trimmings compost, food waste compost, and~~  
15 ~~plastic lumber landscaping timbers and posts); non-paper office products (including binders, office~~  
16 ~~recycling containers, office waste receptacles, plastic desktop accessories, plastic envelopes, plastic~~  
17 ~~trashbags, printer ribbons, toner cartridges, solid plastic binders, plastic clipboards, plastic file folders,~~  
18 ~~plastic clip portfolios, and plastic presentation folders); and miscellaneous products (including pallets,~~  
19 ~~sorbents, industrial drums, awards and plaques, mats, signage, including sign supports and posts, and~~  
20 ~~manual grade strapping).~~

21 “Contract” means a binding written agreement for the provision of goods and/or services  
22 to be provided at the expense of the City or to be paid out of monies deposited in the treasury  
23 or out of trust monies under control of the City between a person, firm, corporation or other  
24 entity, including a governmental entity, and a City department. This Chapter shall not apply to  
25 contracts entered into or amended to extend the term prior to October 1, 2000.

1           “Contractor” means a person, firm, corporation or other entity, including a governmental  
2 entity, that enters into a contract with a City department.

3           “Contracting officer” means that officer or employee of the City authorized under the  
4 Charter or Municipal Code to enter into a contract on behalf of the City. “Contracting officer”  
5 shall include the Mayor, each department head or general manager and other employees of the  
6 City authorized to enter into contracts on behalf of the City.

7           “Director” means the Director of the Department of the Environment or his or her  
8 designee.

9           “Document Imaging” means the conversion of paper documents into electronic images  
10 on a computer, thereby reducing the amount of paper used for copying and printing. A  
11 document imaging system includes the ability to scan, store, index, retrieve and search  
12 documents.

13           “Post-consumer material” means those products generated by a business or consumer  
14 which have served their intended end use, and which have been diverted from becoming solid  
15 waste for purposes of recycling.

16           “Processed Chlorine Free” means recycled paper in which the recycled content is  
17 unbleached or bleached without chlorine or chlorine derivatives. Any virgin material portion of  
18 the paper must be totally chlorine free (i.e., unbleached or processed with a sequence that  
19 includes no chlorine or chlorine derivatives).

20           “Purchaser” means the Purchaser of the City or his or her designee.

21           ~~“Recovered Materials Advisory Notice” or “RMAN” means the information and~~  
22 ~~recommendations periodically published and amended by the U.S. EPA, based on U.S. EPA's market~~  
23 ~~research concerning the availability, quality, and price of products listed in the CPG. Existing RMANs~~  
24 ~~can be found at 60 Federal Register 21386 (May 1, 1995) (RMAN); 62 Federal Register 60976~~  
25 ~~(November 13, 1997) (RMAN II); 61 Federal Register 26986 (May 29, 1996) (Paper RMAN IV); 63~~



1 ~~Federal Register 31214 (June 8, 1998) (Paper RMAN II); 63 Federal Register 45580 (August 26, 1998)~~  
2 ~~(RMAN III); and 65 Federal Register 3070 (January 19, 2000) (RMAN V).~~

3 “Recyclable material” means any material or product separated or capable of being  
4 separated at its point of discard or from the solid waste stream for utilization as a raw material  
5 in the manufacture of a new product.

6 “Recycle” or “recycling” means the process of collecting, sorting, cleaning, treating,  
7 reusing or reconstituting a material that would otherwise become a solid waste and/or  
8 hazardous waste, and returning it to the economic mainstream in the form of a raw material for  
9 new, reused or reconstituted products which may be used in the marketplace.

10 ~~“Recycled product” means a product that is or can be made with recovered materials, including~~  
11 ~~those listed in the CPG and which at a minimum, meets the requirements of the federal RMAN.~~

12 “Reuse” means the secondary use of a product or its packaging for its original intended  
13 purpose or another function which does not require the product to be treated or reconstituted in  
14 any way.

15 “Solid Waste” or “Waste” has the same meaning as “solid waste” in the California  
16 Integrated Waste Management Act of 1989, Public Resources Code Section 40191.

17 “U.S. EPA” means the United States Environmental Protection Agency.

18 “Waste prevention” means discontinuing the use of an unnecessary material rather than  
19 disposing of it to the waste stream and shall include: (1) reduced resource use per unit of  
20 product; (2) increased product life; and (3) decreased consumption.

21 “Waste Reduction” means the diversion of materials, products and packaging from  
22 disposal through waste prevention, reuse, recycling and/or composting, but does not include  
23 steps taken after the material becomes solid waste or actions which would transfer the impacts  
24 of land disposal to air or water resources, such as transformation, incineration, pyrolysis,  
25 distillation, gasification, or biological conversion (other than composting).

1 Section 5. The San Francisco Environment Code is hereby amended by  
2 amending Section 506 to read as follows:

3 SEC. 506. PURCHASE AND USE OF PRINTING AND WRITING PAPER PRODUCTS.

4 (a) Every publication exhibit, form and letter produced by a City department, including  
5 all materials distributed to the public shall be on printing and writing paper products that contain:

6 (1) A minimum of 30% post-consumer materials for copier and bond paper (including  
7 any uncoated duplicating, printer and letterhead paper used in a variety of end use applications  
8 such as business forms and offset printing, but excluding high quality papers used for  
9 stationery, envelopes and other specialty items); and

10 (2) A minimum of 30% post-consumer materials for all other printing and writing  
11 paper products including, without limitation: publications, forms, letters, letterhead, promotional  
12 materials, advertisements, educational pamphlets, newsletters, exhibits, reports, business  
13 cards, calendars, commission and committee notices, agendas and minutes, requests for  
14 proposals or qualifications, invitations for bids, checks, tickets, high quality papers used for  
15 stationery, envelopes and other specialty items and other printed materials.

16 (3) The minimum level of post-consumer content will be reviewed annually by the  
17 Director. Pursuant to Section 511, the Director may raise, but not lower, the minimum level of  
18 post-consumer content as higher post-consumer content paper becomes available.

19 (4) All printing and writing paper products shall be on processed chlorine free paper  
20 as it becomes available at a reasonable price. The availability of processed chlorine free paper  
21 will be determined by the Director pursuant to Section 511.

22 (b) All pre-printed materials intended for distribution that are purchased or produced  
23 in quantities greater than 50 sheets after the effective date of this Chapter must include a  
24 recycled content logo and the percentage of post-consumer material in the paper.

25

1 (c) Each City department including the Purchaser, shall use its best efforts to  
2 incorporate the standards set forth in this Section into existing contracts for the provision of  
3 printing and writing paper and services. If the City department is unable to amend an existing  
4 contract, the City department is authorized to enter into another contract to procure products  
5 that do comply with this Section, provided that the City department complies with all other  
6 applicable laws. Nothing in this Chapter is or shall be interpreted to require or authorize any  
7 City department to breach the terms of a contract. Each City department shall document its  
8 efforts pursuant to this Section in a report filed with the Director, explaining the circumstances.

9 (d) This Section does not apply to commercial sanitary products, paperboard and  
10 packaging products, newsprint products or other products not generally considered to be  
11 printing or writing paper products. ~~Such products are covered under Section 507.~~

12 (e) The contracting officer shall require all suppliers of printing and writing paper  
13 products or services to certify the minimum content of post-consumer materials in the products  
14 to be provided in the performance of a contract.

15 (f) Unless specifically provided by court rules or other legal mandates, all pre-printed  
16 City forms and other pre-printed material shall be printed on double-sided pages.

17 (g) In all contracts for printing services for the City, the contract shall specify and  
18 require that the contractor use paper products meeting the standards set forth in this Section,  
19 and, unless inappropriate for the end use, that the contractor print the document on both sides  
20 of the paper.

21 (h) Any City department seeking the preparation and/or submission of any bid, report,  
22 request for proposal, quotation or other document shall specify and require the document to be  
23 submitted on paper which meets the requirements in this Chapter and printed on double-sided  
24 pages.

1 Section 6. The San Francisco Environment Code is hereby amended by  
2 repealing Section 507 in its entirety.

3 ~~SEC. 507. PURCHASE AND USE OF PRODUCTS LISTED IN THE CPG OTHER THAN~~  
4 ~~PRINTING AND WRITING PAPER PRODUCTS UNDER SECTION 506.~~

5 ~~—— (a) — Except for printing and writing paper products covered under Section 506, a City~~  
6 ~~department (including but not limited to City departments having responsibility for drafting or reviewing~~  
7 ~~construction specifications) that purchases or contracts to purchase any product listed in the CPG shall~~  
8 ~~purchase and contract to purchase a product that meets or exceeds the RMAN for that CPG.~~

9 ~~—— (b) — City departments are not required to procure products that meet or exceed the RMAN in~~  
10 ~~the following circumstances: (i) the (RMAN) product is not available in a reasonable period of time; (ii)~~  
11 ~~the (RMAN) product would fail to meet reasonable performance standards; (iii) or the (RMAN) product~~  
12 ~~is only available at an unreasonable price. “Available in a reasonable period of time” means that the~~  
13 ~~department would receive the (RMAN) product within the needed time frame without hindering~~  
14 ~~productivity. “Reasonable performance standards” means a (RMAN) product that will perform the~~  
15 ~~desired objective without overriding any City specifications for a project. If a City department relies on~~  
16 ~~one of these exceptions, within two weeks of the purchase, it must file a report with the Director, in a~~  
17 ~~form specified by the Director, explaining the circumstances and demonstrating a good faith effort to buy~~  
18 ~~products that meet the RMAN.~~

19 ~~—— (c) — Each City department, including the Purchaser, shall use its best efforts to incorporate the~~  
20 ~~CPGs and associated RMANs into existing contracts for these products. If the City department is unable~~  
21 ~~to amend an existing contract, the City department is authorized to enter into another contract to procure~~  
22 ~~products that do comply with the RMAN, provided that the City department complies with all other~~  
23 ~~applicable laws. Nothing in this Chapter is or shall be interpreted to require or authorize any City~~  
24 ~~department to breach the terms of a contract. Each City department shall document its efforts pursuant~~  
25 ~~to this Subsection in a report filed with the Director, explaining the circumstances.~~

1 ~~—— (d) — Notwithstanding any other provision of this Chapter, no City department is required to~~  
2 ~~purchase retreaded tires for use on passenger vehicles, police, fire, ambulance or other emergency~~  
3 ~~vehicle used in the course of protecting the health and safety of the residents of the City.~~

4 ~~—— (e) — The contracting officer shall require all contractors vendors and suppliers of products~~  
5 ~~subject to this Section to certify that the product meets or exceeds the relevant RMAN.~~

6 ~~—— (f) — Wherever possible, each City department that purchases or contracts to purchase paper~~  
7 ~~products subject to this Section 507 shall purchase and contract to purchase paper products that are~~  
8 ~~processed chlorine free. City departments are not required to procure paper products that are processed~~  
9 ~~chlorine free under this Subsection in any of the following circumstances: (i) the product is not available~~  
10 ~~in a reasonable period of time; (ii) the product would fail to meet reasonable performance standards; or~~  
11 ~~(iii) the product is only available at an unreasonable price.~~

12 Section 7. The San Francisco Environment Code is hereby amended by  
13 repealing Section 508 in its entirety.

14 ~~SEC. 508. PRODUCTS NOT LISTED IN THE CPG. — Wherever possible, for products which are~~  
15 ~~not included in the CPGs, the City shall procure for its use products containing the maximum amount of~~  
16 ~~post-consumer material.~~

17 Section 8. The San Francisco Environment Code is hereby amended by  
18 amending Section 511 to read as follows:

19 SEC. 511. GUIDELINES.

20 (a) The Director shall act as a clearinghouse of information on recycled product  
21 availability, performance, and post-consumer material content and shall assist City departments  
22 in meeting compliance with the letter and spirit of this Chapter. ~~The Director shall maintain and~~  
23 ~~make copies of the current CPG and RMAN and supporting documents available.~~

24 (b) The Director, ~~in conjunction with the Purchaser,~~ shall promulgate any guidelines  
25 necessary or appropriate to carry out the purposes and requirements of this Chapter.

1 Section 9. The San Francisco Environment Code Chapter 5 is hereby amended  
2 by repealing Section 512 as follows:

3 ~~SEC. 512. BATTERIES.~~

4 ~~—— (a) — A City department that purchases or contracts to purchase batteries or products that~~  
5 ~~include or incorporate battery or battery packs, shall purchase and contract to purchase only the~~  
6 ~~following types of batteries and battery packs only from vendors that collect spent batteries and recycle~~  
7 ~~them in accordance with applicable laws:~~

8 ~~—— (i) — Rechargeable alkaline batteries~~

9 ~~—— (ii) — Rechargeable nickel metal hydride batteries, or~~

10 ~~—— (iii) — Another rechargeable battery type identified by the Director pursuant to Section 511. At~~  
11 ~~the request of the City department, a vendor must submit written certification and documentation that~~  
12 ~~collected spent batteries were recycled in accordance with applicable laws.~~

13 ~~—— (b) — A City department that purchases or contracts to purchase battery chargers shall~~  
14 ~~purchase and contract to purchase chargers that recharge Ni-MH batteries as well as other battery~~  
15 ~~types.~~

16 ~~—— (c) — Each department that purchases batteries must require in the contract that the products be~~  
17 ~~accompanied by detailed recycling instructions and any batteries containing cadmium, mercury, lead, or~~  
18 ~~other hazardous materials include a written explanation of the toxic hazards of these substances in the~~  
19 ~~wastestream.~~

20 ~~—— (d) — A City department that purchases or contracts to purchase products that include or~~  
21 ~~incorporate battery packs shall purchase and contract to purchase such products in which the batteries~~  
22 ~~are easily removable.~~

23 ~~—— (e) — City departments are not required to follow the specifications required in subsections~~

24 ~~(a)–(d) above in the following circumstances: (i) the product or service is not available in a reasonable~~  
25 ~~period of time; (ii) the product or service would fail to meet reasonable performance standards; or (iii)~~

~~the product or service is only available at an unreasonable price. “Available in a reasonable period of time” means that the department would receive the product or service within the needed time frame without hindering productivity. “Reasonable performance standards” means a product or service that will perform the desired objective without overriding any City specifications for a project. If a City department relies on one of these exceptions, within two weeks of the purchase, it must file a report with the Director, in a form specified by the Director, explaining the circumstances, the product ultimately purchased and demonstrating a good faith effort to follow the specifications in subsections (a)–(d). If the product purchased was a rechargeable Ni–Cd battery or battery pack, the department must justify why this chemistry was necessary as opposed to rechargeable alkaline or Ni–MH.~~

~~—— (f) —— Each City department, including the Purchaser, shall use its best efforts in incorporate the purchase of rechargeable alkaline batteries and rechargeable nickel metal hydride batteries into existing contracts for these products. If the City department is unable to amend an existing contract, the City department is authorized to enter into another contract to procure these products, provided that the City department complies with all other applicable laws. Nothing in this Chapter is or shall be interpreted to require or authorize any City department to breach the terms of a contract. Each City department shall document its efforts pursuant to this subsection in a report filed with the Director, explaining the circumstances.~~

~~(g) —— The contracting officer shall require all contractors, vendors and suppliers of products subject to this Section to certify that the product meets or exceeds the criteria.~~

Section 10. The San Francisco Environment Code is hereby amended by repealing Chapter 9 in its entirety.

~~SEC. 900. FINDINGS.~~

~~—— The Board of Supervisors makes the following findings:~~

~~—— (a) —— In response to a report on the “Health and Environmental Assessment of Methyl Tertiary-Butyl Ether (MTBE)” prepared by the University of California, Governor Davis issued Executive Order~~

1 ~~D-5-99 requiring the California Energy Commission, in consultation with the California Air Resources~~  
2 ~~Board, to develop a timetable by July 1, 1999, for the removal of methyl tertiary butyl ether (MTBE) from~~  
3 ~~gasoline sold in the State of California at the earliest possible date but not later than December 31, 2002.~~

4 ~~—— (b) —— Under this Chapter, the City and County of San Francisco wishes to exercise its power to~~  
5 ~~make economic decisions involving its own funds as a participant in the marketplace and to conduct its~~  
6 ~~own business as a municipal corporation to ensure that purchases and expenditures of public monies are~~  
7 ~~made so as to encourage the marketing of non-MTBE gasoline.~~

8 ~~—— (c) —— This Chapter applies the Precautionary Principle to the selection of fuels used in the City~~  
9 ~~fleet to minimize negative impacts on groundwater and human health.~~

10 ~~SEC. 901. DEFINITIONS.~~

11 ~~—— Except as otherwise stated, the terms used in this Chapter shall have the following meaning:~~

12 ~~—— (a) —— “City” or “City and County” shall mean the City and County of San Francisco, or any~~  
13 ~~department, board, commission or agency thereof.~~

14 ~~—— (b) —— “Commodities Contract” shall mean an agreement for goods, supplies, materials, or~~  
15 ~~equipment to be purchased at the expense of the City.~~

16 ~~—— (c) —— “Contracting Officer” shall mean that officer or employee of the City and County~~  
17 ~~authorized under the Charter, the Administrative Code or the Municipal Code to enter into a~~  
18 ~~Commodities Contract on behalf of the City and County. “Contracting Officer” shall include the Mayor,~~  
19 ~~each department head or general manager and other employees of the City and County authorized to~~  
20 ~~enter into contracts on behalf of the City and County.~~

21 ~~—— (d) —— “Contractor” shall mean any person who enters into a Commodities Contract for the~~  
22 ~~provision of Motor Vehicle Fuel to the City.~~

23 ~~—— (e) —— “Motor Vehicle” shall mean a vehicle that is self-propelled.~~

24 ~~—— (f) —— “Motor Vehicle Fuel” shall mean any substance which can be used as an energy source to~~  
25 ~~power Motor Vehicles. Motor Vehicle Fuel shall include but is not limited to gasoline and diesel fuel.~~



1 ~~—— (g) —— “MTBE” shall mean the chemical commonly known as methyl tertiary butyl ether.~~

2 ~~—— (h) —— “Person” shall mean a natural person, a firm, joint stock company, business concern,~~  
3 ~~association, partnership or corporation, its or their successors or assigns, or agents~~

4  
5 ~~SEC. 902. PROHIBITING PURCHASE OF MTBE CONTAINING MOTOR VEHICLE FUEL.~~

6 ~~—— (a) —— From the effective date of this Chapter, the City shall not enter into any new Commodities~~  
7 ~~Contracts allowing for the purchase of Motor Vehicle Fuel that contains MTBE.~~

8 ~~—— (b) —— From the effective date of this Chapter, the City shall not modify any existing~~  
9 ~~Commodities Contract for the purchase of Motor Vehicle Fuel containing MTBE to extend its term.~~

10 ~~—— (c) —— From the effective date of this Chapter, all Commodities Contracts entered into by the~~  
11 ~~City for the purchase of Motor Vehicle Fuel shall require the purchased Motor Vehicle Fuel to be free of~~  
12 ~~MTBE.~~

13 ~~SEC. 903. CONTRACT REQUIREMENTS.~~

14 ~~—— Every Commodities Contract for Motor Vehicle Fuel entered into by City shall provide the~~  
15 ~~following:~~

16 ~~—— (a) —— Contractor agrees that it is not and will not be supplying any Motor Vehicle Fuel to City~~  
17 ~~that contains MTBE.~~

18 ~~—— (b) —— Failure to comply with the foregoing requirement shall constitute a material breach by~~  
19 ~~Contractor of the terms of the Commodities Contract. Such failure shall be determined by the City in its~~  
20 ~~sole discretion.~~

21 ~~—— (c) —— In the event that Contractor is found to be in breach of this provision, Contractor shall be~~  
22 ~~liable for liquidated damages in an amount equal to the Contractor's net profit under the Commodities~~  
23 ~~Contract, or five percent of the total amount of the contract dollars, whichever is greater. Such~~  
24 ~~liquidated damages shall be payable upon demand, and may be withheld from monies owed to~~  
25 ~~Contractor under the Commodities Contract.~~

1 ~~—— (d) — Nothing in this section shall be construed to limit any other remedies available at law to~~  
2 ~~City.~~

3 ~~SEC. 904. ADMINISTRATION AND ENFORCEMENT.~~

4 ~~—— Whenever the City and County discovers, after an investigation by the Contracting Officer and~~  
5 ~~the City Attorney, that a person or entity being considered for a Commodities Contract or under a~~  
6 ~~Commodities Contract with the City and County has, in connection with the bidding, execution or~~  
7 ~~performance of any Commodities Contract (1) falsely represented to the City and County the nature or~~  
8 ~~character of the Motor Vehicle Fuel offered to or supplied under the Commodities Contract to the City,~~  
9 ~~or (2) provided the City with Motor Vehicle Fuel containing MTBE in violation of this ordinance, the~~  
10 ~~rules and regulations adopted pursuant to this ordinance, or contract provisions pertaining to the~~  
11 ~~prohibition against providing MTBE containing Motor Vehicle Fuel to the City, the Contracting Officer~~  
12 ~~shall have the authority to impose such sanctions or take such other actions as are designed to ensure~~  
13 ~~compliance with the provisions of the ordinance which shall include, but are not limited to:~~

14 ~~—— (a) — Refusal to certify the award of a Commodities Contract;~~

15 ~~—— (b) — Termination or Suspension of the Commodities Contract;~~

16 ~~—— (c) — Ordering the withholding of funds due the Contractor under any Commodities Contract~~  
17 ~~with the City and County;~~

18 ~~—— (d) — Ordering the revision of a Commodities Contract based upon a material breach of~~  
19 ~~contract provisions or pertaining to representations made in bidding, execution or performance of the~~  
20 ~~Commodities Contract;~~

21 ~~—— (e) — Disqualification of the Contractor from eligibility for providing commodities or other~~  
22 ~~services to the City and County for a period not to exceed five years.~~

23 ~~SEC. 905. SEVERABILITY.~~

24 ~~—— If any section, subsection, clause, phrase or portion of this Chapter is for any reason held invalid~~  
25 ~~or unconstitutional by any court or federal or State agency of competent jurisdiction, such portion shall~~

1 ~~be deemed a separate, distinct and independent provision and such holding shall not affect the validity of~~  
2 ~~the remaining portions thereof.~~

3 ~~SEC. 906. EFFECTIVE DATE.~~

4 ~~——— This legislation shall become effective on January 1, 2002. The Board of Supervisors encourages~~  
5 ~~all city contracting officers to comply with and implement this legislation as far in advance of the~~  
6 ~~effective date as is possible.~~

7

8 Section 11. The San Francisco Administrative Code is hereby amended by amending  
9 Section 21.16, to read as follows:

10 Sec. 21.16. USE OF PURCHASING AGREEMENTS OF AND RECIPROCAL  
11 AGREEMENTS WITH OTHER PUBLIC AND NON-PROFIT AGENCIES; SOLICITATIONS  
12 FOR MULTIPLE DEPARTMENTS.

13 (a) Notwithstanding any other provisions of this Municipal Code, in cases where the  
14 Purchaser deems that it is in the City's best interests to do so, the Purchaser is authorized,  
15 subject to the Board of Supervisors' approval by Resolution, to sell to, acquire from, participate  
16 in, sponsor, conduct or administer cooperative purchasing agreements with or made available  
17 by any public agency or non-profit made up of multiple public agencies in California or  
18 elsewhere, and may enter into reciprocal agreements with such agencies for the cooperative  
19 use of Commodities or Services or the common use or lease of facilities, under the terms  
20 agreed upon between the parties.

21 (b) Notwithstanding any other provisions in this Municipal Code , the Purchaser may  
22 utilize the competitive procurement process of any other public agency or non-profit made up of  
23 multiple public agencies to make purchases of Commodities or Services for the use of the City  
24 under the terms established in that agency's competitive procurement process and as agreed  
25 upon by the City and the procuring agency, upon making a determination that (i) the other

1 agency's procurement process was competitive or the result of a sole source award, and (ii) the  
2 use of the other agency's procurement would be in the City's best interests.

3 (c) Departments may utilize the results of competitive Solicitation by other City  
4 departments if such potential use by other City departments is specified in the Solicitation.

5 Section 12. The San Francisco Administrative Code is hereby amended by amending  
6 Section 21.30, to read as follows:

7 Sec. 21.30. SOFTWARE LICENSES, SUPPORT, ESCROW, FINANCE, AND  
8 EQUIPMENT MAINTENANCE AGREEMENTS.

9 (a) The Board of Supervisors hereby approves the execution of perpetual,  
10 nonexclusive software licensing agreements which warrant performance of the software  
11 according to specifications and which are for an amount of less than ten million dollars,  
12 including any associated escrow agreement for source code or finance agreement, without  
13 further Board approval.

14 (b) Software licensing procurements are not subject to the contracting requirements  
15 of the Administrative *or Environment* Code, but shall be subject to the requirements established  
16 by Section 21.03(j) and Chapter 67. For the purpose of this section, software licensing  
17 procurements shall be deemed to include both the licensed software product, any escrow  
18 agreement for source code, finance agreements, and support services for such product where  
19 support for that product is available only from the licensor.

20 (c) Agreements for the development of software shall include acceptance testing of  
21 the software and/or performance criteria, and shall condition payments on successful  
22 completion of the acceptance test or satisfaction of the performance criteria specified in the  
23 contract.

24 (d) Where a vendor has proprietary rights to software or where maintenance of  
25 equipment by a particular vendor is required to preserve a warranty, software support and

1 equipment maintenance agreements entered into with that vendor shall be treated as a sole  
2 source for the purposes of any contract requirements included in the Municipal Code.

3 (e) A Contracting Officer is authorized to make payment for software license fees and  
4 software support, equipment maintenance and associated escrow and finance fees in advance  
5 of receiving services under a contract.

6

7

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

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11 By: Rona H. Sandler  
12 Deputy City Attorney

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