

BOARD of SUPERVISORS



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MEMORANDUM

TO: Phil Ginsburg, General Manager, Recreation and Parks Department
Elaine Forbes, Executive Director, Port Department
Harlan Kelly, Jr., General Manager, Public Utilities Commission
Jose Cisneros, Treasurer, Office of the Treasurer and Tax Collector
Mohammed Nuru, Director, Public Works
John Rahaim, Director, Planning Department
Deborah Raphael, Director, Department of the Environment

FROM: Erica Major, Assistant Clerk, Public Safety and Neighborhood Services
Committee, Board of Supervisors

DATE: December 2, 2016

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Public Safety and Neighborhood Services Committee has received the following proposed legislation, introduced by Supervisor Mar on November 29, 2016:

File No. 161290

Ordinance amending the Environment Code to modify restrictions on the sale or distribution on City property of drinking water in single service containers, to educate City departments regarding the restrictions, and making environmental findings.

If you have any comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

c:
Sarah Madland, Recreation and Parks Department
Daley Dunham, Port Department
Juliet Ellis, Public Utilities Commission
Amanda Kahn Fried, Office of the Treasurer and Tax Collector
Frank Lee, Public Works
Scott Sanchez, Planning Department
AnMarie Rodgers, Planning Department
Aaron Starr, Planning Department
Guillermo Rodriguez, Department of the Environment

1 [Environment Code - Packaged Drinking Water]

2
3 **Ordinance amending the Environment Code to modify restrictions on the sale or**
4 **distribution on City property of drinking water in single service containers, to educate**
5 **City departments regarding the restrictions, and making environmental findings.**

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

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

14 Section 1. The Planning Department has determined that the actions contemplated in
15 this ordinance comply with the California Environmental Quality Act (California Public
16 Resources Code Sections 21000 et seq.). Said determination is on file with the Clerk of the
17 Board of Supervisors in File No. 161290 and is incorporated herein by reference. The Board
18 affirms this determination.

19 Section 2. The San Francisco Environment Code is hereby amended by revising
20 Chapter 24, Sections 2402, 2403, 2404, 2405, 2406, and 2407, to read as follows:

21
22 **SEC. 2402. DEFINITIONS.**

23 For purposes of this Chapter,
24
25

1 "Bottled Water" means drinking water in a sealed Rigid Plastic Bottle having a capacity
2 of 21 fluid ounces or less.

3 "City Property" means real property, including any buildings thereon, owned or leased
4 by the City and County of San Francisco ("City"), and in the City's possession or in the
5 possession of a public or private entity under contract with the City to perform a public
6 purpose, including but not limited to the following property: recreational and park property
7 including but not limited to Golden Gate Park, the San Francisco Zoo, and San Francisco's
8 parks and playgrounds, plazas including but not limited to United Nations Plaza and Hallidie
9 Plaza, community centers such as Ella Hill Hutch Community Center, and property of the
10 Department of Recreation and Parks, the Port, and the Public Utilities Commission. "City
11 Property" includes a "City Street."

12 "City Funds" means all monies or other assets received and managed by, or which are
13 otherwise under the control of, the Treasurer, and any notes, bonds, securities, certificates of
14 indebtedness or other fiscal obligations issued by the City and County.

15 "City Street" means the public right-of-way owned by the City, including any area
16 across, along, on, over, upon, and within the dedicated public alleys, boulevards, courts,
17 lanes, roads, sidewalks, streets, and ways within the City.

18 "Event" means any gathering held on City Property, including a City Street, and subject
19 to a City permit, where more than 100 people attend or participate.

20 "Mineral water" means drinking water containing more than 500 milligrams per liter of
21 total dissolved solids and/or one or more chemical constituents in excess of the
22 concentrations listed in the Federal Bottled Water Quality Standards (Title 21, Code of
23 Federal Regs., Sec. 165.110).

1 "Packaged Water" means drinking water in a sealed box, bag, can, glass bottle, Rigid Plastic
2 Bottle or other container intended primarily for single service use and having a capacity of one liter
3 or less.

4 "Participant Athletic Event" means an athletic event in which a group of people
5 collectively walk, jog, run, or bicycle or otherwise participate in a sport on City Property,
6 including a City Street.

7 "Rigid Plastic Bottle" means any formed or molded container comprised predominantly
8 of plastic resin, having a relatively inflexible fixed shape or form, having a neck that is smaller
9 than the container body, and intended primarily as a single service container. "Rigid Plastic
10 Bottle" includes a compostable plastic bottle meeting these criteria.

11 "Water" includes: natural spring or well water; water taken from municipal or private
12 utility systems or other sources; distilled, deionized, filtered, or other purified water; or any of
13 the foregoing to which chemicals may be added. "Water" does not include: mineral water;
14 carbonated or sparkling water; soda, seltzer, or tonic water; or flavored water, also marketed
15 as fitness water, vitamin water, enhanced water, energy water, or other similar products.
16 "Water" does not include those food ingredients that are listed in ingredient labeling as
17 "water," "carbonated water," "disinfected water," or "filtered water."
18

19 **SEC. 2403. SALE OR DISTRIBUTION OF ~~BOTTLED WATER~~PACKAGED WATER ON CITY**
20 **PROPERTY RESTRICTED.**

21 (a) Starting October 1, 2014, no person may sell or distribute Bottled Water an Event
22 held indoors on City Property.

23 (b) Starting October 1, 2014, no person may sell or distribute Bottled Water at an
24 Event held outdoors on City Property, including a City Street, where the permitting officer,
25 department, or agency (collectively, "department") allows the Event sponsor access to reliable

1 on-site potable water connections adequate to meet the hydration needs of the Event
2 participants or attendees. By July 1, 2014, departments that issue permits for Events on their
3 properties and in their facilities shall, in consultation with the San Francisco Public Utilities
4 Commission ("SFPUC"), determine which properties that are frequently used for Events have
5 a reliable on-site supply of drinking water that could be used by Event sponsors.

6 (c) Starting October 1, 2016, no person may sell or distribute Bottled Water at an
7 Event held outdoors on City Property, including a City Street.

8 (d) Starting March 1, 2017, the above subsections (a), (b) and (c) of this Section 2403 shall
9 apply to restrict the sale and distribution of Packaged Water.

10 (~~e~~) The provisions of this Section 2403 shall not apply to the sale or distribution of
11 ~~Bottled Water~~Packaged Water to participants in a Participant Athletic Event. The provisions of
12 this Section 2403 shall not apply where the City grants the general public access to enter or
13 use City Property in question, including a City Street, without requiring issuance of a permit.

14 (e~~f~~) This Section 2403 shall not apply to an event held prior to January 1, 2018 that is
15 sponsored by a not-for-profit entity and that has over 250,000 attendees or participants.

16
17 **SEC. 2404. NEW LEASES, PERMITS, AND AGREEMENTS; MOBILE FOOD FACILITIES.**

18 (a) Starting October 1, 2014, all new leases, permits, management agreements or
19 other agreements awarded by the City allowing any person to use City Property, including a
20 City Street, for purposes that contemplate or would allow the sale or distribution of beverages
21 (collectively, "permits") shall specifically require that the permittee comply with this Chapter.
22 This requirement shall also apply to any such permit renewed, extended, or materially
23 amended after October 1, 2014.

24 (b) Starting October 1, 2014, no City officer or department shall issue a bid proposal or
25 solicitation, request for bid or proposal, or contract for vendors or concessions to be operated

1 on City Property that would require or permit the sale or distribution of Bottled Water on such
2 property.

3 (c) Starting March 1, 2017, the above subsections (a) and (b) of this Section 2404 shall apply
4 to restrict the sale and distribution of Packaged Water.

5 (d) No person shall sell, provide, or otherwise distribute Packaged Water as part of its
6 performance of a City contract or grant unless specifically exempted from or allowed to do so under
7 this Chapter.

8 (ee) This Section 2404 does not apply to concessions/vendors at San Francisco Airport
9 facilities. This Section 2404 does not apply to permits for the use of City Property, including a
10 City Street, for a Participant Athletic Event, if the permit provides that the Event sponsor may
11 only sell or distribute ~~Bottled Water~~Packaged Water, or allow the sale or distribution of ~~Bottled~~
12 ~~Water~~Packaged Water, to participants in the Participant Athletic Event and not to any other
13 persons. This Section 2404 will not apply to concessions/vendors at the Moscone Center
14 facility until (1) the City Administrator certifies to the Board of Supervisors that the first phase
15 of the expansion of the facility, the plans for which include installation of bottle filling stations,
16 has been completed, or (2) January 1, 2018, whichever is sooner.

17 (df) Starting October 1, 2016, all Mobile Food Facility permits issued or renewed under
18 Article 5.8 of the Public Works Code shall specifically provide that the permittee shall not sell
19 or distribute or allow the sale or distribution of ~~Bottled Water~~Packaged Water as part of the
20 operation of the Facility.

21
22 **SEC. 2405. BARRING USE OF CITY FUNDS FOR PURCHASE OF ~~BOTTLED~~**
23 **WATERPACKAGED WATER.**

24 (a) No City officer, department, or agency (collectively, "department") shall use City
25 Funds to purchase ~~Bottled Water~~Packaged Water for its own general use. A department may

1 use City Funds to purchase ~~Bottled Water~~Packaged Water for uses specifically exempted from
2 or allowed under this Chapter.

3 (b) It shall be City policy not to have drinking water systems in City offices or facilities
4 that use plastic water bottles of any size where satisfactory alternatives exist and are feasible
5 at the location under consideration. It shall further be City policy to conform drinking water
6 systems in City offices or facilities to this goal where reasonable by the end of 2016.

7
8 **SEC. 2406. WAIVERS AND EXCLUSIONS.**

9 (a) A City officer, department, or agency (collectively, "department") responsible for
10 permitting an Event on or issuing a lease for City Property may seek from the Department of the
11 Environment ("DOE") a waiver of~~waive~~ the requirements of Sections 2403 and 2404 in full or in
12 part if the Event sponsor or lessee demonstrates to the satisfaction of the ~~department~~DOE that
13 strict application of the requirement would not be feasible, would create an undue hardship or
14 practical difficulty, or that circumstances otherwise warrant granting of the waiver. The
15 ~~department's~~DOE's decision to grant a waiver shall be in writing and shall be final. If no
16 response is received from the DOE within 60 days of a waiver request, the request shall be deemed
17 approved.

18 (b) The provisions of Sections 2403 and 2404 shall not apply where the department
19 finds that the inclusion or application of such provisions would violate or be inconsistent with
20 the terms or conditions of a grant, subvention or contract with an agency of the State of
21 California or the United States or the instructions of an authorized representative of any such
22 agency with respect to any such grant, subvention or contract.

23 (c) The provisions of Sections 2403, 2404, and 2405(a) shall not apply where the
24 department finds that relying on ~~Bottled Water~~Packaged Water is necessary in a given situation
25

1 to protect the public health, safety and welfare, and no reasonable alternative to *Bottled*
2 *WaterPackaged Water* will serve the same purpose.

3 (d) Departments shall annually report all ~~waivers granted under subsection (a) and~~
4 determinations of non-applicability made under subsections (b) and (c) to the Director of the
5 Department of the Environment, and include the reason for each waiver.

6
7 **SEC. 2407. IMPLEMENTATION.**

8 (a) This Chapter 24 shall not apply to an Event held on City Property, including a City
9 Street, where the sponsor applied for or received the permit prior to July 1, 2014. Nothing in
10 this Chapter shall be construed to impair a contract, lease, management agreement or other
11 legally-binding agreement to which the City is a party on ~~the effective date of this Chapter~~ April
12 20, 2014. In addition, none of the amendments to this Chapter restricting the sale or distribution of
13 Packaged Water enacted as part of the ordinance in Board File No. 161290 shall be construed to
14 impair a contract, lease, management agreement or other legally-binding agreement to which the City
15 is a party on the effective date of that ordinance.

16 (b) The Department of the Environment and the Public Utilities Commission shall take
17 appropriate steps to educate and inform City departments about the requirements of this
18 Chapter.

19 (c) The Director of the Department of the Environment shall submit an annual report to
20 the Mayor and the Board of Supervisors on the implementation of this Chapter. The report
21 shall include the number of waivers granted ~~by City officers or departments~~ under Section
22 2406(a) and determinations of non-applicability made under Section 2406(b) and (c), and a
23 brief explanation of the justifications for the same. The report shall also summarize efforts taken
24 to educate and inform City departments about the requirements of this Chapter, and include plans to
25 continue doing so over the coming year.

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Section 3. Effective Date. This ordinance shall become effective 30 days after enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the Mayor's veto of the ordinance.

Section 4. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors intends to amend only those words, phrases, paragraphs, subsections, sections, articles, numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal Code that are explicitly shown in this ordinance as additions, deletions, Board amendment additions, and Board amendment deletions in accordance with the "Note" that appears under the official title of the ordinance.

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

By: 
NEHA GUPTA
Deputy City Attorney

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LEGISLATIVE DIGEST

[Environment Code - Packaged Drinking Water]

Ordinance amending the Environment Code to modify restrictions on the sale or distribution on City property of drinking water in single service containers, to educate City departments regarding the restrictions, and making environmental findings.

Existing Law

Environment Code Chapter 24, entitled “Bottled Drinking Water,” regulates the sale or distribution of “Bottled Water,” defined to include drinking water in a sealed rigid plastic bottle having a capacity of 21 fluid ounces or less, on City property. It also requires the Department of the Environment and Public Utilities Commission to educate other City departments about Chapter 24’s requirements, and compels the Director of the Department of the Environment to report annually to the Mayor and Board of Supervisors on Chapter 24’s implementation. Chapter 24 also contains a City policy to promote the availability of clean, free drinking water in public areas.

Amendments to Current Law

The proposal, the “San Francisco Packaged Water Ordinance,” is an ordinance that would amend Chapter 24 to extend application of many of the Chapter’s current regulations concerning Bottled Water to also apply to “Packaged Water.” “Packaged Water” would be defined as drinking water in a sealed box, bag, can, glass bottle, rigid plastic bottle, or other container intended primarily for single service use and having a capacity of one liter or less.

Events on City Property

According to Chapter 24, as of October 1, 2014, no person may sell or distribute Bottled Water at an indoor event held on City property, or an outdoor event held on City property, including a City street, where the City allowed the sponsor to use an on-site water supply. As of October 1, 2016, no one may sell or distribute Bottled Water at an outdoor event held on City property.

These restrictions apply only to events where more than 100 people attend or participate. They do not apply to public athletic events held on City property, to events where the City grants the general public access to enter or use the property without a permit, or to events held on City property where the sponsor applied for or received the permit prior to July 1, 2014.

A City officer or department responsible for an event or the property to be used for an event may waive these requirements in full or in part if the event sponsor demonstrates that strict application of the requirements is not feasible, would cause undue hardship or practical difficulty, or that circumstances otherwise warrant waiver.

The proposal would, starting March 1, 2017, apply these same restrictions to the sale and distribution of Packaged Water. In addition, the proposal would require a City officer or department responsible for an event or the property to be used for an event to seek a full or partial waiver from the Department of the Environment—rather than itself waiving this Chapter’s requirements—in the event that the sponsor demonstrates that a strict application of the requirement is not feasible, would cause undue hardship or practice difficulty, or that circumstances otherwise warrant waiver.

Permits and Leases; Food Trucks

According to Chapter 24, as of October 1, 2014, all new permits or leases allowing any person to use City property for purposes that include the sale or distribution of beverages must require that the permittee comply with the Chapter. This requirement also applies to permits or leases renewed, extended, or materially amended after that date. As of October 1, 2014, no City officer or department may issue a bid proposal or solicitation, request for bid or proposal, or contract for vendors or concessions to be operated on City property that require or permit the sale or distribution of Bottled Water on such property. These restrictions do not apply to concessions or vendors at San Francisco Airport facilities. They likewise do not apply to the Moscone Center until either January 1, 2018, or completion of the first phase of the current expansion of that facility, whichever occurs sooner.

As of October 1, 2014, all Mobile Food Facility permits issued or renewed under Article 5.8 of the Public Works Code must specifically provide that the permittee shall not sell or distribute Bottled Water as part of the operation of the Facility.

Per the proposal, starting March 1, 2017, these same requirements would apply to the sale and distribution of Packaged Water. In addition, starting March 1, 2017, no person would be permitted to sell or distribute Packaged Water as part of its performance of a City contract or grant, unless specifically exempted from or allowed to do so under this Chapter.

Use of City Funds to Purchase Packaged Water

Under Chapter 24, City departments and officers may not use City funds to purchase Bottled Water for their own general use. The proposal would apply this same restriction to purchases of Packaged Water.

It is City policy not to use drinking water systems in City offices or facilities that use plastic water bottles of any size, where satisfactory alternatives exist and are feasible at the location under consideration. In addition, it is City policy to conform drinking water systems in City offices or facilities to this goal where reasonable by the end of 2016. The proposal would not change these policies.

Policy to Increase the Availability of Clean, Free Drinking Water in Public Areas

Chapter 24 includes a City policy to increase the availability of clean, free drinking water in public areas. Specifically, it is City policy that any City department undertaking a capital improvement in a park, plaza, playground, or other public space must ensure the

space includes bottle-filling stations or drinking fountains for public use, if reasonable and appropriate. It is also City policy to encourage the inclusion of bottle-filling stations or drinking fountains for public use in Privately-Owned Public Spaces. The proposal would not modify these policies.

Penalties

An event sponsor who allows a violation of Chapter 24 can be punished by administrative fines imposed by the Director of the Department of the Environment in an amount of up to \$500 for a first violation, up to \$750 for a second violation within a year, and up to \$1,000 for a third and subsequent violations within a year. The proposal would not modify these penalties.

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