

File No. 101419

Committee Item No. 8

Board Item No. 06

COMMITTEE/BOARD OF SUPERVISORS

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Committee CITY OPERATIONS AND
NEIGHBORHOOD SERVICES

Date 12/13/10

Board of Supervisors Meeting

Date 01/04/11

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Completed by: Gail Johnson
Completed by: _____

Date 12/9/10
Date _____

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

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

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

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

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

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

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

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

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. _____ and is incorporated herein by
8 reference.

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11
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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23
24
25

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"¹ 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.

¹ 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.

BOARD of SUPERVISORS



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December 8, 2010

File No. 101419

Bill Wycko
Environmental Review Officer
Planning Department
1650 Mission Street, 4th Floor
San Francisco, CA 94103

Dear Mr. Wycko:

On November 23, 2010, Supervisor Eric Mar introduced the following proposed legislation:

File No. 101419 [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.

The legislation is being transmitted to you for environmental review, pursuant to Planning Code Section 306.7(c).

Angela Calvillo, Clerk of the Board

Gail Johnson

By: Gail Johnson, Committee Clerk
City Operations and Neighborhood Services

Attachment

cc: Nannie Turrell, Major Environmental Analysis
Brett Bollinger, Major Environmental Analysis

Environmental Review Referral

Exempt from environmental review per CEQA Guidelines Section 15066(c)(2). Not a project.

Nannie Turrell
7/23/09
December 9, 2010

