

BOARD of SUPERVISORS



City Hall
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

CITY OPERATIONS AND NEIGHBORHOOD SERVICES

SAN FRANCISCO BOARD OF SUPERVISORS

TO: Supervisor Carmen Chu, Chair
City Operations and Neighborhood Services

FROM: Gail Johnson, Committee Clerk

DATE: December 14, 2010

SUBJECT: **COMMITTEE REPORT. BOARD MEETING**
Tuesday, December 14, 2010

The following files should be presented as a **COMMITTEE REPORT** at today's Board meeting. These items were acted upon at the Committee Meeting on Monday, December 13, 2010, at 10:30 a.m., by the votes indicated.

Item No. 50 File No. 100761

Ordinance amending the San Francisco Environment Code by amending Sections 300, 301, 302, 303, 304, 305, 306, and 308, adding Section 310, and repealing Section 307, all to strengthen restrictions on the use of pesticides on City property, and making environmental findings.

RECOMMENDED AS A COMMITTEE REPORT

Vote:	Chu:	Aye
	Avalos:	Aye

Item No. 51 File No. 101419

Ordinance amending the San Francisco Environment Code by amending Sections 1103 and 1105, to require cell phone retailers to provide customers upon request with factsheets regarding Specific Absorption Rate values for cell phones and the use of cell

phones, and to delay the enforcement date for certain provisions of the Chapter 11, the "Cell Phone Right-to-Know Ordinance," and making environmental findings.

RECOMMENDED AS A COMMITTEE REPORT

Vote:	Chu:	Aye
	Avalos:	Aye

cc: Angela Calvillo, Clerk of the Board
Cheryl Adams, Deputy City Attorney
Rick Caldeira, Legislative Deputy Director
Binder Copy

[Environment Code - Restrictions on Pesticide Use]

Ordinance amending the San Francisco Environment Code by amending Sections 300, 301, 302, 303, 304, 305, 306, and 308, adding Section 310, and repealing Section 307, all to strengthen restrictions on the use of pesticides on City property, and making environmental findings.

Note: Additions are single-underline italics Times New Roman;
deletions are ~~striketrough italics Times New Roman~~.
Board amendment additions are double underlined.
Board amendment deletions are ~~striketrough normal~~.

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

Section 1. The San Francisco Environment Code is hereby amended by amending Sections 300, 301, 302, 303, 304, 305, and 308, adding Section 310, and repealing Section 307, to read as follows:

SEC. 300. PURPOSE AND FINDINGS.

(a) The Board of Supervisors hereby finds and declares that it shall be the policy of the City and County of San Francisco for City departments and City contractors who apply pesticides to City property to eliminate or reduce pesticide applications on City property to the maximum extent feasible.

(b) Under this Chapter, the City and County of San Francisco wishes to exercise its power to make economic decisions involving its own funds as a participant in the marketplace and to conduct its own business as a municipal corporation to ensure that purchases and expenditures of public monies are made in a manner consistent with integrated pest management policies and practices.

1 (c) This Chapter 3 concerns the application of pesticides to property owned by the City
2 and County of San Francisco only, and does not concern the application of pesticides to
3 property that is not owned by the City and County of San Francisco.

4 (d) City departments shall implement the following City Integrated Pest Management
5 (IPM) Policy:

6 **CITY INTEGRATED PEST MANAGEMENT POLICY**

7 The City, in carrying out its operations, shall assume pesticides are potentially
8 hazardous to human and environmental health. City departments shall give preference to
9 reasonably available nonpesticide alternatives when considering the use of pesticides on City
10 property. For all pest problems on City property, City departments shall follow the integrated
11 pest management (IPM) approach outlined below.

12 (1) Monitor each pest ecosystem to determine pest population, size,
13 occurrence, and natural enemy population, if present. Identify decisions and practices that
14 could affect pest populations. Keep records of such monitoring;

15 (2) Set for each pest at each site and identify in an IPM implementation plan, an
16 injury level, based on how much biological, aesthetic or economic damage the site can
17 tolerate;

18 (3) Consider a range of potential treatments for the pest problem. Employ
19 nonpesticide management tactics first. Consider the use of chemicals only as a last resort and
20 select and use chemicals only within an IPM program and in accordance with the provisions of
21 this Chapter.

22 (A) Determine the most effective treatment time, based on pest biology
23 and other variables, such as weather, seasonal changes in wildlife use and local conditions,
24
25

1 (B) Design and construct indoor and outdoor areas to reduce and
2 eliminate pest habitats,

3 (C) Modify management practices, including watering, mulching, waste
4 management, and food storage,

5 (D) Modify pest ecosystems to reduce food and living space,

6 (E) Use physical controls such as hand-weeding, traps and barriers,

7 (F) Use biological controls (introducing or enhancing pests' natural
8 enemies);

9 (4) Conduct ongoing educational programs:

10 (A) Acquaint staff with pest biologies, the IPM approach, new pest
11 management strategies as they become known, and toxicology of pesticides proposed for
12 use,

13 (B) Inform the public of the City's attempt to reduce pesticide use and
14 respond to questions from the public about the City's pest management practices;

15 (5) Monitor treatment to evaluate effectiveness. Keep monitoring records and
16 include them in the IPM implementation plan.

17 (e) Nothing in this Chapter is intended to apply to pesticide applications that are
18 required to comply with Federal federal, State or local laws or regulations.

19 (f) This Chapter applies the Precautionary Principle to the selection of reduced risk
20 pesticides and other pest management techniques on City property with the intent of
21 minimizing negative impacts on human health and the environment.

1 **SEC. 301. DEFINITIONS.**

2 Whenever used in this Chapter, the following terms shall have the meanings set forth
3 below.

4 (a) "Antimicrobial agents" means any substance or mixture of substances intended for
5 inhibiting the growth of or destroying any bacteria, fungi pathogenic to human and other animals, or
6 viruses declared to be pests by California Food and Agriculture Code § 12754.5. Antimicrobial agents
7 do not include slime control agents, substances intended for the use in or on humans or other animals,
8 or substances intended for use in or on processed food, beverages, or pharmaceuticals.

9 (b) (a) "City department" means any department of the City and County of San
10 Francisco and includes any pesticide applicator hired by a City department to apply pesticides
11 on City property. City department does not include any other local agency or any federal or
12 State agency, including but not limited to the San Francisco Unified School District, the San
13 Francisco Community College District, the San Francisco Redevelopment Agency and the
14 San Francisco Housing Authority.

15 (c) (b) "Commission" means the Commission on the Environment provided for by San
16 Francisco Charter Section 4.118.

17 (d) (e) "Contract" means a binding written agreement, including but not limited to a
18 contract, lease, permit, license or easement between a person, firm, corporation or other
19 entity, including a governmental entity, and a City department, which grants a right to use or
20 occupy property of the City and County of San Francisco for a specified purpose or purposes.

21 (e) (d) "Contractor" means a person, firm, corporation or other entity, including a
22 governmental entity, that enters into a contract with a City department.

23 (f) (e) "Department" means the Department of the Environment provided for by San
24 Francisco Charter Section 4.118.

1 (g) ~~(f)~~ "Integrated pest management" means a decision-making process for managing
2 pests that uses monitoring to determine pest injury levels and combines biological, cultural,
3 physical, and chemical tools to minimize health, environmental and financial risks. The
4 method uses extensive knowledge about pests, such as infestation thresholds, life histories,
5 environmental requirements and natural enemies to complement and facilitate biological and
6 other natural control of pests. The method uses the least toxic synthetic pesticides only as a
7 last resort to controlling pests.

8 (h) "Notification Sign" means a sign containing the name and active ingredient of the pesticide
9 product, the target pest, the date of pesticide use, the signal word, the date for re entry to the area
10 treated, and the City's 311 information number. Such signs shall be of a standardized design that is
11 easily recognizable to the public and workers.

12 (i) ~~(g)~~ "Pesticide" means pesticide as defined in Section 12753 of Chapter 2 of Division
13 7 of the California Food and Agricultural Code, but does not include antimicrobial agents.

14 ~~"Antimicrobial agents" means any substance or mixture of substances intended for inhibiting the~~
15 ~~growth of or destroying any bacteria, fungi pathogenic to human and other animals, or viruses~~
16 ~~declared to be pests under Section 12754.5 of the California Food and Agricultural Code, except slime~~
17 ~~control agents, substances intended for the use in or on humans or other animals, and use in or on~~
18 ~~processed food, beverages, or pharmaceuticals. Antimicrobial Agents include, but are not limited to,~~
19 ~~disinfectants, sanitizers, bacteriostats, sterilizers, fungicides and fungistats applied to raw materials or~~
20 ~~manufactured products.~~

21 (j) "Signal word" means the applicable word—"Danger," "Warning," or "Caution"—or some
22 other word, signifying the level of toxicity of a pesticide designated by Federal law under 40 C.F.R.
23 156.64.

1 (k) "San Francisco Hazard Tier Rating System" means the pesticide hazard screening protocol
2 developed by the San Francisco Department of the Environment, which rates pesticide hazards as
3 Tier I (most hazardous), Tier II (medium hazard), or Tier III (least hazardous).

4 (h) ~~"Toxicity Category I Pesticide Product" means any pesticide product that meets United~~
5 ~~States Environmental Protection Agency criteria for Toxicity Category I under Section 156.10 of Part~~
6 ~~156 of Title 40 of the Code of Federal Regulations.~~

7 (i) ~~"Toxicity Category II Pesticide Product" means any pesticide product that meets United~~
8 ~~States Environmental Protection Agency criteria for Toxicity Category II under Section 156.10 of Part~~
9 ~~156 of Title 40 of the Code of Federal Regulations.~~

10
11 **SEC. 302. PROHIBITED USE OF PESTICIDES. BAN ON USE OF TOXICITY CATEGORY I,**
12 **AND CERTAIN OTHER PESTICIDES.**

13 No pesticides may be used on or applied to property owned by the City and County of San
14 Francisco, except for pesticides granted an exemption under Section 303. Except for pesticides
15 granted an exemption pursuant to Section 307, effective January 1, 1997, no City department shall use
16 any Toxicity Category I Pesticide Product, any pesticide containing a chemical identified by the State
17 of California as a chemical known to the State to cause cancer or reproductive toxicity pursuant to the
18 California Safe Drinking Water and Toxic Enforcement Act of 1986, and any pesticide classified as a
19 human carcinogen, probable human carcinogen or possible human carcinogen by the United States
20 Environmental Protection Agency, Office of Prevention, Pesticides and Toxic Substances.

21
22 / / /

23 / / /

24 / / /

1 **SEC. 303. EXEMPTIONS. BAN ON USE OF TOXICITY CATEGORY II PESTICIDE**
2 **PRODUCTS; TOTAL PESTICIDE BAN.**

3 (a) Reduced Risk Pesticide List. Pesticides included on the most current Reduced Risk
4 Pesticide List compiled by the Department of the Environment may be used within limitations stated on
5 the List.

6 (b) Improving and maintaining water quality. Notwithstanding any other provision of this
7 Chapter, this Chapter shall not apply to the use of any pesticide for the purpose of improving or
8 maintaining water quality at:

9 (1) Drinking water treatment plants;

10 (2) Wastewater treatment plants;

11 (3) Reservoirs; and,

12 (4) Related collection, distribution and treatment facilities.

13 (c) Limited use exemptions. A City department may apply to the Department for up to a one-
14 year exemption from the pesticide ban imposed by Section 302 for use of a particular pesticide for a
15 particular use. The application for an exemption shall be filed on a form specified by the Department
16 and shall be signed by the City department's IPM Coordinator. The Department of the Environment
17 may grant the exemption for a specific and limited purpose for up to one year upon a finding that the
18 City department has:

19 (1) Made a good-faith effort to find alternatives to the banned pesticide;

20 (2) Demonstrated that effective, economic alternatives to the banned pesticide do not
21 exist for the particular use; and

22 (3) Developed a reasonable plan for investigating alternatives to the banned pesticide
23 during the exemption period.

1 (d) **Pilot testing exemptions.** A City department may also apply to the Department for up to a
2 one-year exemption from the pesticide ban imposed by Section 302 for pilot testing of a pesticide that
3 has been categorized as a reduced-risk pesticide by the Department, but which has not yet been added
4 to the Reduced-Risk Pesticide List. An application for exemption must be filed as in 303(c) above. The
5 Department of the Environment may grant the exemption for a specific and limited purpose for up to
6 one year upon a finding that:

7 (1) The City department has made a good-faith effort to find non-chemical control
8 methods for solving the pest problem;

9 (2) The pesticide proposed for pilot testing shows potential for replacing more
10 hazardous pest management methods, and

11 (3) The pesticide proposed for pilot testing meets the Department's criteria for
12 Reduced-Risk Pesticides.

13 (e) **Reduced-risk pesticide.** The Commission on the Environment may exempt a reduced-risk
14 pesticide from the ban imposed by Section 302 upon a finding that the reduced-risk pesticide is
15 commonly used as part of an IPM strategy. Based on recommendations by the Department, the
16 Commission shall maintain a list of reduced-risk pesticides granted an exemption pursuant to this
17 subsection. The Commission shall review the list annually and make necessary changes. The
18 Commission may review and revise the list more frequently upon recommendation by the Department.

19 (f) **Emergency exemption.** A City department may apply to the Department for an emergency
20 exemption in the event that an emergency pest outbreak poses an immediate threat to public health or
21 significant economic damage will result from failure to use a pesticide banned pursuant to Section 302.
22 The application for an exemption shall be filed on a form specified by the Department. The Department
23 shall respond to the application in a timely manner. If the requesting department is unable to reach the
24 Department, the departmental IPM Coordinator may authorize the one-time emergency use of the
25

1 required pesticide. The department IPM Coordinator must notify the Department of the determination
2 to use the pesticide by facsimile prior to its application in the event that the department IPM
3 Coordinator is unable to reach the Department. Notification Signs shall be posted at the time of
4 application and remain posted four days following the application. The Department may impose
5 additional conditions for emergency applications.

6 ~~(a) Except for pesticides granted an exemption pursuant to Section 307, effective January 1,~~
7 ~~1998, no City department shall use any Toxicity Category II Pesticide Product.~~

8 ~~(b) Except for pesticides granted an exemption pursuant to Section 307, by January 1, 2000,~~
9 ~~any City department that uses one or more pesticides not banned under Section 302 or Section 303(a),~~
10 ~~shall reduce by 100 percent the cumulative volume of such pesticides that it used in calendar year 1996~~

12 **SEC. 304. NOTICE OF PESTICIDE USE.**

13 (a) Except as provided in Subdivisions (b) through (e) hereof, ~~within 120 days of the~~
14 ~~effective date of this ordinance,~~ any City department that uses any pesticide shall comply with
15 the following notification procedures:

16 (1) Notification Signs ~~Signs~~ shall be posted at least three days before application
17 of ~~the~~ any Tier I or Tier II pesticide product and remain posted at least four days after
18 application of the pesticide.

19 (2) Notification Signs shall be posted for pesticide products classified as Tier III (least
20 hazardous) on the day of treatment, prior to application of the Tier III pesticide product. Signs shall
21 remain posted in accordance with instructions on the pesticide product's label. Signs shall be posted
22 ~~(i) at every entry point where the pesticide is applied if the pesticide is applied in an enclosed area, and~~
23 ~~(ii) in highly visible locations around the perimeter of the area where the pesticide is applied if the~~
24 ~~pesticide is applied in an open area.~~

1 (3) Signs shall be posted (i) at every entry point to the area where the pesticide is
2 applied if the pesticide is applied in an enclosed area, and (ii) in highly visible locations around the
3 perimeter of the area where the pesticide is applied if the pesticide is applied in an open area. Signs
4 shall be of a standardized design that are easily recognizable to the public and workers.

5 (4) Signs shall contain the name and active ingredient of the pesticide product,
6 the target pest, the date of pesticide use, the signal word indicating the toxicity category of the
7 pesticide product, the date for re-entry to the area treated, and the name and contact number
8 for the City department responsible for the application.

9 (5) City departments may use permanent signs if the signs are updated as required by
10 this Chapter.

11 (b) City departments shall not be required to post Notification Signs signs in accordance
12 with Subsection (a) in right-of-way locations that the general public does not use for
13 recreational purposes. However, each City department that uses pesticides in such right-of-
14 way locations shall ~~develop and maintain a public access telephone number~~ work with the City's 311
15 center to ensure that callers to the 311 center can receive information about pesticide applications in
16 the right-of-way areas. The department, acting through the 311 call center, shall provide callers
17 inquiring about pesticide use in right-of-way locations with all the information normally listed on
18 notification signs under subsection (a)(4). Information readily available for any pesticide that will be
19 applied within the next three days or has been applied within the last four days: A description of the
20 area of the pesticide application, the name and active ingredient of the pesticide product, the target
21 pest, the date of pesticide use, the signal word indicating the toxicity category of the pesticide product,
22 the re-entry period of the area treated and the name and contact number for the City department
23 responsible for the application. The department shall also post a notice in a public area located in its
24 main office building explaining that the public may obtain information regarding the department's use
25

1 ~~of pesticides in right-of-way locations by calling the City's 311 center. Information about the public~~
2 ~~access telephone number shall be posted in a public location at the City department's main office~~
3 ~~building.~~

4 (c) City departments using baits or other pesticides granted an exemption by the
5 Department pursuant to Subsection (e) shall not be required to post Notification Signs signs in
6 accordance with Subsection (a). However, each ~~City~~ such department ~~that uses pesticidal baits~~
7 ~~or other pesticides granted an exemption by the Department pursuant to Subsection (e)~~ shall post a
8 permanent Notification Sign sign: (1) in each building or vehicle where such pesticides are
9 used, (2) at the City department's main office or a similar location where the public obtains
10 information regarding the building or vehicle, and (3) when such pesticides are used outdoors
11 to control rats and other pests, in a conspicuous location outside of the area where they are
12 used. ~~The sign shall indicate the name and active ingredient of the pesticides used in and around the~~
13 ~~building or vehicle, the target pests, the signal word indicating the toxicity category of the pesticide~~
14 ~~product, the area or areas where the pesticides are commonly placed, and the contact number for the~~
15 ~~City department responsible for the application.~~

16 (d) In the event of a public health emergency or to comply with worker safety requirements, the
17 Department of the Environment may authorize City departments ~~may obtain authorization from the~~
18 ~~Department to apply a~~ Tier I or Tier II pesticide without providing the usual three-day advance
19 notification. ~~without providing a three-day advance notification in the event of a public health~~
20 ~~emergency or to comply with worker safety requirements. Signs meeting the requirements of Subsection~~
21 ~~(a)(2) through Subsection (a)(4)~~ In such cases, Notification Signs signs shall be posted on the day of
22 treatment, prior to application at the time of application and remain posted four days following the
23 application.
24
25

1 (e) The Department may grant exemptions to the notification requirements for one-
2 time pesticide uses and may authorize permanent changes in the way City departments notify
3 the public about pesticide use in specific circumstances, upon a finding that good cause exists
4 to allow an exemption to the notification requirements. Prior to granting an exemption
5 pursuant to this subsection, the City department requesting the exemption shall identify the
6 specific situations in which it is not possible to comply with the notification requirements and
7 propose alternative notification procedures. The Department shall review and approve the
8 alternative notification procedures.
9

10 **SEC. 305. ~~IMPLEMENTATION OF~~ CITY INTEGRATED PEST MANAGEMENT POLICY.**

11 (a) ~~Within 90 days of the effective date of this ordinance each~~ Each City department that
12 uses pesticides shall ~~maintain an submit to the Department a plan for implementing the City~~
13 Integrated Pest Management (IPM) Policy. The Department may require periodic IPM plan
14 updates. The IPM implementation plans and any periodic updates shall be consistent with the
15 requirements of this Section and any guidelines developed by the Department pursuant to this
16 Chapter.

17 (b) A City department IPM implementation plan shall outline the ways in which the City
18 department shall comply with the City IPM Policy in Section 300(d). The City department IPM
19 implementation plan shall include pesticide applications performed by pesticide applicators at
20 the request of the City department. The IPM implementation plan shall contain a list of the
21 types and quantities of chemicals used ~~as of December 31, 1996~~, the types of pest problems,
22 the alternatives adopted to date, alternatives proposed for adoption within the next six
23 months, and the name of the IPM Coordinator for the City department.
24
25

1 (c) At the request of the Department, the Commission may determine that a City
2 department's IPM implementation plan is not in conformity with the City IPM Policy. Upon a
3 determination of nonconformity, the City department shall submit a revised plan to the
4 Department in accordance with a schedule established by the Commission.

5 (d) The Department shall ~~assist City departments in implementing the City IPM Policy by~~
6 ~~developing~~ disseminate public educational information about IPM plans and programs and the
7 City's IPM Policy.

8 (e) ~~The Department shall establish an IPM Policy implementation program to assist City~~
9 ~~departments in implementing the City IPM Policy.~~ The Department shall maintain ~~establish~~ a data
10 bank of information concerning pesticide use by City departments and the efficacy of
11 alternatives used by City departments. All City departments that use pesticides shall
12 participate in the Department's program by:

13 (1) Identifying the types of pest problems that the City Department has;

14 (2) Identifying types and quantities of pesticides currently in use by the City
15 department;

16 (3) Identifying the use of alternatives for ~~banned~~ pesticides;

17 (4) Designating City department contact personnel who are responsible for the
18 service for which the pesticides are used to regularly assess the efficacy of alternatives and to
19 act as a resource for other City departments; and

20 (5) Providing regular reports as required by the Department of the Environment
21 on the City department's efforts to implement the City IPM Policy.

22 (f) Any City department planning to apply pesticides to outdoor areas must first obtain a
23 written recommendation from a person holding a valid Agricultural Pest Control Advisor license issued
24 by the California Department of Pesticide Regulation. Written recommendations shall be consistent
25

1 with the IPM plan for the site and state the period for which they are valid, from one day up to one
2 calendar year from the date of issue. The Department shall determine the cost of maintaining the IPM
3 implementation program. The Department may request that the City departments that use pesticides
4 provide work orders to the Department to cover the cost of maintaining the program.

5 (g) Any City department that performs landscape pesticide applications must do so by or under
6 the supervision of a person holding a valid Qualified Applicator certificate under state law. Properly
7 trained, but unlicensed staff may apply pesticides under the direction of a properly licensed staff
8 member. No later than July 1, 1997 and semi-annually thereafter, the Department shall report to the
9 Commission on the status of City department efforts to implement the City IPM Policy. Such report
10 shall include a summary of exemptions granted by the Department during the reporting period. The
11 Department shall provide an annual report to the Board of Supervisors on the status of City department
12 efforts.

13 (h) The Department may request that the City departments that use pesticides provide work
14 orders to the Department to cover the cost of implementing this IPM program.

15 (i) The Department shall post on its website summaries of pesticide use by City departments
16 and exemptions granted.

18 **SEC. 306. RECORDKEEPING AND REPORTING.**

19 (a) Each City department that uses pesticides shall keep records of all pest
20 management activities. Each record shall include the following information:

- 21 (1) The target pest;
- 22 (2) The type and quantity of pesticide used;
- 23 (3) The site of the pesticide application;
- 24 (4) The date the pesticide was used;
- 25

1 (5) The name of the pesticide applicator;
2 (6) The application equipment used;
3 (7) Prevention and other non-chemical methods of control used;
4 (8) Experimental efforts; and
5 (9) Exemptions granted by the Department pursuant to Section 303 304 or 307
6 for that application.

7 (b) Each City department that uses pesticides shall submit the pest management
8 record required by Subsection (a) to the Department on a monthly basis. The Department
9 may reduce the submittal frequency.

10 (c) Pest management records shall be made available to the public upon request in
11 accordance with the provisions of the San Francisco Sunshine Ordinance, San Francisco
12 Administrative Code, Chapter 67.

13
14 **SEC. 307. Reserved. EXEMPTIONS.**

15 ~~(a) Improving and maintaining water quality. Notwithstanding any other provision of this~~
16 ~~Chapter, this Chapter shall not apply to the use of any pesticide for the purpose of improving or~~
17 ~~maintaining water quality at:~~

18 ~~(1) Drinking water treatment plants;~~

19 ~~(2) Wastewater treatment plants;~~

20 ~~(3) Reservoirs; and~~

21 ~~(4) Related collection, distribution and treatment facilities.~~

22 ~~(b) One-year exemptions. A City department may apply to the Department for up to a one-year~~
23 ~~exemption from the pesticide ban imposed by Sections 302 or 303 for use of a particular pesticide for a~~
24 ~~particular use. The application for an exemption shall be filed on a form specified by the Department~~

1 and shall be signed by the City department's IPM Coordinator. The Department of the Environment
2 may grant the one year exemption upon a finding that the City department has:

- 3 (1) ~~Made a good faith effort to find alternatives to the banned pesticide;~~
4 (2) ~~Demonstrated that effective, economic alternatives to the banned pesticide do not~~
5 ~~exist for the particular use; and~~
6 (3) ~~Developed a reasonable plan for investigating alternatives to the banned pesticide~~
7 ~~during the exemption period.~~

8 (e) ~~Limited use exemption.~~ A City department may apply to the Department for a limited use
9 exemption for a particular pesticide banned pursuant to Section 302 or 303 and not covered by a one-
10 year exemption. The application for an exemption shall be filed on a form specified by the Department
11 and shall be signed by the City department's IPM Coordinator. The Department may grant a limited-
12 use exemption provided that the Department finds that the City department will use the pesticide for a
13 specific and limited purpose and for a short and defined period and the City department has identified
14 a compelling need to use the pesticide.

15 (d) ~~Reduced risk pesticide.~~ The Commission on the Environment may exempt a reduced risk
16 pesticide from the ban imposed by Section 303 upon a finding that the reduced risk pesticide is
17 commonly used as part of an IPM strategy. Based on recommendations by the Department, the
18 Commission shall maintain a list of reduced risk pesticides granted an exemption pursuant to this
19 subsection. The Commission shall review the list annually and make necessary changes. The
20 Commission may review and revise the list more frequently upon recommendation by the Department.

21 (e) ~~Emergency exemption.~~ A City department may apply to the Department for an emergency
22 exemption in the event that an emergency pest outbreak poses an immediate threat to public health or
23 significant economic damage will result from failure to use a pesticide banned pursuant to Section 302
24 or Section 303. The application for an exemption shall be filed on a form specified by the Department.

1 *The Department shall respond to the application in a timely manner. If the requesting department is*
2 *unable to reach the Department, the departmental IPM Coordinator may authorize the one time*
3 *emergency use of the required pesticide. The department IPM Coordinator must notify the Department*
4 *of the determination to use the pesticide by facsimile prior to its application in the event that the*
5 *department IPM Coordinator is unable to reach the Department. Signs meeting the requirements of*
6 *Subsection (a)(2) through Subsection (a)(4) shall be posted at the time of application and remain*
7 *posted four days following the application. The Department may impose additional conditions for*
8 *emergency applications.*

10 **SEC. 308. CITY CONTRACTS.**

11 *(a) As of the effective date of this Section, when a City department enters into a new contract or*
12 *extends the term of an existing contract, the contract shall obligate the contractor to comply with*
13 *provisions of this Section 308(a):*

14 *(1) Effective January 1, 1998, the contractor shall comply with Sections 302, 304 and*
15 *306. In addition, effective January 1, 1998, the contractor shall submit to the City department an IPM*
16 *implementation plan that lists the types and estimated quantities, to the extent possible, of pesticides*
17 *that the contractor may need to apply to City property during its contract, outlines actions the*
18 *contractor will take to meet the City IPM Policy in Section 300 to the extent feasible, and identifies the*
19 *primary IPM contact for the contractor.*

20 *(2) Effective January 1, 1999, the contractor shall comply with Section 303(a).*

21 *(3) Effective January 1, 2000, the contractor shall comply with Section 303(b).*

22 *(b) As of the effective date of this Section, when (a) When a City department enters into a*
23 *new contract or extends the term of an existing contract that authorizes a contractor to apply*
24 *pesticides to City property, the City department shall submit an IPM implementation plan*
25

1 update to the Commission on the Environment that incorporates the pesticide usage of the
2 contractor into the City department's IPM ~~implementation~~ plan.

3 (b) The contractor shall comply with Sections 300, 301, 302, 304 and 306.

4 (c) The contractor, or City department on behalf of a contractor, may apply for any
5 exemption authorized under Section 303 ~~307~~.

6
7 **SEC. 310. ACCOUNTABILITY.**

8 (a) The Department shall hold a noticed public meeting at least once a year at which it shall
9 consider issues related to pest management activities on City property, including the use of reduced-
10 risk pesticides. Any City department or contractor granted a limited use exemption or an emergency
11 exemption under Section 303 during the prior calendar year shall send a representative to the meeting
12 to explain why the exemption was sought and what actions the department or contractor has taken
13 under the exemption. Any City department or contractor using the highest risk products included on
14 the Reduced-Risk Pesticide List maintained by the Department shall send a representative to the
15 meeting to explain the reasons for using such products and how they have been used. The Department
16 shall be responsible for notifying City departments of the meeting each year and of the requirements of
17 this subsection. City departments shall cooperate in notifying their contractors of the same.

18 (b) The Department shall establish a mechanism for collecting complaints from City residents
19 regarding inappropriate pesticide use on City properties. The Department shall conduct any necessary
20 investigations and respond to the complaints within 30 days of their receipt.

21 (c) The Department shall maintain on its website an up-to-date list of all exemptions approved
22 by the Department under Section 303.

23
24 / / /

1 **Section 2. Additional Provisions.**

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

7 **(b) Conflict with State or Federal Law.** This ordinance shall be construed so as not
8 to conflict with applicable federal or State laws, rules or regulations. Nothing in this ordinance
9 shall authorize any City agency or department to impose any duties or obligations in conflict
10 with limitations on municipal authority established by State or federal law at the time such
11 agency or department action is taken.

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

17 / / /

18 / / /

19 / / /

20 / / /

21 / / /

22 / / /

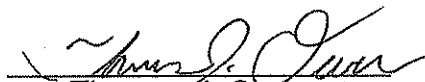
23 / / /

1 (d) **Environmental Findings.** The Planning Department has determined that the
2 actions contemplated in this ordinance are in compliance with the California Environmental
3 Quality Act (Cal. Pub. Res. Code §§ 21000 et seq.). Said determination is on file with the
4 Clerk of the Board of Supervisors in File No. 100761 and is incorporated herein by
5 reference.

6
7
8 APPROVED AS TO FORM:

9 DENNIS J. HERRERA, City Attorney

10
11 By:

12 
13 Thomas J. Owen
14 Deputy City Attorney
15
16
17
18
19
20
21
22
23
24
25

LEGISLATIVE DIGEST
(Substitute Legislation, dated 10/18/2010)

[Restrictions on Pesticide Use]

Ordinance amending the San Francisco Environment Code by amending Sections 300, 301, 302, 303, 304, 305, 306, and 308, adding Section 310, and repealing Section 307, all to strengthen restrictions on the use of pesticides on City property, and making environmental findings.

Section 301. Definitions.

The existing Environment Code uses the EPA criteria for "Toxicity Category I Pesticide Product" and "Toxicity Category I Pesticide Product."

The proposal is an ordinance that would amend the Code to substitute a pesticide hazard screening protocol to be developed by the Department of the Environment, called the "San Francisco Hazard Tier Rating System," which would categorize pesticide products as Tier I (most hazardous), Tier II (medium hazard), or Tier III (least hazardous).

Section 302. Prohibited Use of Pesticides.

Section 303 currently prohibits any City department from using on City property any Toxicity Category I pesticide, any pesticide containing a chemical known to cause cancer or reproductive toxicity, or any pesticide classified as a human carcinogen, probable human carcinogen or possible human carcinogen, except pursuant to an exemption granted under the Code.

The proposal would broaden the ban to prohibit the use of any pesticide on City property, except where an exemption has been granted under the Code.

Sec. 303/Former Section 307. Exemptions.

Current Section 303(a) bars any City department from using a Toxicity Category II Pesticide on City property, unless the Department of the Environment has granted the department an exemption under the terms of the Environment Code. Section 303(b) requires any City department using any other pesticide allowed under the Code to reduce by 100 percent the cumulative volume of such pesticides that it used in calendar year 1996,

except where the Department of the Environment has granted an exemption. Current Section 307 sets out the grounds for the Department to grant exemptions to the general restrictions on the use of pesticides on City property by City departments.

The proposal would repeal the current provisions of Sections 304 and 307 and move most of the provisions of former Section 307 to Section 304.

The Code currently exempts the use of pesticides at water system facilities to maintain water quality.

The Department of the Environment may grant a one-year exemption for the use of any pesticide where the department has (1) made a good-faith effort to find alternatives to the banned pesticide; (2) demonstrated that effective, economic alternatives to the banned pesticide do not exist for the particular use; and (3) developed a reasonable plan for investigating alternatives to the banned pesticide during the exemption period.

The Department may also grant a limited-use exemption for the use of a particular pesticide for a specific and limited purpose and for a short and defined period, if the department has shown a compelling need for the use of the pesticide.

The Department may exempt a pesticide it has identified as a "reduced risk pesticide" from the general ban on pesticide use in Section 303, if the Department finds that the pesticide is commonly used as part of an Integrated Pest Management strategy. The Code does not define what is a "reduced risk pesticide."

And the Department may grant an emergency exemption to combat an immediate threat to the public health or an immediate threat of significant economic damage.

The proposal would carry forward the exemptions for maintaining water quality, for reduced-risk pesticides, and for emergencies. It would combine the one-year and limited-use exemptions. And it would add a new exemption for up to one year of pilot testing of a reduced-risk pesticide that had not yet been officially added to the City's Reduced-Risk Pesticide List.

Sec. 304. Notice of Pesticide Use.

Section 304 requires a City department to post notices on site for at least 3 days before and 4 days after it applies a pesticide to a City property. The signs must include a contact number at the department for people who have questions about the pesticide application.

The proposal would allow City departments to post the notice on the day the pesticide is applied, if the pesticide was classified by the Department of the Environment as Tier III, or "least hazardous." All notices of pesticide use would direct callers to the City's 311 system.

Sec. 305. Implementation of City
Integrated Pest Management Policy.

Section 305 requires each City department to prepare its own plan for implementing the City's Integrated Pest Management Policy, and requires the Department of the Environment to develop and oversee a City-wide Integrated Pest Management Policy implementation program.

The proposal would add two new requirements:

- Any City department planning to apply pesticides to outdoor areas would be required to first obtain a written recommendation from a person holding a valid Agricultural Pest Control Advisor license issued by a state agency.
- Any City department that performs landscape pesticide applications would be required to do so by or under the supervision of a person holding a valid Qualified Applicator certificate under state law.

Sec. 306. Recordkeeping and Reporting.

No significant changes.

Sec. 308. City Contracts.

The proposal would eliminate obsolete provisions governing the phase-in of the original legislation.

Sec. 310. Accountability.

The proposal would add a new section to the Code requiring the Department of the Environment to hold a noticed public meeting at least once a year to consider the implementation of the City's Integrated Pest Management Program, including the granting of exemptions, and other issues related to pest management activities on City property.

The proposal would also require the Department to establish a program for collecting complaints from City residents regarding inappropriate pesticide use on City property, and to maintain a list on its website of approved exemptions to the rules on pesticide use.

* * *

The main difference between the substitute legislation, dated 10/18/2010, and the initial version on file, dated 4/27/2010, is the addition of the new Section 310, "Accountability."