

File No. 130315

Committee Item No. 8

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Rules

Date 4/18/13

Board of Supervisors Meeting

Date _____

Cmte Board

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| <input type="checkbox"/> | <input type="checkbox"/> | Motion |
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| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Ordinance |
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OTHER

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| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Stipulation regarding Entry of Final Judgement</u> |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Exhibits A-E</u> |
| <input type="checkbox"/> | <input type="checkbox"/> | _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | _____ |

Completed by: Linda Wong

Date 4/15/13

Completed by: _____

Date _____

An asterisked item represents the cover sheet to a document that exceeds 25 pages. The complete document is in the file.

[Settlement of Lawsuit - CTIA - The Wireless Association]

Ordinance authorizing settlement of a lawsuit filed by CTIA against the City and County of San Francisco; the lawsuit was filed on July 23, 2010, in United States District Court, Northern District of California, Case No. 3:10-cv-03224 (WHA); entitled CTIA - The Wireless Association v. City and County of San Francisco; the material terms of said settlement are that: CTIA and the City will enter into a stipulated Final Judgment for the CTIA, including declaratory relief and a permanent injunction against enforcement of the Cell Phone Right-to-Know Law; the City will cease all litigation over the Cell Phone Right-to-Know Law; and, CTIA will waive its claims for attorney's fees.

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

Section 1. The City Attorney is hereby authorized to settle the action entitled "CTIA - The Wireless Association v. City and County of San Francisco," United States District Court, Northern District of California, Case No. 3:10-cv-03224 (WHA), on substantially the same terms as set forth in the Settlement Agreement on file with the Clerk of the Board of Supervisors in File No. 130315, which is incorporated by reference and declared to be a part of this ordinance as if set forth fully herein. The Settlement Agreement provides that: CTIA and the City will enter into a stipulated Final Judgment for the CTIA, including declaratory relief and a permanent injunction against enforcement of the Cell Phone Right-to-Know Law (Environment Code Chapter 11, adopted by Ordinance No. 155-10 and as amended by Ordinance No. 165-11) and implementing regulations; the City will cease litigation over the Cell Phone Right-to-Know Law; and, CTIA will waive its entitlement to any attorney's fees and costs it could seek in any court as a result of being a prevailing party in the litigation. A copy of the stipulated Final Judgment is on file with the Clerk of the Board of Supervisors in File

Supervisors in File No. 130315, which is incorporated by reference and declared to be a part of this ordinance as if set forth fully herein.

Section 2. The above-named action was filed in United States District Court, Northern District of California, on July 23, 2010 and the following parties were named in the lawsuit: CTIA - The Wireless Association, plaintiff; the City and County of San Francisco, defendant.

APPROVED AS TO FORM AND
RECOMMENDED:

DENNIS J. HERRERA
City Attorney



VINCE CHHABRIA
Deputy City Attorney

RECOMMENDED:

DEPARTMENT OF THE ENVIRONMENT



MELANIE NUTTER
Director

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Settlement Agreement

This Settlement Agreement (this "Agreement") is made by and between CTIA-The Wireless Association ("CTIA"), on the one hand, and the City and County of San Francisco (the "City"), on the other hand. Signatories to this Agreement are individually referred to as a "Party" and jointly as the "Parties."

RECITALS

WHEREAS, in 2010, CTIA filed a lawsuit against the City and County of San Francisco ("City") seeking to invalidate the City's Cell Phone Right-to-Know law, Ordinance No. 155-10 *CTIA v. City and County of San Francisco*, No. 10-3224 (N.D. Cal) (the "Litigation"), which was subsequently amended by Ordinance No. 165-11 (attached as Exhibits A and B) ("Ordinance"), and which was implemented by Regulations and Materials adopted by the Department of Environment, including those scheduled to become effective on September 30, 2011 (attached as Exhibit C);

WHEREAS, CTIA secured on October 27, 2011 a partial preliminary injunction from the United States District Court for the Northern District of California, and, following cross-appeals, secured a favorable Ninth Circuit decision, holding that the Ordinance, Regulations and Materials, including a "factsheet" revised at the District Court's direction (attached as Exhibit D) (all materials collectively referred to as "Display Materials"), should be preliminarily enjoined in their entirety under the First Amendment, *CTIA v. City and County of San Francisco*, 2012 WL 3900689 (Nos. 11-17707, 11-17773) (Sept. 20, 2012);

WHEREAS, the City filed a Petition for Rehearing En Banc which was denied on February 27, 2013, and the Ninth Circuit's mandate issued on March 11, 2013 with an award of costs to CTIA;

WHEREAS, CTIA is entitled to seek attorneys' fees from the United States Court of Appeals for the Ninth Circuit and the United States District Court for the Northern District of California, as a prevailing party on its First Amendment claim within the meaning of 42 U.S.C. 1988 and filed a petition for fees on March 13, 2013 in the United States Court of Appeals for the Ninth Circuit to comply with filing deadlines and preserve its right to seek fees in the event a settlement was not reached and ratified by the City Board of Supervisors;

WHEREAS, the parties have reached a settlement, subject to approval by the San Francisco Board of Supervisors, to terminate, compromise, and resolve expeditiously all aspects of the Litigation;

TERMS OF SETTLEMENT

1. **Recitals.** The foregoing recitals are incorporated into and made a part of this Agreement.

2. **Board of Supervisors Approval.** This Agreement is contingent upon approval by the San Francisco Board of Supervisors, and shall only be effective on the date an ordinance

approving the Agreement becomes effective, either as a result of signature by the Mayor or a veto override by the Board. The City agrees to make its best efforts to obtain final Board and Mayoral action on an ordinance approving this agreement by June 1, 2013.

3. **Agreements by CTIA and the City.**

(a) CTIA agrees it will waive its entitlement to any attorney's fees and costs it could seek in any court as a result of being a prevailing party in the Litigation. This includes withdrawing the March 13, 2013 fee petition pending before the United States Court of Appeals for the Ninth Circuit after the entry of final judgment as described herein.

(b) The City agrees that it will cease and refrain from further litigation over the Ordinance, Regulations, or Display Materials, including any attempt to seek further review of the Ninth Circuit ruling by the Supreme Court of the United States.

(c) The City represents that it is not presently considering legislation or regulatory action that would impose any requirement on any private person or entity to disclose or display any information regarding radiofrequency energy from cell phones.

(d) The City will consent to the entry of final judgment for CTIA, including declaratory relief and a permanent injunction against all aspects of the Ordinance, Regulations and Display Materials by the District Court in the form attached as Exhibit E, and that it will join CTIA in filing such stipulation and proposed order and any motion or other papers necessary to effectuate such stipulation within three (3) business days after the ordinance approving this Agreement becomes effective.

(e) The parties expressly agree that if the Board of Supervisors does not adopt an ordinance approving the Agreement, or if that Ordinance does not become effective, either as a result of signature by the Mayor or a veto override by the Board, within 90 days of its execution, CTIA may, at its option, terminate this Settlement Agreement, and CTIA may seek its attorneys' fees.

4. **Execution.** This Agreement may be executed in multiple counterpart originals, each of which shall constitute one and the same document and shall be deemed an original. Each of the signatories of this Agreement represents and warrants that he or she is authorized to execute this Agreement and to bind his or her respective Party.

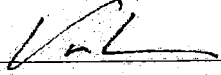
5. **Entire Agreement.** This Agreement represents the entire agreement between the Parties relating to the subject matter described herein and supersedes any other prior or contemporaneous negotiations, representations, agreements and understandings, oral or written, relating to the Litigation.

6. **No Inference From Drafting.** This Agreement was negotiated between the Parties at arms' length. Each Party had the opportunity to consult with counsel. None of the Parties will be entitled to have any language herein construed against the other because of the identity of the drafter.

7. **Laws of the State of California.** This Agreement, and any dispute related to or arising under this Agreement, shall be governed by and construed under California law.

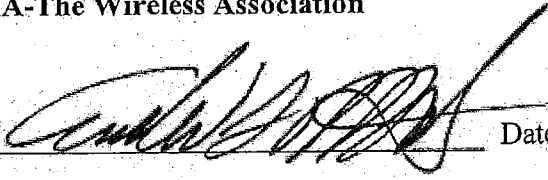
IN WITNESS WHEREOF,

The City and County of San Francisco

By:  Date: 3/21/13

Vince Chhabria, Counsel to the City

CTIA-The Wireless Association

By:  Date: 3/21/13

Andrew G. McBride, Counsel to CTIA.

EXHIBIT A

FILE NO. 100104

ORDINANCE NO. 155-10

[Cell Phones; Retailers' Duty to Disclose Specific Absorption Rate Values.]

Ordinance amending the San Francisco Environment Code by adding Chapter 11, Sections 1100 through ~~1106~~ 4405, to require retailers to disclose Specific Absorption Rate values for cell phones, and making environmental findings.

Note: Additions are single-underline italics Times New Roman,
deletions are ~~strike through Italics Times New Roman~~,
Board amendment additions are double underlined,
Board amendment deletions are ~~strike through normal~~.

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

Section 1. Findings.

(a) Government agencies and scientific bodies in the European Union (EU) and Israel have recognized the potential harm of long-term exposure to radiation emitted from cell phones and, as a result, have issued warnings about their use, especially their use by children.

(b) The United States Federal Communications Commission ("the FCC") has established a maximum allowable Specific Absorption Rate ("SAR") rating that manufacturers must disclose to the government when offering a portable wireless device (cell phone) for sale. The SAR is a value that corresponds to the relative amount of radiofrequency energy absorbed in the head or body of a user of a wireless handset. At the time of adoption of this ordinance, the FCC limit for public exposure from cellular telephones is an SAR level of 1.6 watts per kilogram (1.6 W/kg) for spatial peak (local) SAR, such as SAR in the user's head, as averaged over any 1 gram of tissue.

(c) The SAR values for different makes and models of cell phones differ widely, but consumers are not able to make informed purchasing decisions because there is no

(d) Cell phones are an important communication tool, especially during emergencies, and radiation exposure from cell phones can be reduced by using a speakerphone or a headset, or by sending text messages.

CHAPTER 11: CELL PHONE DISCLOSURE REQUIREMENTS

This Chapter may be known as the "Cell Phone Right-to-Know Ordinance."

For the purposes of this Chapter, the following terms shall have the following meanings, unless the context requires otherwise:

(b) "Cell phone retailer" means any person or entity within the City which sells or leases cell phones to the public or which offers cell phones for sale or lease. "Cell phone retailer" shall include a "formula cell phone retailer." "Cell phone retailer" shall not include anyone selling or leasing cell phones over the phone, by mail, or over the Internet. "Cell phone retailer" shall also not include

(g) "SAR value" means the maximum whole-body and spatial peak Specific Absorption Rate for a particular make and model of cell phone as registered with the Federal Communications Commission. (See, generally, Section 2.1093 of Title 47 of the Code of Federal Regulations.)

~~Reference - Huddle - Huddle - Humphreys 1987-06-03-03-03~~

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1 SEC. 1104. DEPARTMENTAL FACTSHEETS: ASSISTANCE WITH COMPLIANCE.

2 (a) Following a public hearing, the Department of the Environment, in consultation with the
3 Department of Public Health, shall develop a supplemental factsheet regarding SAR values and the use
4 of cell phones, as well as templates for display materials and store posters required by this Chapter.
5 The Department of the Environment shall hold the initial public hearing by September 1, 2010, and
6 complete the supplemental factsheet by November 1, 2010. The supplemental factsheet shall be no
7 larger than 8.5 inches by 11 inches.

8 (b) By November 1, 2010, the Department of the Environment shall issue regulations specifying
9 the contents and format for the elements required by Section 1103, subsections (a) and (b), for display
10 materials and store posters, respectively. By that date, the Department of the Environment shall also
11 adopt templates for display materials and store posters.

12 (c) The Department shall develop content for all of these materials that is based on and
13 consistent with the relevant information provided by the FCC or other federal agencies having
14 jurisdiction over cell phones, explaining the significance of the SAR value and potential effects of
15 exposure to cell phone radiation. The materials shall also inform customers of actions that can be
16 taken by cell phone users to minimize exposure to radiation, such as turning off cell phones when not in
17 use, using a headset and speaker phone, or texting.

18
19 SEC. 1105. IMPLEMENTATION AND ENFORCEMENT.

20 (a) Notwithstanding those provisions of Section 1103(a) and (b) applicable to formula cell
21 phone retailers, requiring them to make certain disclosures and statements in connection with cell
22 phone sales and leases, the City shall not enforce those provisions until May 1, 2011. During the
23 period between the operative date for those requirements, February 1, 2011, and May 1, 2011, the
24 Department of the Environment shall conduct an education and assistance program for formula cell
25

1 phone retailers, and shall visit the retailers and assist them with meeting the requirements of the
2 subsections.

3 (b) Notwithstanding those provisions of Section 1103(a) and (b) applicable to all cell phone
4 retailers other than formula cell phone retailers, requiring them to make certain disclosures and
5 statements in connection with cell phone sales and leases, the City shall not enforce those provisions
6 until August 1, 2012. During the period between the operative date for those requirements,
7 February 1, 2012, and August 1, 2012, the Department of the Environment shall conduct an education
8 and assistance program for those cell phone retailers, and shall visit the retailers and assist them with
9 meeting the requirements of the subsections.

10 (c) The City Administrator shall issue a written warning to any person he or she determines is
11 violating provisions of this Chapter or any regulation issued under this Chapter. If 30 days after
12 issuance of the written warning the City Administrator finds that the person receiving the warning has
13 continued to violate the provisions of the Chapter or any regulation issued under this Chapter, the City
14 Administrator may impose administrative fines as provided below in subsections (d), (e), and (f).

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

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

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

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

20 (e) Except as provided in subsection (d), setting forth the amount of administrative fines,
21 Administrative Code Chapter 100, "Procedures Governing the Imposition of Administrative Fines," as
22 may be amended from time to time, is hereby incorporated in its entirety and shall govern the
23 imposition, enforcement, collection, and review of administrative citations issued by the City
24 Administrator to enforce this Chapter or any regulation issued under this Chapter. Violation of this
25

1 Chapter is not a misdemeanor, and the Board of Supervisors intends that the requirements of
2 this Chapter be enforced only through administrative fines as provided in this Section.

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

6
7 **SEC. 1106. DISCLAIMER:**

8 In adopting and implementing this Chapter, the City and County of San Francisco is
9 assuming an undertaking only to promote the general welfare. It is not assuming, nor is it
10 imposing on its officers and employees, an obligation for breach of which it is liable in money
11 damages to any person who claims that such breach proximately caused injury.

12
13 **Section 3. Additional Provisions.**

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

18 (a) (b) Conflict with State or Federal Law. This Chapter shall be construed so as not
19 to conflict with applicable federal or State laws, rules or regulations. Nothing in this Chapter
20 shall authorize any City agency or department to impose any duties or obligations in conflict
21 with limitations on municipal authority established by State or federal law at the time such
22 agency or department action is taken.

23 (b) (c) Severability. If any of the provisions of this Chapter or the application thereof
24 to any person or circumstance is held invalid, the remainder of those provisions, including the
25 application of such part or provisions to persons or circumstances other than those to which it

(c) (d) **Environmental Findings.** The Planning Department has determined that the actions contemplated in this ordinance are in compliance with the California Environmental Quality Act (Cal. Pub. Res. Code §§ 21000 et seq.). Said determination is on file with the Clerk of the Board of Supervisors in File No. 100104 and is incorporated herein by reference.

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

See File for Signature
By: THOMAS J. OWEN
Deputy City Attorney



City and County of San Francisco

**Tails
Ordinance**

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

File Number: 100104

Date Passed: June 22, 2010

Ordinance amending the San Francisco Environment Code by adding Chapter 11, Sections 1100 through 1108, to require retailers to disclose specific absorption rate values for cell phones, and making environmental findings.

June 08, 2010 Board of Supervisors - CONTINUED ON FIRST READING

Ayes: 9 - Alloto-Pier, Campos, Chiu, Chu, Daly, Elsbernd, Mar, Maxwell and Mirkarimi
Noes: 2 - Avalos and Duffy

June 16, 2010 Board of Supervisors - AMENDED, AN AMENDMENT OF THE WHOLE BEARING NEW TITLE

Ayes: 11 - Alloto-Pier, Avalos, Campos, Chiu, Chu, Daly, Duffy, Elsbernd, Mar, Maxwell and Mirkarimi

June 16, 2010 Board of Supervisors - PASSED ON FIRST READING AS AMENDED

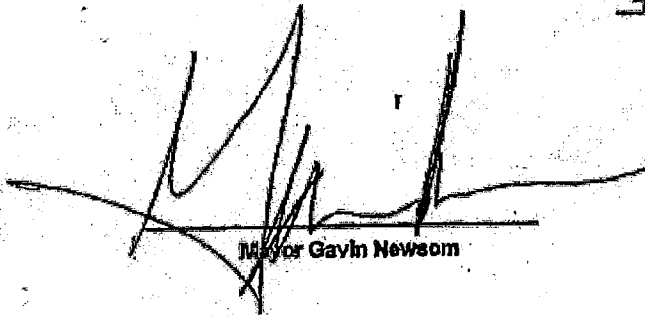
Ayes: 10 - Alloto-Pier, Avalos, Campos, Chiu, Chu, Daly, Duffy, Mar, Maxwell and Mirkarimi
Noes: 1 - Elsbernd

June 22, 2010 Board of Supervisors - FINALLY PASSED


Ayes: 9 - Avalos, Campos, Chiu, Chu, Daly, Duffy, Mar, Maxwell and Mirkarimi
Noes: 1 - Elsbernd
Excused: 1 - Alloto-Pier

File No. 100104

I hereby certify that the foregoing
Ordinance was **FINALLY PASSED** on
6/22/2010 by the Board of Supervisors of the
City and County of San Francisco.



Mayor Gavin Newsom



Angela Calvillo
Clerk of the Board

July 1, 2010
Date Approved

EXHIBIT B

FILE NO. 110656

Amendment of the Whole - 7/11/11

ORDINANCE NO.

165-11

[Environment Code—Cell Phone Disclosure Requirements]

Ordinance amending the San Francisco Environment Code Sections 1101 through 1105 to require cell phone retailers to provide their customers with information regarding how to limit exposure to the radiofrequency energy emitted by cell phones in place of the mandatory disclosure of Specific Absorption Rate values for cell phone models.

NOTE: Additions are single-underline italics Times New Roman,
deletions are ~~strike-through italics Times New Roman~~.
Board amendment additions are double-underlined;
Board amendment deletions are ~~strikethrough normal~~.

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

Section 1. Findings.

1. It is the policy of the City and County of San Francisco to adhere to the Precautionary Principle, which provides that the government should not wait for scientific proof of a health or safety risk before taking steps to inform the public of the potential for harm.
2. There is a debate in the scientific community about the health effects of cell phones.
3. Numerous studies have identified evidence of an increased risk of brain cancer and other illnesses as a result of cell phone use, as well as heightened health concerns for children and pregnant women.
4. Leading epidemiologists who have studied the effects of radiofrequency energy absorbed from cell phones have recommended that the public be informed of the potential for adverse health effects from long-term cell phone use, particularly for children. See Cardis and Sadetski, "Indications of possible brain-tumour risk in mobile-phone studies: Should we be concerned?," Journal of Occupational and Environmental Medicine, Jan. 24, 2011.

Supervisor Avalos, Mar
BOARD OF SUPERVISORS

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1 5. Most cellular phone user manuals disclose, in fine print, that if a user holds a phone
2 too close to his or her body, his or her phone may exceed the radiofrequency energy
3 exposure limitation set by the Federal Communications Commission ("FCC").

4 6. FCC regulations presently do not require cell phone manufacturers to measure the
5 amount of radiofrequency energy an average user will absorb from each model of cell phone.
6 The amount of radiofrequency energy a user will absorb from a particular model of cell phone
7 depends on numerous factors, including how the phone is used, the frequency on which it
8 operates and the communication system it uses (for example, CDMA technology or GSM
9 technology).

10 7. The Board urges the FCC and the scientific community to develop a metric for
11 measuring the actual amount of radiofrequency energy an average user will absorb from each
12 model of cell phone. Such a metric would better enable consumers concerned about the
13 potential effects of radiofrequency emissions to compare cell phone models and make
14 informed purchasing decisions.

15 8. The Board finds that until such a metric is developed, it is in the interest of the public
16 health to require cell phone retailers to inform consumers about the potential health effects of
17 cell phone use, and about measures they can take to reduce their exposure to radiofrequency
18 energy from cell phones. The purpose of this legislation is to improve and strengthen the
19 disclosures required under the original Cell Phone Right-to-Know Ordinance to better achieve
20 this public health purpose.

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Supervisor Avalos
BOARD OF SUPERVISORS

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1 Section 2. The San Francisco Environment Code is hereby amended by amending
2 Sections 1101 through 1105, to read as follows:

3 **SEC. 1101. DEFINITIONS.**

4 For the purposes of this Chapter, the following terms shall have the following
5 meanings, unless the context requires otherwise:

6 (a) "Cell phone" means a portable wireless telephone device that is designed to send
7 or receive transmissions through a cellular radiotelephone service, as defined in Section
8 22.99 of Title 47 of the Code of Federal Regulations. A cell phone does not include a wireless
9 telephone device that is integrated into the electrical architecture of a motor vehicle.

10 (b) "Cell phone retailer" means any person or entity within the City which sells or
11 leases cell phones to the public or which offers cell phones for sale or lease. *"Cell phone*
12 *retailer" shall include a "formula cell phone retailer."* "Cell phone retailer" shall not include
13 anyone selling or leasing cell phones solely over the phone, by mail, or over the internet. "Cell
14 phone retailer" shall also not include anyone selling or leasing cell phones directly to the
15 public at a convention, trade show, or conference, or otherwise selling or leasing cell phones
16 directly to the public within the City for fewer than 10 days in a year.

17 (c) "Cell phone service provider" means a telecommunications common carrier
18 authorized to offer and provide cellular service for hire to the general public.

19 (d) "Director" means the Director of the Department of the Environment, or his or her
20 designee.

21 (e) "Display materials" means informational or promotional materials posted adjacent
22 to a sample phone or phones on display at the retail location that describe or list the features
23 of the phone. "Display materials" shall not include any tag, sticker, or decal attached to a cell
24 phone by the manufacturer, the manufacturer's packaging for a cell phone, or materials that
25 list only the price and an identifier for the phone.

Supervisor Avalos
BOARD OF SUPERVISORS

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1 ~~(f) "Formula cell phone retailer" means a cell phone retailer which sells or leases cell phones~~
2 ~~to the public, or which offers cell phones for sale or lease, through a retail sales establishment located~~
3 ~~in the City which, along with eleven or more other retail sales establishments located in the United~~
4 ~~States, maintains two or more of the following features: a standardized array of merchandise; a~~
5 ~~standardized facade; a standardized decor and color scheme; a uniform apparel; standardized~~
6 ~~signage; or, a trademark or service mark.~~

7 ~~(g) "SAR value" means the maximum whole body and spatial peak Specific Absorption Rate for~~
8 ~~a particular make and model of cell phone as registered with the Federal Communications~~
9 ~~Commission. (See, generally, Section 2.1093 of Title 47 of the Code of Federal Regulations.)~~

10
11 **SEC. 1102. REQUIREMENTS FOR CELL PHONE SERVICE PROVIDERS.**

12 ~~(a) Beginning September 1, 2010, any Any cell phone service provider that sells its service~~
13 ~~through a retailer in the City must provide a list of those retail locations to the Department of~~
14 ~~the Environment in a form determined by the Department. The service provider must update~~
15 ~~the list annually. The Department shall adopt regulations governing the form and submission~~
16 ~~of the lists.~~

17 ~~(b) Beginning November 1, 2010, any cell phone service provider that sells its service through~~
18 ~~a retailer in the City must provide those retailers with the SAR value for each make and model of cell~~
19 ~~phone sold or leased at that location in connection with cell phone service from the provider. The~~
20 ~~service provider must update the information it provides to retailers whenever new makes and models~~
21 ~~of cell phones covered by the service provider are added or old makes and models dropped, or~~
22 ~~whenever the service provider receives new information on the SAR values of any of the phones.~~

23 ~~(c) If a cell phone service provider is unable to provide this information (in subsection b) to~~
24 ~~retailers in the City, then the Department of Environment upon the request of the service provider shall~~
25 ~~provide assistance in procuring that information.~~

Supervisor Avalos
BOARD OF SUPERVISORS

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

3 (a) Beginning 15 days after the Department of the Environment adopts the regulations required
4 under Section 1104(d) 4404(b), cell phone retailers must display in a prominent location visible to the
5 public, within the retail store, an informational poster developed by the Department of the Environment
6 as referenced in Section 1104.

7 (b) Beginning 15 days after the Department of the Environment adopts the regulations required
8 under Section 1104(d) 4404(b), cell phone retailers must provide to every customer that purchases a
9 cell phone a free copy of an informational factsheet developed by the Department of the Environment
10 as referenced in Section 1104. A copy of this factsheet must also be provided to any customer who
11 requests it, regardless of whether they purchase a cell phone or not.

12 (c) ~~(a)~~ Beginning 30 days after the Department of the Environment adopts the regulations
13 required under Section 1104(d) 4404(b), if If a cell phone retailer posts display materials in
14 connection with sample phones or phones on display, the display materials must include
15 these three informational statements, whose contents, and size, and format as printed, shall
16 be determined by the Department of the Environment elements:

17 (1) A statement explaining that cell phones emit radiofrequency energy that is absorbed
18 by the head and body;

19 (2) A statement referencing measures to reduce exposure to radiofrequency energy from
20 the use of a cell phone; and,

21 (3) A statement that the informational factsheet referenced in subsection (b) is available
22 from the cell phone retailer upon request.

23 (1) The SAR value of that phone and the maximum allowable SAR value for cell phones
24 set by the FCC;

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

Supervisor Avalos
BOARD OF SUPERVISORS

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

3 ~~The Department of the Environment shall adopt regulations specifying the content and format~~
4 ~~for the elements required by this subsection (a), and shall develop a template for those elements. The~~
5 ~~SAR values and header text shall be printed in type no smaller than the size and readability equivalent~~
6 ~~of "Arial" 11 point, and the copy text shall be printed in type no smaller than the size and readability~~
7 ~~equivalent of "Arial" 8 point.~~

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

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

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

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

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

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

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

23 ~~(d) (e)~~ The Director may, in his or her discretion, authorize a retailer to use alternate
24 means to comply with the requirements of subsections (a), ~~(b) and (c) and (b)~~. The Director
25 shall authorize such alternate means through the adoption of a regulation after a noticed

1 hearing, and no retailer may sell or lease cell phones to the public or offer to sell or lease cell
2 phones to the public using any alternate means of compliance with this Chapter unless
3 specifically authorized to do so in advance in writing by the Director.

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

7
8 **SEC. 1104. REQUIREMENTS FOR THE DEPARTMENT OF THE ENVIRONMENT**
9 **DEPARTMENTAL FACTSHEETS; ASSISTANCE WITH COMPLIANCE.**

10 (a) Following a public hearing, the Department of the Environment, in consultation with
11 the Department of Public Health, shall develop: ~~a supplemental factsheet regarding SAR values~~
12 ~~and the use of cell phones, as well as templates for display materials and store posters required by this~~
13 ~~Chapter.~~

14 (1) An informational poster, as referenced in Section 1103(a);

15 (2) An informational factsheet, as referenced in Section 1103(b); and

16 (3) A set of statements that must be included in display materials, as referenced in
17 Section 1103(c).

18 (b) The materials shall inform consumers of issues pertaining to radiofrequency energy
19 emissions from cell phones and actions that can be taken by cell phone users to minimize exposure to
20 radiofrequency energy, such as turning off cell phones when not in use, using a headset and speaker
21 phone, or using the phone to send text messages ("texting").

22 (c) The Director may by regulation require the inclusion of additional information in the
23 poster, the factsheet, and/or the statements required in connection with display materials.

1 ~~The Department of the Environment shall hold the initial public hearing by September 1, 2010,~~
2 ~~and complete the supplemental factsheet by November 1, 2010. The supplemental factsheet shall be no~~
3 ~~larger than 8.5 inches by 11 inches.~~

4 ~~(d) (b) By November 1, 2010, Within 15 days after the effective date of this ordinance or as~~
5 ~~soon thereafter as is practicable, the Department of the Environment shall, after a noticed public~~
6 ~~hearing, issue regulations specifying the contents, size, and format for the elements the poster, the~~
7 ~~factsheet, and the statements required in connection with display materials as referenced in~~
8 ~~subsection (a), and provide templates of them for use by retailers.~~

9 ~~(1) The informational poster shall be a maximum size of 11 inches by 17 inches;~~

10 ~~(2) The informational factsheet shall be a maximum size of 5.5 inches by 11 inches~~
11 ~~(half-sheet of paper); and.~~

12 ~~(3) The informational statements shall be printed in a space no smaller than 1 inch by~~
13 ~~2.625 inches.~~
14 ~~required by Section 1103, subsections (a) and (b), for display materials and store posters, respectively.~~
15 ~~By that date, the Department of the Environment shall also adopt templates for display materials and~~
16 ~~store posters.~~

17 ~~(c) The Department shall develop content for all of these materials that is based on and~~
18 ~~consistent with the relevant information provided by the FCC or other federal agencies having~~
19 ~~jurisdiction over cell phones, explaining the significance of the SAR value and potential effects of~~
20 ~~exposure to cell phone radiation. The materials shall also inform customers of actions that can be taken~~
21 ~~by cell phone users to minimize exposure to radiation, such as turning off cell phones when not in use,~~
22 ~~using a headset and speaker phone, or texting.~~

23 ~~(c) Should the scientific community or the FCC develop a new metric to measure the actual~~
24 ~~amount of radiofrequency energy an average user will absorb from each model of cell phone, the~~
25

Department of the Environment shall make recommendations to the Board of Supervisors for amendments to this Chapter to require notification to the public of this metric at the point of sale.

SEC. 1105. IMPLEMENTATION AND ENFORCEMENT.

(a) During the period leading up to May 1, 2011, the Department of the Environment shall conduct an education and assistance program for formula cell phone retailers regarding the provisions of Section 1103(a), (b), and (d), and shall visit the retailers and assist them with meeting the requirements of the subsections.

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

(a) (e) The City Administrator shall issue a written warning to any person he or she determines is violating provisions of this Chapter or any regulation issued under this Chapter. If 30 days after issuance of the written warning the City Administrator finds that the person receiving the warning has continued to violate the provisions of the Chapter or any regulation issued under this Chapter, the City Administrator may impose administrative fines as provided below in subsections *(b), (c) and (d) (d), (e), and (f)*.

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

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

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

1 (3) Up to \$500.00 for the third and subsequent violations within a twelve-month
2 period.

3 (c) (e) Except as provided in subsection (b) (d), setting forth the amount of
4 administrative fines, Administrative Code Chapter 100, "Procedures Governing the Imposition
5 of Administrative Fines," as may be amended from time to time, is hereby incorporated in its
6 entirety and shall govern the imposition, enforcement, collection, and review of administrative
7 citations issued by the City Administrator to enforce this Chapter or any regulation issued
8 under this Chapter. Violation of this Chapter is not a misdemeanor, and the Board of
9 Supervisors intends that the requirements of this Chapter be enforced only through
10 administrative fines as provided in this Section.

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

14
15 **Section 3. Additional Provisions.**

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

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

Supervisor Avalos
BOARD OF SUPERVISORS

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7/11/2011


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1 (c) **Severability.** If any of the words, phrases, clauses, sentences, sections, or
2 provisions of this ordinance or the application thereof to any person or circumstance are held
3 invalid, the remainder of this ordinance's words, phrases, clauses, sentences, sections, or
4 provisions, including the application of such part or provisions thereof to persons or
5 circumstances other than those to which it is held invalid, shall not be affected thereby and
6 shall continue in full force and effect. To this end, the provisions of this ordinance are
7 severable.

8 (d) **Environmental Findings.** The Planning Department has determined that the
9 actions contemplated in this ordinance are in compliance with the California Environmental
10 Quality Act (Cal. Pub. Res. Code §§ 21000 et seq.). Said determination is on file with the
11 Clerk of the Board of Supervisors in File No. 110656 and is incorporated herein by
12 reference.

13
14
15
16 APPROVED AS TO FORM:
17 DENNIS J. HERRERA, City Attorney

18 By:


19 THOMAS J. OWEN
20 Deputy City Attorney
21
22
23
24
25

Supervisor Avalos
BOARD OF SUPERVISORS

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7/11/2011

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A-11



City and County of San Francisco

Tails
Ordinance

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

File Number: 110656

Date Passed: July 26, 2011

Ordinance amending the San Francisco Environment Code Sections 1101 through 1105 to require cell phone retailers to provide their customers with information regarding how to limit exposure to the radiofrequency energy emitted by cell phones in place of the mandatory disclosure of Specific Absorption Rate Values for cell phone models.

July 11, 2011 City Operations and Neighborhood Services Committee - AMENDED, AN AMENDMENT OF THE WHOLE BEARING SAME TITLE

July 11, 2011 City Operations and Neighborhood Services Committee - RECOMMENDED AS AMENDED

July 19, 2011 Board of Supervisors - PASSED, ON FIRST READING

Ayes: 11 - Avalos, Campos, Chiu, Chu, Cohen, Elsbernd, Farrell, Kim, Mar, Mirkarimi and Wiener

July 26, 2011 Board of Supervisors - FINALLY PASSED

Ayes: 11 - Avalos, Campos, Chiu, Chu, Cohen, Elsbernd, Farrell, Kim, Mar, Mirkarimi and Wiener

File No. 110656

I hereby certify that the foregoing Ordinance was FINALLY PASSED on 7/26/2011 by the Board of Supervisors of the City and County of San Francisco.

Angela Calvillo
Clerk of the Board

Mayor Edwin Lee
Date Approved

EXHIBIT C

San Francisco Department of the Environment Regulations SFE 11-07-CPO
Requirement for cell phone retailers to provide information to their customers
regarding how to limit their exposure to cell phone radiofrequency energy
Ordinance No. 165-11, Adopted July 11, 2011

Regulation Effective Date: September 30, 2011

A. Authorization

San Francisco Environment Code Chapter 11:

SEC. 1103. REQUIREMENTS FOR CELL PHONE RETAILERS.

(a) Beginning 15 days after the Department of the Environment adopts the regulations required under Section 1104(d), cell phone retailers must display in a prominent location visible to the public, within the retail store, an informational poster developed by the Department of the Environment as referenced in Section 1104.

(b) Beginning 15 days after the Department of the Environment adopts the regulations required under Section 1104(d), cell phone retailers must provide to every customer that purchases a cell phone a free copy of an informational factsheet developed by the Department of the Environment as referenced in Section 1104. A copy of this factsheet must also be provided to any customer who requests it, regardless of whether they purchase a cell phone or not.

(c) Beginning 30 days after the Department of the Environment adopts the regulations required under Section 1104(d), if a cell phone retailer posts display materials in connection with sample phones or phones on display, the display materials must include these three informational statements, whose contents, and size, and format as printed, shall be determined by the Department of Environment:

- (1) A statement explaining that cell phones emit radiofrequency energy that is absorbed by the head and body;
- (2) A statement referencing measures to reduce exposure to radiofrequency energy from the use of a cell phone; and,
- (3) A statement that the informational factsheet referenced in subsection (b) is available from the cell phone retailer upon request.

(d) The Director may, in his or her discretion, authorize a retailer to use alternate means to comply with the requirements of subsections (a), (b) and (c). The Director shall authorize such alternate means through the adoption of a regulation after a noticed hearing, and no retailer may sell or lease cell phones to the public or offer to sell or lease cell phones to the public using any alternate means of compliance with this Chapter unless specifically authorized to do so in advance in writing by the Director.

SEC. 1104. REQUIREMENTS FOR THE DEPARTMENT OF THE ENVIRONMENT

(a) Following a public hearing, the Department of the Environment, in consultation with the Department of Public Health, shall develop:

- (1) An informational poster, as referenced in Section 1103(a);
- (2) An informational factsheet, as referenced in Section 1103(b); and,
- (3) A set of statements that must be included in display materials, as referenced in Section 1103(c).

(b) The materials shall inform consumers of issues pertaining to radiofrequency energy emissions from cell phones and actions that can be taken by cell phone users to minimize exposure to radiofrequency energy, such as turning off cell phones when not in use, using a headset and speaker phone, or using the phone to send text messages ("texting").

(c) The Director may by regulation require the inclusion of additional information in the poster, the factsheet, and/or the statements required in connection with display materials.

(d) Within 15 days after the effective date of this ordinance or as soon thereafter as is practicable, the Department of the Environment shall, after a noticed public hearing, issue regulations specifying the contents, size, and format for the poster, the factsheet, and the statements required in connection with display materials as referenced in subsection (a), and provide templates of them for use by retailers.

- (1) The informational poster shall be a maximum size of 11 inches by 17 inches;
- (2) The informational factsheet shall be a maximum size of 5.5 inches by 11 inches (half-sheet of paper); and,
- (3) The informational statements shall be printed in a space no smaller than 1 inch by 2.625 inches.

(e) Should the scientific community or the FCC develop a new metric to measure the actual amount of radiofrequency energy an average user will absorb from each model of cell phone, the Department of the Environment shall make recommendations to the Board of Supervisors for amendments to this Chapter to require notification to the public of this metric at the point of sale.

B. Policy or Findings

According to the World Health Organization (WHO),

- Mobile phone use is ubiquitous with an estimated 4.6 billion subscriptions globally.
- The electromagnetic fields produced by mobile phones are classified by the International Agency for Research on Cancer as possibly carcinogenic to humans.
- Studies are ongoing to more fully assess potential long term effects of mobile phone use.
- WHO will conduct a formal risk assessment of all studied health outcomes from radiofrequency fields exposure by 2012.

Leading epidemiologists who have studied the effects of radiofrequency energy absorbed from cell phones have recommended that the public be informed of the potential for adverse health effects from long-term cell phone use, particularly for children.

Cell phones are an important communication tool, especially during emergencies, and radiation exposure from cell phones can be reduced by using a speakerphone or a headset, or by sending text messages.

C. Applicability

This regulation applies to all San Francisco cell phone retailers, defined by the San Francisco Environment Code Chapter 11, Section 1101 as:

(b) "Cell phone retailer" means any person or entity within the City which sells or leases cell phones to the public or which offers cell phones for sale or lease. "Cell phone retailer" shall not include anyone selling or leasing cell phones over the phone, by mail, or over the internet. "Cell phone retailer" shall also not include anyone selling or leasing cell phones directly to the public at a convention, trade show, or conference, or otherwise selling or leasing cell phones directly to the public within the City for fewer than 10 days in a year.

D. Requirements

- SEC. 1103(a): Informational poster. See poster (Attachment A).

The attached poster is formatted to fit standard paper size of 11 x 17 inches. The cell phone retailer must display the poster identical to attachment A (in size, content, format and graphics).

The Department will provide hardcopy posters to cell phone retailers and make replacements available upon request. The cell phone retailers are responsible for contacting the Department to obtain the poster and future replacements in order to ensure compliance with this law. The request for posters can be made in two ways:

- o In person at The Department of the Environment, M-F (9AM to 5PM):
11 Grove St. San Francisco, CA 94102
 - o A written request to:
 - Toxics Reduction Program, SF Department of the Environment, 11 Grove St. San Francisco, CA 94102; Or
 - cellphone@sfdenvironment.org
- SEC. 1103(b): Department factsheet. See factsheet template (Attachment B).

The attached supplemental factsheet template is formatted to fit standard paper size 8.5 x 11 inches, with two 8.5 x 5.5 inches sized factsheets per sheet. Cell phone retailers are required to provide this factsheet to customers upon request and with every cell phone sale. The factsheet provided to customers must be identical in content, format, color and graphics.

The Department shall make the factsheet template available in PDF or Microsoft Word format for printing by cell phone retailers. The Department shall provide starter kits to retailers with 50 factsheets each, and retailers are responsible for making color copies for distribution thereafter.

- SEC. 1103(c): Statements to include in display materials. See label template (Attachment C)

The attached sticker template is formatted to fit on Avery standard 5160-address labels. The font type and size are Futura size 12. A cell phone retailer may print and paste stickers on cell phone display materials or include the content of the sticker in cell phone display materials in a manner that preserves the font size, type and meets the space requirement of no smaller than 1 x 2.625 inches.

The Department shall make the sticker template available in PDF or Microsoft Word format for printing by cell phone retailers.

E. Attachments

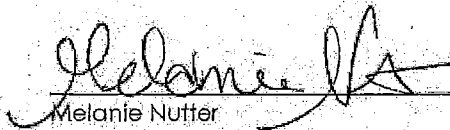
Attachment A: Informational poster

Attachment B: Informational factsheet

Attachment C: Sticker template for inclusion of informational statements in display materials

The Director of the Department of the Environment hereby adopts these regulations as of the date specified below.

Approved:

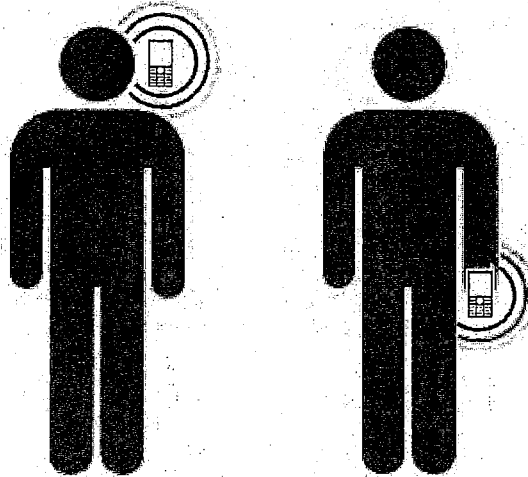

Melanie Nutter

9/30/11
Date

Director, Department of the Environment



You can limit exposure to Radio-frequency (RF) Energy from your cell phone.



Although studies continue to assess potential health effects of mobile phone use, the World Health Organization has classified RF Energy as a possible carcinogen.

This material was prepared solely by the City and County of San Francisco and must be provided to consumers under local law.

09/11

If you are concerned about potential health effects from cell phone RF Energy, the City of San Francisco recommends:

- **Limiting cell phone use by children**
Developing brains and thinner skulls lead to higher absorption in children.
- **Using a headset, speakerphone or text instead**
Exposure decreases rapidly with increasing distance from the phone.
- **Using belt clips and purses to keep distance between your phone and body**
Do not carry on your body to at least meet the distance specified in your phone's user manual.
- **Avoiding cell phones in areas with weak signals (elevators, on transit, etc.)**
Using a cell phone in areas of good reception decreases exposure by allowing the phone to transmit at reduced power.
- **Reducing the number and length of calls**
Turn off your cell phone when not in use.



Learn More:

SF Department of the Environment @ SFEEnvironment.org/cellphoneradiation • (415) 355-3700

Federal Communications Commission @ FCC.gov/cgb/consumerfacts/mobilephone.html

World Health Organization @ WHO.int/mediacentre/factsheets/fs193/en/

This material was prepared solely by the City and County of San Francisco and must be provided to consumers under local law.

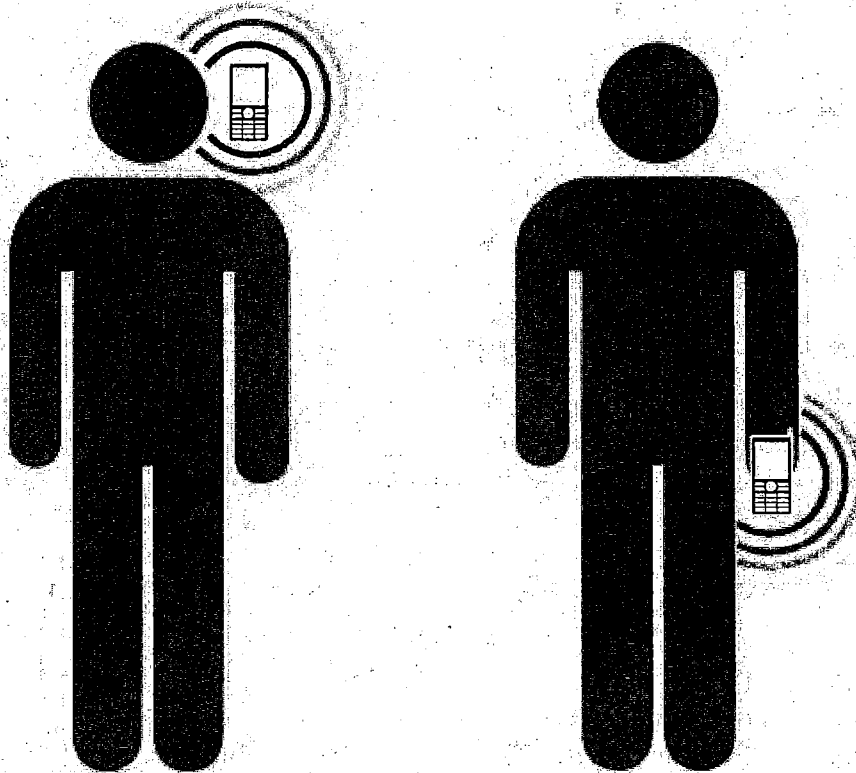
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A-17

This material was prepared solely by the City and County of San Francisco and must be provided to consumers under local law.



Cell Phones Emit Radio-frequency Energy



Studies continue to assess potential health effects of mobile phone use.

If you wish to reduce your exposure, the City of San Francisco recommends that you:

- **Keep distance between your phone and body**
- **Use a headset, speakerphone, or text instead**
- **Ask for a free factsheet with more tips**



SF Environment
Our home. Our city. Our planet.
A Department of the City and County of San Francisco

Learn More:

SF Department of Environment @ SfEnvironment.org/cellphoneradiation
Federal Communications Commission @ FCC.gov/cgb/consumerfacts/mobilephone.html
World Health Organization @ WHO.int/mediacentre/factsheets/fs193/en/

This material was prepared solely by the City and County of San Francisco and must be provided to consumers under local law.

09/11

EXHIBIT D

You can limit exposure to Radio-frequency (RF) Energy from your cell phone.



Although all cell phones sold in the United States must comply with RF safety limits set by the Federal Communications Commission (FCC), no safety study has ever ruled out the possibility of human harm from RF exposure.

This material was prepared solely by the City and County of San Francisco and must be provided to consumers under local law.

11/11

RF Energy has been classified by the World Health Organization as a possible carcinogen (rather than as a known carcinogen or a probable carcinogen) and studies continue to assess the potential health effects of cell phones. **If you are concerned about potential health effects from cell phone RF Energy, the City of San Francisco recommends:**

- **Limiting cell phone use by children**
Average RF energy deposition for children is two times higher in the brain and up to ten times higher in the bone marrow of the skull compared with cell phone use by adults.
- **Using a headset, speakerphone or text instead**
Exposure decreases rapidly with increasing distance from the phone.
- **Using belt clips and purses to keep distance between your phone and body**
Do not carry on your body to at least meet the distance specified in your phone's user manual.
- **Avoiding cell phones in areas with weak signals (elevators, on transit, etc.)**
Using a cell phone in areas of good reception decreases exposure by allowing the phone to transmit at reduced power.
- **Reducing the number and length of calls**
Turn off your cell phone when not in use.



Learn More: SF Department of the Environment @ SFEEnvironment.org/cellphoneradiation • (415) 355-3700
Federal Communications Commission @ FCC.gov/cgb/consumerfacts/mobilephone.html
World Health Organization @ WHO.int/mediacentre/factsheets/fs193/en/

This material was prepared solely by the City and County of San Francisco and must be provided to consumers under local law.

11/11

EXHIBIT E

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA
3 SAN FRANCISCO DIVISION

4 CTIA - THE WIRELESS ASSOCIATION®,

Case No. 3:10-cv-03224 WHA

5 Plaintiff,

**STIPULATION REGARDING ENTRY
OF FINAL JUDGMENT**

6 v.

7 THE CITY AND COUNTY OF SAN
8 FRANCISCO, CALIFORNIA,

Date: XXXX X, 2013

Time: XX

9 Defendant.

Courtroom: Courtroom 9, 19th Floor

1 Pursuant to Fed. R. Civ. P. 54; N.D. Cal. Civ. R. 7-12, the Parties submit this Stipulation
2 Regarding Entry of Final Judgment.

3 **RECITALS**

4 1. On October 4, 2011, Plaintiff CTIA-The Wireless Association filed a Second
5 Amended Complaint for Declaratory and Injunctive Relief against Defendant the City and County
6 of San Francisco ("City"), challenging the City's Cell Phone "Right-to-Know" Ordinance, File
7 No. 100104, Ordinance No. 155-10, as amended by Ordinance No. 165-11 (collectively, the
8 "Ordinance"), and Regulations and Display Materials promulgated by the Department of
9 Environment, San Francisco Department of the Environment, *see* SFE 10-02-CPO, SFE 10-03-
10 CPO, and SFE 11-07-CPO and attachments.

11 2. On October 4, 2011, Plaintiff filed a motion seeking a preliminary injunction
12 against the Ordinance, Regulations and Display Materials.

13 3. On October 27, 2011, after briefing and a hearing, this Court granted a partial
14 preliminary injunction.

15 4. The parties cross-appealed (Nos. 11-17707, 11-17773) and the Ninth Circuit
16 decided the appeals in favor of CTIA on September 10, 2012, holding that the Ordinance,
17 Regulations and Display Materials should be preliminarily enjoined in their entirety under the
18 First Amendment.

19 6. The United States Court of Appeals denied the City's Petition for Rehearing En
20 Banc on February 27, 2013.

21 7. The Ninth Circuit's mandate issued on March 11, 2013, with an award of costs to
22 CTIA.

23 8. CTIA filed petitions for award of attorneys' fees before this Court and before the
24 Ninth Circuit as the prevailing party on its constitutional claim under 42 U.S.C. § 1988. As part
25 of a comprehensive settlement of litigation between the Parties, CTIA has agreed to withdraw all
26 requests for attorneys' fees connected with this matter.

27 **STIPULATION**

28 The parties hereby stipulate that no further litigation is necessary or appropriate and

1 jointly move this Court to enter, in the form attached, Final Judgment, including a Declaratory
2 Ruling and Permanent Injunction, to fully resolve this case.

3 Dated this Xth day of _____, 2013

4 Dated: _____ X, 2013

5 JONES DAY

6 By: /s/ Craig E. Stewart

7 _____
8 Craig E. Stewart

9 Attorneys for Plaintiff

10 CTIA – The Wireless Association®

Dated: July 12, 2012

11 Dated: _____ X, 2013

DENNIS J. HERRERA, State Bar #139669

City Attorney

12 WAYNE SNODGRASS, State Bar #148137

13 VINCE CHHABRIA, State Bar #208557

Deputy City Attorneys

City Hall, Room 234

14 #1 Dr. Carlton B. Goodlett Place

15 San Francisco, California 94102-4682

Telephone: (415) 554-4674

16 Facsimile: (415) 554-4699

17 E-Mail: vince.chhabria@sfgov.org

18 By: _____

Vince Chhabria

19 Attorneys for Defendant

20 The City And County Of San Francisco, California

21
22 IT IS SO ORDERED.

23 Dated: _____

24
25 _____
26 William H. Alsup

27 United States District Judge

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA
3 SAN FRANCISCO DIVISION

4 CTIA - THE WIRELESS ASSOCIATION®,

Case No. 3:10-cv-03224 WHA

5 Plaintiff,

6 v.

**[PROPOSED] FINAL JUDGMENT,
DECLARATORY RULING AND
PERMANENT INJUNCTION FOR
PLAINTIFF**

7 THE CITY AND COUNTY OF SAN
8 FRANCISCO, CALIFORNIA,

9 Defendant.

Date: _____ X, 2013

Time: **XX**

Courtroom: Courtroom 9, 19th Floor

1
2 **[PROPOSED] FINAL JUDGMENT**

3 The Court has reviewed the Parties' Stipulation Regarding Entry of Final Judgment and
4 concludes that it is appropriate for the Court to enter this Final Judgment for Plaintiff, a
5 Declaratory Ruling, and Permanent Injunction.

6 **PURSUANT TO STIPULATION, IT IS HEREBY ORDERED, ADJUDGED,**
7 **AND DECREED** that:

8 1. The City's Cell Phone Right to Know Ordinance, and any implementing
9 regulations and materials promulgated by the City Department of Environment thereunder,
10 including any versions of same revised in the course of this litigation, are **DECLARED TO BE**
11 **INVALID** under the First Amendment to the United States Constitution.

12 2. Defendant and each of its officers, principals, agents, servants, employees,
13 successors and assignees, are **PERMANENTLY ENJOINED** from enforcing the City of San
14 Francisco's Cell Phone Right to Know Ordinance and any regulations and materials promulgated
15 thereunder, including any versions of same revised in the course of this litigation.

16 3. This Final Judgment, Declaratory Ruling, and Permanent Injunction are applicable
17 to the Cell Phone Right to Known Ordinance, as adopted on July 1, 2010, amended on January 7,
18 2011 and July 26, 2011, and approved by the Mayor on August 3, 2011 (Ordinance Nos. 155-10
19 and 165-11), which were the subject of the above-captioned litigation, and any and all regulations
20 and materials promulgated thereunder, including any versions of same revised in the course of
21 this litigation.

22
23 Dated: _____ X, 2013

24 JONES DAY

25 By: /s/ Craig E. Stewart

26 _____
27 Craig E. Stewart
28 Attorneys for Plaintiff

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CTIA – The Wireless Association®

Dated: _____ X, 2013

DENNIS J. HERRERA, State Bar #139669
City Attorney
WAYNE SNODGRASS, State Bar #148137
VINCE CHHABRIA, State Bar #208557
Deputy City Attorneys
City Hall, Room 234
#1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102-4682
Telephone: (415) 554-4674
Facsimile: (415) 554-4699
E-Mail: vince.chhabria@sfgov.org

By: _____
Vince Chhabria

Attorneys for Defendant
The City And County Of San Francisco, California

IT IS SO ORDERED.

Dated: _____

William H. Alsup
United States District Judge