

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

1 [Environment Code - Cell Phones; Retailers' Duty to Disclose Specific Absorption Rate  
2 Values]

3 Ordinance amending the San Francisco Environment Code by amending Sections 1103  
4 and 1105, to require cell phone retailers to provide customers upon request with  
5 factsheets regarding Specific Absorption Rate values for cell phones and the use of  
6 cell phones, and to delay the enforcement date for certain provisions of the Chapter 11,  
7 the "Cell Phone Right-to-Know Ordinance," and making environmental findings.  
8

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

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

14 Section 1. The San Francisco Environment Code is hereby amended by amending  
15 Sections 1103 and 1105, to read as follows:

16 **SEC. 1103. REQUIREMENTS FOR CELL PHONE RETAILERS.**

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

- 19 (1) The SAR value of that phone and the maximum allowable SAR value for cell  
20 phones set by the FCC;
- 21 (2) A statement explaining what a SAR value is; and,
- 22 (3) A statement that additional educational materials regarding SAR values and  
23 cell phone use are available from the cell phone retailer.

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

1 The SAR values and header text shall be printed in type no smaller than the size and  
2 readability equivalent of "Arial" 11 point, and the copy text shall be printed in type no smaller  
3 than the size and readability equivalent of "Arial" 8 point.

4 Formula cell phone retailers must comply with the requirements of this subsection (a)  
5 beginning ~~May~~ *February* 1, 2011. All other cell phone retailers must comply by February 1,  
6 2012.

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

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

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

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

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

19 Formula cell phone retailers must comply with the requirements of this subsection (b)  
20 beginning ~~May~~ *February* 1, 2011. All other cell phone retailers must comply by February 1,  
21 2012.

22 (c) The Director may, in his or her discretion, authorize a retailer to use alternate  
23 means to comply with the requirements of subsections (a) and (b). The Director shall  
24 authorize such alternate means through the adoption of a regulation after a noticed hearing,  
25 and no retailer may sell or lease cell phones to the public or offer to sell or lease cell phones

1 to the public using any alternate means of compliance with this Chapter unless specifically  
2 authorized to do so in advance in writing by the Director.

3 (d) Retailers shall provide any customer who requests one with a free copy of the supplemental  
4 factsheet prepared by the Department of the Environment under Section 1104(a), as referenced in  
5 subsections (a)(3) and (b)(3).

6  
7 **SEC. 1105. IMPLEMENTATION AND ENFORCEMENT.**

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

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

24 (c) The City Administrator shall issue a written warning to any person he or she  
25 determines is violating provisions of this Chapter or any regulation issued under this Chapter.

1 If 30 days after issuance of the written warning the City Administrator finds that the person  
2 receiving the warning has continued to violate the provisions of the Chapter or any regulation  
3 issued under this Chapter, the City Administrator may impose administrative fines as provided  
4 below in subsections (d), (e), and (f).

5 (d) Violation of this Chapter or any regulation issued under this Chapter shall be  
6 punishable by administrative fines in the amount of:

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

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

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

11 (e) Except as provided in subsection (d), setting forth the amount of administrative  
12 fines, Administrative Code Chapter 100, "Procedures Governing the Imposition of  
13 Administrative Fines," as may be amended from time to time, is hereby incorporated in its  
14 entirety and shall govern the imposition, enforcement, collection, and review of administrative  
15 citations issued by the City Administrator to enforce this Chapter or any regulation issued  
16 under this Chapter. Violation of this Chapter is not a misdemeanor, and the Board of  
17 Supervisors intends that the requirements of this Chapter be enforced only through  
18 administrative fines as provided in this Section.

19 (f) For purposes of this Chapter, each individual item that is sold or leased, or offered  
20 for sale or lease, contrary to the provisions of this Chapter or any regulation issued under this  
21 Chapter shall constitute a separate violation.

## 22 23 Section 2. **Additional Provisions.**

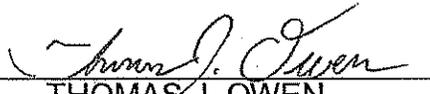
24 (a) **Severability.** If any of the provisions of this Chapter or the application thereof to  
25 any person or circumstance is held invalid, the remainder of those provisions, including the

1 application of such part or provisions to persons or circumstances other than those to which it  
2 is held invalid, shall not be affected thereby and shall continue in full force and effect. To this  
3 end, the provisions of this Chapter are severable.

4 (b) **Environmental Findings.** The Planning Department has determined that the  
5 actions contemplated in this ordinance are in compliance with the California Environmental  
6 Quality Act (Cal. Pub. Res. Code §§ 21000 et seq.). Said determination is on file with the  
7 Clerk of the Board of Supervisors in File No. 101419 and is incorporated herein by  
8 reference.

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

14  
15 By:

  
16 THOMAS J. OWEN  
17 Deputy City Attorney  
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**LEGISLATIVE DIGEST**

[Environment Code - Cell Phones; Retailers' Duty to Disclose Specific Absorption Rate Values]

**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.**

Duty to Provide Departmental Factsheet

Chapter 11 of the San Francisco Environment Code, the "Cell Phone Right-to-Know Ordinance," requires the Department of the Environment to prepare a supplemental factsheet regarding SAR values and the use of cell phones, and requires cell phone retailers to include a notice on various display materials that additional educational materials regarding SAR values and cell phone use are available from the cell phone retailer.

The proposal would make express the requirement that a cell phone retailer provide a free copy of the Department's factsheet to any customer who requests one.

Compliance Date for "Formula Cell Phone Retailers"

Chapter 11 currently provides that "formula cell phone retailers"<sup>1</sup> must comply with the disclosure requirements beginning February 1, 2010, although the City will not actually enforce the requirements against them until May 1, 2011. (All other cell phone retailers must comply with the disclosure requirements beginning February 1, 2012; the City will not actually enforce the requirements against them until August 1, 2012.)

The proposal would move the compliance date for formula cell phone retailers from February 1, 2011 to May 1, 2011.

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<sup>1</sup> Under the Chapter, a "formula cell phone retailer" is one "which sells or leases cell phones to the public . . . through a retail sales establishment located in the City which, along with eleven or more other retail sales establishments located in the United States, maintains two or more of the following features: a standardized array of merchandise; a standardized facade; a standardized decor and color scheme; a uniform apparel; standardized signage; or, a trademark or service mark."

The amendment is not intended to have any effect upon regulations previously adopted by the Department of the Environment to implement Chapter 11.