

1 [Environment Code - Repealing Yellow Pages Distribution Pilot Program]

2

3 **Ordinance amending the Environment Code by repealing Yellow Pages Distribution**
4 **Pilot Program.**

5 NOTE: Additions are *single-underline italics Times New Roman*;
6 deletions are ~~*strike-through italics Times New Roman*~~.
7 Board amendment additions are double-underlined;
8 Board amendment deletions are ~~striketthrough normal~~.

8

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

10 Section 1. The San Francisco Environment Code is hereby amended by repealing
11 Sections 2101 through 2109 in their entirety:

12 ~~**SEC. 2101. FINDINGS AND PURPOSE.**~~

13 ~~*(a) Every year, private residences and businesses in San Francisco cumulatively receive,*~~
14 ~~*unsolicited, hundreds of thousands of Commercial Phone Directories, commonly known as "the Yellow*~~
15 ~~*Pages." The best estimate of the number of unsolicited Commercial Phone Directories annually*~~
16 ~~*distributed in San Francisco is 1.6 million. These unsolicited Commercial Phone Directories*~~
17 ~~*cumulatively weigh thousands of pounds and contain millions of pages.*~~

18 ~~*(b) The failure to target deliveries of Commercial Phone Directories to private residences and*~~
19 ~~*businesses where an owner or occupant has indicated an interest in receiving one or more Commercial*~~
20 ~~*Phone Directories results in gross overproduction and significant wastage. In many cases unsolicited*~~
21 ~~*Commercial Phone Directories that have been delivered to private residences and businesses are not*~~
22 ~~*used by the recipient, and often are not picked up by the intended recipient. In other cases, they are*~~
23 ~~*only rarely used by the recipient. And, even when Commercial Phone Directories are used by the*~~
24 ~~*recipient, in many cases the same information is readily available to the recipient through electronic*~~
25 ~~*channels of communication.*~~

1 ~~(c) The wastage caused by delivery of unsolicited Commercial Phone Directories to private~~
2 ~~residences and businesses greatly exacerbates the environmental harms and economic costs inherent in~~
3 ~~the production and disposal of such directories.~~

4 ~~——— (1) The wastage causes substantial and unnecessary depletion of natural resources that~~
5 ~~go into the production of Commercial Phone Directories, including substantial consumption of energy~~
6 ~~used in the production process. Further, overproduction of Commercial Phone Directories~~
7 ~~unnecessarily pollutes the environment.~~

8 ~~——— (2) The wastage causes substantial and unnecessary environmental harms and economic~~
9 ~~costs associated with the disposal of Commercial Phone Directories, even if they are recycled, which~~
10 ~~they often are not. Further, recycling of Commercial Phone Directories poses special difficulties~~
11 ~~because of their bulk, weight, and composition. While recycling of Commercial Phone Directories is~~
12 ~~environmentally preferable to their being disposed of without recycling, the better approach from an~~
13 ~~environmental and economic standpoint is to prevent wastage in the first place, and thereby reduce the~~
14 ~~need for and costs of recycling, by devising a system tailored to match the production of Commercial~~
15 ~~Phone Directories with the demand for such directories. Not printing a Commercial Phone Directory~~
16 ~~reduces greenhouse gases to a far greater extent than printing the directory and eventually recycling it.~~

17 ~~(d) Delivery of unsolicited Commercial Phone Directories to private residences and businesses~~
18 ~~also creates neighborhood blight. Unsolicited deliveries often sit on the porch, the steps, in front of the~~
19 ~~door to a home, or on the sidewalk, for days or even weeks. Piles of Commercial Phone Directories are~~
20 ~~often left in front of multi-unit residential buildings, to be battered and degraded by the elements rather~~
21 ~~than picked up by the intended recipients. The size, weight, and bulk of the product operates as a~~
22 ~~particular disincentive for people to pick it up. And the size and bulk of the product creates a~~
23 ~~particularly unsightly blight on City streets, especially in more densely populated areas, impeding the~~
24 ~~aesthetic enjoyment of the neighborhood.~~

1 ~~(e) The nature and magnitude of the environmental and related harms caused by delivery of~~
2 ~~unsolicited Phone Directories is unique to Phone Directories. In the experience of San Francisco and~~
3 ~~other cities, no product or object of similar size, weight, and bulk, whether made of paper or otherwise,~~
4 ~~and whether containing print or otherwise, is regularly left, unsolicited, at private residences and~~
5 ~~businesses throughout San Francisco. Commercial Phone Directories comprise a large subset—almost~~
6 ~~certainly a majority—of the Phone Directories delivered unsolicited to private residences and~~
7 ~~businesses in San Francisco.~~

8 ~~(f) The information contained in Commercial Phone Directories is readily available on the~~
9 ~~Internet or may easily be made available on the Internet. The large majority of private residences and~~
10 ~~businesses in San Francisco have access to the Internet, and the numbers of private residences and~~
11 ~~businesses with access to the Internet is expected to become even greater in the future. Access to the~~
12 ~~Internet has become increasingly common and convenient for residents and businesses in San~~
13 ~~Francisco with the advent of personal computers, including hand-held devices, and smart phones.~~

14 ~~(g) The purpose of this Chapter is to significantly reduce the environmental and other harms~~
15 ~~and related costs caused by delivery of unsolicited Commercial Phone Directories to private residences~~
16 ~~and businesses in San Francisco. There is a compelling public interest in achieving this objective.~~

17 ~~(h) The Pilot Program established by this Chapter directly advances the City's interest in~~
18 ~~significantly reducing the environmental and other harms and related costs caused by delivery of~~
19 ~~unsolicited Commercial Phone Directories to private residences and businesses in San Francisco. The~~
20 ~~Pilot Program is narrowly tailored to meet this objective. It does not prohibit the publication or~~
21 ~~distribution of Commercial Phone Directories but rather focuses on channeling their distribution to~~
22 ~~Persons and others who find a need to use such directories. And a central feature of the program is its~~
23 ~~public outreach component, which is designed in part to ensure that Persons and others who seek to~~
24 ~~obtain a Commercial Phone Directory are able easily to do so. Further, the Pilot Program will be far~~
25 ~~more effective in meeting the goals of this Chapter than any "opt-out" program permitting unsolicited~~

1 *distribution of Commercial Phone Directories to private residences and businesses unless the resident*
2 *or business expresses a preference not to receive the directory.*

3
4 ***SEC. 2102. DEFINITIONS.***

5 *For purposes of this Chapter, the following definitions apply:*

6 *(a) "City" means the City and County of San Francisco.*

7 *(b) "Commercial Phone Directory" means a printed publication (a hard copy) of at least 100*
8 *pages (counting the front and back of a page as two pages), consisting of nonresidential phone number*
9 *listings and advertisements for those listed in the publication, with the listings segregated under*
10 *headings for similar types of businesses. A "Commercial Phone Directory" is commonly, but not*
11 *necessarily, printed on yellow paper.*

12 *(c) "Commission" means the Commission on the Environment.*

13 *(d) "Department" means the Department of the Environment.*

14 *(e) "Director" means the Director of the Department of the Environment.*

15 *(f) "Distribute" means to physically deliver Commercial Phone Directories to private residences*
16 *and/or businesses in San Francisco. "Distribute" does not include storage of Commercial Phone*
17 *Directories by a Distributor or Phone Company at a site under the control of the Distributor or Phone*
18 *Company, at which site Persons and others may come to receive Commercial Phone Directories. The*
19 *act of distribution of a Commercial Phone Directory shall be imputed to all Distributors, as defined in*
20 *subsection (g), of that directory.*

21 *(g) "Distributor" means*

22 *—— (1) a company, entity, business, or Person contractually obligated to distribute or cause*
23 *the distribution of Commercial Phone Directories to private residences and/or businesses in San*
24 *Francisco;*

1 ~~—— (2) a company, entity, business, or Person that enters into a contract with a Distributor~~
2 ~~as defined in subdivision (g)(1) for the purpose of that Distributor's distributing or causing the~~
3 ~~distribution of Commercial Phone Directories to private residences and/or businesses in San~~
4 ~~Francisco;~~

5 ~~—— (3) a company, entity, business, or Person that does not contract for the distribution of~~
6 ~~Commercial Phone Directories to private residences and/or businesses in San Francisco but instead~~
7 ~~itself distributes the Commercial Phone Directories.~~

8 ~~Notwithstanding the above definition, "Distributor" does not include a Person or Persons~~
9 ~~whose sole role in the distribution of Commercial Phone Directories is limited to driving the streets~~
10 ~~and physically delivering Commercial Phone Directories. In addition, "Distributor" does not include~~
11 ~~the United States Postal Service, a commercial courier, or a commercial package delivery service that~~
12 ~~allows a customer to track the status of a shipment by destination, date, and time of delivery.~~

13 ~~(h) "Person" means a human being.~~

14 ~~(i) "Phone Company" means a company or other entity that provides telephone service to~~
15 ~~private residences and/or businesses in San Francisco. "Phone Company" includes a wholly owned~~
16 ~~subsidiary of a Phone Company, or any other company or entity the ownership or management of~~
17 ~~which is controlled by a Phone Company.~~

18 ~~(j) "Phone Directory" includes Commercial Phone Directories but also includes an alphabetical~~
19 ~~compilation of phone listings for residences, businesses, and government offices, commonly known as~~
20 ~~"the White Pages." A "Phone Directory" is a printed publication (a hard copy).~~

21 ~~(k) "Pilot Program" means the Yellow Pages Distribution Pilot Program established by this~~
22 ~~Chapter.~~

23 ~~(l) "State law" means the entire corpus of State law, including decisions and regulations of the~~
24 ~~California Public Utilities Commission.~~

1 **~~SEC. 2103. DISTRIBUTION OF COMMERCIAL PHONE DIRECTORIES.~~**

2 ~~(a) A Distributor may not distribute or cause to be distributed a Commercial Phone Directory~~
3 ~~to a private residence or business in San Francisco unless:~~

4 ~~—— (1) The Distributor delivers the Commercial Phone Directory to a Person at the private~~
5 ~~residence or business who is an occupant or authorized representative of the private residence or~~
6 ~~business and who personally accepts the Commercial Phone Directory; or~~

7 ~~—— (2) The Distributor delivers the Commercial Phone Directory to a private residence or~~
8 ~~business after having received a request from an occupant or authorized representative of the private~~
9 ~~residence or business for the Commercial Phone Directory to be delivered there.~~

10 ~~(b) Subsection (a) shall not be construed to prevent the placement of Commercial Phone~~
11 ~~Directories in a business open to the public, with the consent of the occupant or authorized~~
12 ~~representative of the business, to be available for pick-up by patrons or other members of the public.~~

13 ~~(c) For purposes of the exception in subdivision (a)(2), there is no restriction on the manner of~~
14 ~~making a request for delivery of a Commercial Phone Directory to a private residence or business. But~~
15 ~~the Distributor has a duty to maintain documentation of requests for a Commercial Phone Directory to~~
16 ~~be delivered to a private residence or business. The Distributor is permitted but not required to~~
17 ~~maintain a registry of such requests. In any proceeding to determine whether a Distributor has violated~~
18 ~~subsection (a) because of not qualifying for the exception in subdivision (a)(2), the absence of~~
19 ~~documentation of a request shall raise an inference that the request was not made.~~

20 ~~(d) For purposes of the exception in subdivision (a)(2), a request for delivery of a Commercial~~
21 ~~Phone Directory shall be construed to continue in effect for the duration of the Pilot Program.~~

22 ~~(e) A Distributor may not evade the prohibition contained in subsection (a) by:~~

23 ~~—— (1) Dividing a Commercial Phone Directory into two or more volumes, when at least~~
24 ~~one of the volumes does not meet the pages requirement in the definition of Commercial Phone~~
25 ~~Directory but the volumes combined would meet the pages requirement; or~~

1 ~~—— (2) Including in a Commercial Phone Directory listings the distribution of which are~~
2 ~~required by State law, or other information the distribution of which is required by State law.~~

3 ~~(f) A Distributor who violates subsection (a) may be subject to administrative penalties, as~~
4 ~~follows.~~

5 ~~—— (1) The Director, a designee of the Director, the Director of Public Works, or a designee~~
6 ~~of the Director of Public Works, may issue administrative citations for violations of subsection (a). San~~
7 ~~Francisco Administrative Code Chapter 100, "Procedures Governing the Imposition of Administrative~~
8 ~~Fines," is hereby incorporated in its entirety and shall govern the amount of fees and the procedure for~~
9 ~~imposition, enforcement, collection, and administrative review of administrative citations issued under~~
10 ~~this subsection (f). The Director, a designee of the Director, the Director of Public Works, or a~~
11 ~~designee of the Director of Public Works, shall impose fines as set forth in Section 100.5(a) of the San~~
12 ~~Francisco Administrative Code.~~

13 ~~(2) For the purpose of determining administrative penalties, violations of subsection (a) shall be~~
14 ~~computed over any period of time not to exceed 12 months and shall be consolidated in increments of~~
15 ~~fifty Commercial Phone Directories unlawfully distributed. For example, a Distributor's unlawful~~
16 ~~distribution of 1-50 Commercial Phone Directories shall count as one violation for the purpose of~~
17 ~~determining an administrative penalty; a Distributor's unlawful distribution of 51-100 Commercial~~
18 ~~Phone Directories shall count as two violations for the purpose of determining an administrative~~
19 ~~penalty; and so on. More than one Distributor may be assessed an administrative penalty for the same~~
20 ~~violation. No Distributor may be assessed twice for the same violation.~~

21 ~~(g) Distributors have a duty to provide reasonable access to relevant information sought by the~~
22 ~~Director, a designee of the Director, the Director of Public Works, or a designee of the Director of~~
23 ~~Public Works, for purposes of enforcing the provisions of this Chapter. A Distributor who violates this~~
24 ~~subsection (g) may be subject to administrative penalties through the process described in subdivision~~
25 ~~(f)(1). For purposes of this subsection (g), violations shall be computed on a daily basis. For example,~~

1 ~~the first day a Distributor fails to provide reasonable access to relevant information sought shall count~~
2 ~~as one violation for the purpose of determining an administrative penalty; the second day a Distributor~~
3 ~~fails to provide reasonable access to relevant information sought shall count as a second violation for~~
4 ~~the purpose of determining an administrative penalty; and so on.~~

5 ~~(h) The Director is authorized to adopt regulations to implement this Section and other~~
6 ~~provisions of this Chapter following a public hearing. At the Director's discretion, the Director may~~
7 ~~delegate this hearing function, but not the authority to adopt regulations, to a designee.~~

8
9 ~~(i) This Section shall not preclude a Distributor, Phone Company, or anyone else from using~~
10 ~~any lawful means to inform Persons or others that they may request delivery of a Commercial Phone~~
11 ~~Directory to a private residence or business, to publicize the process for making such a request, or to~~
12 ~~inform Persons or others of the availability of Commercial Phone Directories at a distribution center~~
13 ~~or business where Commercial Phone Directories are available to members of the public. To the extent~~
14 ~~permitted by State law, these means of providing information may include but are not limited to:~~
15 ~~Notices inserted in phone bills sent to phone customers; notices in other communications from Phone~~
16 ~~Companies to their customers; notices in Phone Directories that are not Commercial Phone~~
17 ~~Directories and that are distributed to residences and businesses; notices on handbills distributed to~~
18 ~~residences and businesses in conformity with provisions of local law regarding distribution of~~
19 ~~handbills; notices posted on doors, similar to notices posted by commercial mail services when no one~~
20 ~~answers the door; notices sent by U.S. mail or email; phone calls; advertisements on television, radio,~~
21 ~~or the Internet; and press releases.~~

22
23 **~~SEC. 2104. PUBLIC OUTREACH PROGRAM.~~**

24 ~~(a) The City shall develop and implement a public outreach program to educate San Francisco~~
25 ~~residents and businesses about the environmental harms associated with excessive distribution of~~

1 ~~Commercial Phone Directories; develop alternatives to private possession of Commercial Phone~~
2 ~~Directories to obtain the information contained in those directories, and inform the public of those and~~
3 ~~other alternatives; and inform the public about the option and means of obtaining a Commercial Phone~~
4 ~~Directory from a Distributor or other source. The public outreach program shall include a special~~
5 ~~emphasis on outreach to seniors, the disabled, low-income persons, and persons whose primary~~
6 ~~language is not English.~~

7 ~~(b) The Department shall coordinate with other City offices, departments, boards, and~~
8 ~~commissions the development and implementation of the public outreach program mandated by~~
9 ~~subsection (a). These other City entities may include but are not limited to the Office of the Mayor,~~
10 ~~including the Mayor's Office on Immigrant and Civic Engagement, the Office of the City Administrator,~~
11 ~~the Department of Public Works, and the Department of Technology. All City offices, departments,~~
12 ~~boards, and commissions shall cooperate with and reasonably assist the Department in its efforts to~~
13 ~~coordinate the development and implementation of the program.~~

14 ~~(c) In developing and implementing the public outreach program mandated by subsection (a),~~
15 ~~the City shall consider the following methods of providing information to the public: Phone calls from~~
16 ~~the City to private residences and businesses; a notice on the City's website and the Department's~~
17 ~~website; notices on regular meeting agendas of the Commission and possibly of other City boards and~~
18 ~~commissions; public service announcements on local television stations including foreign language~~
19 ~~stations and the City's television station; press releases; and mailings or other communications to~~
20 ~~private residences and businesses and to centers in the City that house senior citizens or disabled~~
21 ~~persons, as well as to centers in the City that serve Persons whose primary language is not English. In~~
22 ~~addition, the City may consider any other methods it concludes may be useful in providing information~~
23 ~~to the public that will further the goals of the public outreach program as stated in subsection (a).~~

24 ~~(d) In developing and implementing the public outreach program mandated by subsection (a),~~
25 ~~the City shall consider the feasibility of making Commercial Phone Directories available for~~

1 *distribution to the public in City buildings such as branches of the San Francisco Public Library,*
2 *Recreation Centers, and City Hall; the feasibility of making electronic copies of Commercial Phone*
3 *Directories more accessible to members of the public; and the feasibility of providing a service by*
4 *which members of the public can call a City phone number and request information in a Commercial*
5 *Phone Directory.*

6 *(e) While subsections (c) and (d) require the City to consider various matters in developing and*
7 *implementing the public outreach program mandated by subsection (a), they do not require that the*
8 *public outreach program include any particular component.*

9 *(f) The content of the public outreach program is within the City's discretion and any alleged*
10 *insufficiency of the program in meeting its objectives shall not invalidate this Chapter. The content of*
11 *the public outreach program may evolve during the three-year duration of the Pilot Program.*

12
13 ***SEC. 2105. PROMOTION OF GENERAL WELFARE.***

14 *In adopting and implementing this Chapter, the City is assuming an undertaking only to*
15 *promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an*
16 *obligation for breach of which it is liable in money damages to any person who claims that such breach*
17 *proximately caused injury.*

18
19 ***SEC. 2106. CONFLICT WITH STATE OR FEDERAL LAW.***

20 *Nothing in this Chapter shall authorize the City to impose any duties or obligations in conflict*
21 *with limitations on municipal authority imposed by federal or State law. This Chapter shall be*
22 *construed so as not to conflict with applicable federal or State law. In adopting regulations pursuant to*
23 *Section 2103(h) or engaging in enforcement actions pursuant to Sections 2103(f), 2103(g), and*
24 *2108(e), the City is authorized to implement this Chapter so as to avoid a conflict, if any, with*
25 *applicable federal or State law.*

1
2 **~~SEC. 2107. SEVERABILITY.~~**

3 ~~If any of the provisions of this Chapter or the application thereof to any person or circumstance~~
4 ~~is held invalid, the remainder of those provisions, including the application of such part or provisions~~
5 ~~to persons or circumstances other than those to which it is held invalid, shall not be affected thereby~~
6 ~~and shall continue in full force and effect. To this end, the provisions of this Chapter are severable.~~

7
8 **~~SEC. 2108. OPERATIVE DATE; SUNSET PROVISION; REPORTS.~~**

9 ~~(a) This Chapter shall become operative on May 1, 2012.~~

10 ~~(b) This Chapter shall remain operative through April 30, 2015. This Chapter shall "sunset" on~~
11 ~~May 1, 2015 and no longer have the force of law as of that date.*~~

12 ~~(c) Distributors shall submit a written report to the Director or the Director's designee one year~~
13 ~~after the operative date of this Chapter, two years after the operative date, and six months prior to the~~
14 ~~sunset date. These reports shall contain information on the total number of Commercial Phone~~
15 ~~Directories distributed, and the number of them distributed according to different means of~~
16 ~~distribution. The Director may require Distributors to submit other information pertaining to~~
17 ~~distribution of Commercial Phone Directories.~~

18 ~~Failure of a Distributor to comply with the reporting requirement mandated by this subsection~~
19 ~~(c) may subject the Distributor to administrative penalties through the process described in Section~~
20 ~~2103(f)(1). For purposes of this subsection (c), violations shall be computed on a daily basis, in the~~
21 ~~manner described in Section 2103(g).~~

22 ~~To the extent submission of information from one Distributor would be duplicative of~~
23 ~~information submitted or to be submitted by another Distributor, the Director may, upon request of a~~
24 ~~Distributor, waive the reporting requirement mandated by this subsection (c) for that Distributor.~~

1 *(d) The Department shall report to the Board of Supervisors, no later than three months prior to*
2 *the sunset date of this Chapter, on the efficacy of this Chapter as a means of reducing wastage in the*
3 *distribution of Commercial Phone Directories in San Francisco, the scope and effectiveness of the*
4 *public outreach program mandated by Section 2104(a), and any other matters pertaining to this*
5 *Chapter. All City offices, departments, boards, and commissions shall cooperate with and reasonably*
6 *assist the Department in its efforts to prepare the report. This subsection (d) shall not preclude the*
7 *Board of Supervisors or a committee thereof, or the Commission, or any other City entity or official,*
8 *from holding hearings at any time on the same subject.*

9
10 **~~SEC. 2109. SUSPENSION OF YELLOW PAGES DISTRIBUTION PILOT PROGRAM.~~**

11 *(a) Chapter 21 of the San Francisco Environment Code, Sections 2101 through 2108, is*
12 *suspended. During the period of suspension, Chapter 21 shall have no force or effect and shall not be*
13 *enforced.*

14 *(b) In the event that, upon further proceedings in Dex Media West, Inc. v. City of Seattle, the*
15 *United States Court of Appeals for the Ninth Circuit or the Supreme Court of the United States finally*
16 *holds that the City of Seattle's restrictions on the distribution of Commercial Phone Directories are*
17 *consistent with the First Amendment to the United States Constitution, then the suspension of Chapter*
18 *21 shall be lifted one year from the date the mandate issues in that case.*

19 *(c) In the event that the suspension of Chapter 21 is lifted as described in the foregoing*
20 *subsection (b), then Chapter 21 shall be in force and effect for three years following the date the*
21 *suspension is lifted, notwithstanding any conflicting sunset date set forth in Section 2108.*

22
23 Section 2. Effective Date. This ordinance shall become effective 30 days from the
24 date of passage.

1 Section 3. This section is uncodified. In enacting this Ordinance, the Board intends to
2 amend only those words, phrases, paragraphs, subsections, sections, articles, numbers,
3 punctuation, charts, diagrams, or any other constituent part of the Environment Code that are
4 explicitly shown in this legislation as additions, deletions, Board amendment additions, and
5 Board amendment deletions in accordance with the "Note" that appears under the official title
6 of the legislation.

7
8 APPROVED AS TO FORM:
9 DENNIS J. HERRERA, City Attorney

10 By: _____
11 CHRISTINE VAN AKEN
12 Deputy City Attorney

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