

FILE NO. 131207

ORDINANCE NO.

[Environment Code - Bottled Water]

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Ordinance amending the Environment Code to restrict the sale or distribution on City property of drinking water in plastic bottles of 21 ounces or less, set City policy to increase the availability of drinking water in public areas, and bar the use of City funds to purchase bottled water, and making environmental findings.

NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
Additions to Codes are in *single-underline italics Times New Roman font*.
Deletions to Codes are in ~~*strikethrough italics Times New Roman font*~~.
Board amendment additions are in double-underlined Arial font.
Board amendment deletions are in ~~strikethrough Arial font~~.
Asterisks (* * * *) indicate the omission of unchanged Code subsections or parts of tables.

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

Section 1. Environmental Findings. The Planning Department has determined that the actions contemplated in this ordinance comply with the California Environmental Quality Act (California Public Resources Code Section 21000 et seq.). Said determination is on file with the Clerk of the Board of Supervisors in File No. 131207 and is incorporated herein by reference.

Section 2. Findings.

(a) The City and County of San Francisco has a duty to protect the natural environment, the economy and the health of its citizens. San Francisco is renowned as an environmental leader as a result of the City's adoption of cutting edge policies and its smart and strategic implementation of those policies. Policies such as Plastic Bag Reduction Ordinance enacted in March 2007, the City's zero waste policy, and the requirement that new

1 buildings install water fountains capable of filling reusable bottles, among others, all
2 demonstrate the City's leading role in reducing waste.

3 (b) Americans currently buy half a billion bottles of water every week, enough to circle
4 the globe twice. We consume more bottles of water than any other nation. An estimated
5 2 million tons of plastic water bottles end up in landfills each year. In San Francisco,
6 Recology collects 10-15 million single-use plastic water bottles a year, and this number does
7 not include bottles that go to redemption centers or landfill. It is likely that tens of millions of
8 single-use plastic water bottles from San Francisco end up in our recycling stream or landfill
9 on an annual basis.

10 (c) A plastic bottle in a landfill takes centuries to decompose. While advances by
11 water bottle producers have reduced the amount of packaging and weight of bottle containers
12 that ultimately reach the City's waste facilities, alternatives to plastic bottles, such as reusable
13 bottles, drinking fountains, and water stations produce an insignificant amount of waste in
14 comparison.

15 (d) Almost all this plastic is made from petroleum, requiring nearly 17 million gallons of
16 crude oil annually. Aside from their manufacture, single-use bottles have significant
17 environmental impacts throughout their lifecycle. The bottles require significant energy to
18 transport and often take a long journey to U.S. markets. In 2006, the equivalent of 2 billion
19 half-liter bottles arrived in U.S. ports, according to the Natural Resources Defense Council.
20 Fiji shipped 18 million gallons of bottled water to California, releasing about 2,500 tons of
21 transportation-related pollution. When incinerated, rather than being left to decompose, a
22 plastic bottle releases chlorine gas and heavy metal ash.

23 (e) Many plastic water bottles contain chemicals called phthalates that it has been
24 shown can leach into the water. Phthalates are known to disrupt testosterone and other
25 hormones, which can lead to infertility, cancer, miscarriages and other health problems.

1 (f) The City has repeatedly demonstrated its commitment to reducing this type of
2 waste. The Mayor's 2007 executive order barring the purchase of bottled water by City
3 Departments with City funds is widely recognized as an example of San Francisco's
4 exemplary policies and demonstrates the City's longstanding commitment to environmental
5 sustainability. And while significant strides have been made by City Departments in carrying
6 out this directive, much more remains to be done in connection with City-sponsored and City-
7 authorized events and activities on City property.

8 (g) The Port Commission recently showed great leadership in adopting the balanced
9 and thoughtful "Policy for Zero Waste Events and Activities," restricting plastic bottles on Port
10 property at events with over 5,000 attendees.

11 (h) Many people drink bottled water because they believe it to be of a higher quality,
12 cleaner and better-tasting, but that perception not necessarily accurate. In the United States,
13 public water is regulated by the Environmental Protection Agency (EPA), which requires
14 multiple daily tests for bacteria and makes results available to the public. The Food and Drug
15 Administration, which regulates bottled water, only requires weekly testing and does not share
16 its findings with the EPA or the public.

17 (i) The City's own supply of tap water is one of the cleanest and best tasting in the
18 country. The San Francisco Public Utilities Commission delivers pristine drinking water
19 through the Hetch Hetchy Reservoir in Yosemite National Park and Hetch Hetchy Regional
20 Water System, which meets or exceeds all federal and state criteria for drinking water quality
21 and is tested over 100,000 times per year. The system also uses gravity to transport water to
22 the municipality, while bottled water uses less environmentally-friendly means for
23 transportation.

24 (j) Bottled water is more expensive than tap water for the average consumer. Bottled
25 water cost consumers an average of \$1.30 per gallon (\$11.8. billion/9.1 billion gallons); San

1 Francisco's municipal water from Hetch Hetchy costs about \$0.03 per gallon. Yet bottled
2 water is often filled right from the tap. It is estimated that one third of all bottled water sold in
3 the United States is repackaged tap water. Some companies that are filling their bottles from
4 underwater sources are taking so much that there are nearby communities worried that their
5 own wells will run dry.

6

7 / / /

8 / / /

9 / / /

10 / / /

11 / / /

12 / / /

13 / / /

14 / / /

15 / / /

16 / / /

17 / / /

18 / / /

19 / / /

20 / / /

21 / / /

22 / / /

23 / / /

24 / / /

25 / / /

1 Section 3. The San Francisco Environment Code is hereby amended by adding
2 Chapter 24, Sections 2401 through 2409, to read as follows:

3 **Chapter 24: Bottled Drinking Water**

4 Sec. 2401. Title.

5 Sec. 2402. Definitions.

6 Sec. 2403. Sale Or Distribution Of Bottled Water on City Property Restricted.

7 Sec. 2404. New Leases, Permits, And Agreements; Mobile Food Facilities.

8 Sec. 2405. Barring Use Of City Funds For Purchase Of Bottled Water.

9 Sec. 2406. Waivers and Exclusions.

10 Sec. 2407. Implementation.

11 Sec. 2408. Enforcement And Penalties.

12 Sec. 2409. Increasing the City’s Commitment to Providing Public Water.

13
14 **SEC. 2401. TITLE.**

15 The title of this Chapter shall be the San Francisco Bottled Water Ordinance.

16
17 **SEC. 2402. DEFINITIONS.**

18 For purposes of this Chapter,

19 “Bottled Water” means drinking water in a sealed Rigid Plastic Bottle having a capacity of
20 21 fluid ounces or less.

21 “City Property” means real property, including any buildings thereon, owned or leased by the
22 City and County of San Francisco (“City”), and in the City’s possession or in the possession of a
23 public or private entity under contract with the City to perform a public purpose, including but not
24 limited to the following property: recreational and park property including but not limited to Golden
25 Gate Park, the San Francisco Zoo, and San Francisco’s parks and playgrounds, plazas including but

1 not limited to United Nations Plaza and Hallidie Plaza, community centers such as Ella Hill Hutch
2 Community Center, and property of the Department of Recreation and Parks, the Port, and the Public
3 Utilities Commission. "City Property" includes a "City Street."

4 "City Funds" means all monies or other assets received and managed by, or which are
5 otherwise under the control of, the Treasurer, and any notes, bonds, securities, certificates of
6 indebtedness or other fiscal obligations issued by the City and County.

7 "City Street" means the public right-of-way owned by the City, including any area across,
8 along, on, over, upon, and within the dedicated public alleys, boulevards, courts, lanes, roads,
9 sidewalks, streets, and ways within the City.

10 "Event" means any gathering held on City Property, including a City Street, and subject to a
11 City permit, where more than 100 people attend or participate.

12 "Mineral water" means drinking water containing more than 500 milligrams per liter of total
13 dissolved solids and/or one or more chemical constituents in excess of the concentrations listed in the
14 Federal Bottled Water Quality Standards (Title 21, Code of Federal Regs., Sec. 165.110).

15 "Participant Athletic Event" means an athletic event in which a group of people collectively
16 walk, jog, run, or bicycle or otherwise participate in a sport on City Property, including a City Street.

17 "Rigid Plastic Bottle" means any formed or molded container comprised predominantly of
18 plastic resin, having a relatively inflexible fixed shape or form, having a neck that is smaller than the
19 container body, and intended primarily as a single service container. "Rigid Plastic Bottle" includes a
20 compostable plastic bottle meeting these criteria.

21 "Water" includes: natural spring or well water; water taken from municipal or private utility
22 systems or other sources; distilled, deionized, filtered, or other purified water; or any of the foregoing
23 to which chemicals may be added. "Water" does not include: mineral water; carbonated or sparkling
24 water; soda, seltzer, or tonic water; or flavored water, also marketed as fitness water, vitamin water,
25 enhanced water, energy water, or other similar products. "Water" does not include those food

1 ingredients that are listed in ingredient labeling as "water," "carbonated water," "disinfected water,"
2 or "filtered water."

3
4 **SEC. 2403. SALE OR DISTRIBUTION OF BOTTLED WATER ON CITY PROPERTY**

5 **RESTRICTED.**

6 (a) Starting October 1, 2014, no person may sell or distribute Bottled Water at an Event held
7 indoors on City Property.

8 (b) Starting October 1, 2014, no person may sell or distribute Bottled Water at an Event held
9 outdoors on City Property, including a City Street, where the permitting officer, department, or agency
10 (collectively, "department") allows the Event sponsor access to reliable on-site potable water
11 connections adequate to meet the hydration needs of the Event participants or attendees. By July 1,
12 2014, departments that issue permits for Events on their properties and in their facilities shall, in
13 consultation with the San Francisco Public Utilities Commission ("SFPUC"), determine which
14 properties that are frequently used for Events have a reliable on-site supply of drinking water that
15 could be used by Event sponsors.

16 (c) Starting October 1, 2016, no person may sell or distribute Bottled Water at an Event held
17 outdoors on City Property, including a City Street.

18 (d) The provisions of this Section 2403 shall not apply to the sale or distribution of Bottled
19 Water to participants in a Participant Athletic Event. The provisions of this Section 2403 shall not
20 apply where the City grants the general public access to enter or use City Property in question,
21 including a City Street, without requiring issuance of a permit.

22 (e) This Section 2403 shall not apply to an event held prior to January 1, 2018 that is
23 sponsored by a not-for-profit entity and that has over 250,000 attendees or participants.

24
25 / / /

1 **SEC. 2404. NEW LEASES, PERMITS, AND AGREEMENTS; MOBILE FOOD FACILITIES.**

2 (a) Starting October 1, 2014, all new leases, permits, management agreements or other
3 agreements awarded by the City allowing any person to use City Property, including a City Street, for
4 purposes that contemplate or would allow the sale or distribution of beverages (collectively,
5 “permits”) shall specifically require that the permittee comply with this Chapter. This requirement
6 shall also apply to any such permit renewed, extended, or materially amended after October 1, 2014

7 (b) Starting October 1, 2014, no City officer or department shall issue a bid proposal or
8 solicitation, request for bid or proposal, or contract for vendors or concessions to be operated on City
9 Property that would require or permit the sale or distribution of Bottled Water on such property.

10 (c) This Section 2404 does not apply to concessions/vendors at San Francisco Airport facilities.
11 This Section 2404 does not apply to permits for the use of City Property, including a City Street, for a
12 Participant Athletic Event, if the permit provides that the Event sponsor may only sell or distribute
13 Bottled Water, or allow the sale or distribution of Bottled Water, to participants in the Participant
14 Athletic Event and not to any other persons. This Section 2404 will not apply to concessions/vendors at
15 the Moscone Center facility until (1) the City Administrator certifies to the Board of Supervisors that
16 the first phase of the expansion of the facility, the plans for which include installation of bottle filling
17 stations, has been completed, or (2) January 1, 2018, whichever is sooner.

18 (d) Starting October 1, 2016, all Mobile Food Facility permits issued or renewed under
19 Article 5.8 of the Public Works Code shall specifically provide that the permittee shall not sell or
20 distribute or allow the sale or distribution of Bottled Water as part of the operation of the Facility.

21
22 **SEC. 2405. BARRING USE OF CITY FUNDS FOR PURCHASE OF BOTTLED WATER.**

23 (a) No City officer, department, or agency (collectively, “department”) shall use City Funds to
24 purchase Bottled Water for its own general use. A department may use City Funds to purchase Bottled
25 Water for uses specifically exempted from or allowed under this Chapter.

1 (b) It shall be City policy not to have drinking water systems in City offices or facilities that use
2 plastic water bottles of any size where satisfactory alternatives exist and are feasible at the location
3 under consideration. It shall further be City policy to conform drinking water systems in City offices or
4 facilities to this goal where reasonable by the end of 2016.

5
6 **SEC. 2406. WAIVERS AND EXCLUSIONS.**

7 (a) A City officer, department, or agency (collectively, “department”) responsible for
8 permitting an Event on or issuing a lease for City Property may waive the requirements of
9 Sections 2403 and 2404 in full or in part if the Event sponsor or lessee demonstrates to the satisfaction
10 of the department that strict application of the requirement would not be feasible, would create an
11 undue hardship or practical difficulty, or that circumstances otherwise warrant granting of the waiver.
12 The department’s decision to grant a waiver shall be in writing and shall be final.

13 (b) The provisions of Sections 2403 and 2404 shall not apply where the department finds that
14 the inclusion or application of such provisions would violate or be inconsistent with the terms or
15 conditions of a grant, subvention or contract with an agency of the State of California or the United
16 States or the instructions of an authorized representative of any such agency with respect to any such
17 grant, subvention or contract.

18 (c) The provisions of Sections 2403, 2404, and 2405(a) shall not apply where the department
19 finds that relying on Bottled Water is necessary in a given situation to protect the public health, safety
20 and welfare, and no reasonable alternative to Bottled Water will serve the same purpose.

21 (d) Departments shall annually report all waivers granted under subsection (a) and
22 determinations of non-applicability made under subsections (b) and (c) to the Director of the
23 Department of the Environment, and include the reason for each waiver.

24
25 / / /

1 **SEC. 2407. IMPLEMENTATION.**

2 (a) This Chapter shall not apply to an Event held on City Property, including a City Street,
3 where the sponsor applied for or received the permit prior to July 1, 2014. Nothing in this Chapter
4 shall be construed to impair a contract, lease, management agreement or other legally-binding
5 agreement to which the City is a party on the effective date of this Chapter.

6 (b) The Department of the Environment and the Public Utilities Commission shall take
7 appropriate steps to educate and inform City departments about the requirements of this Chapter.

8 (c) The Director of the Department of the Environment shall submit an annual report to the
9 Mayor and the Board of Supervisors on the implementation of this Chapter. The report shall include
10 the number of waivers granted by City officers or departments under Section 2406(a) and
11 determinations of non-applicability made under Section 2406(b) and (c), and a brief explanation of the
12 justifications for the same.

13
14 **SEC. 2408. ENFORCEMENT AND PENALTIES.**

15 (a) Any person who violates any provision of Section 2403 or of an administrative regulation
16 adopted under this Article to implement that Section may be punished by administrative fines imposed
17 by the Director of the Department of the Environment in the amount of:

18 (1) Up to \$500 for the first violation;

19 (2) Up to \$750 for a second violation within a twelve-month period; and,

20 (3) Up to \$1,000 for a third and subsequent violations within a twelve-month period.

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

1 **SEC. 2409. INCREASING THE CITY'S COMMITMENT TO PROVIDING PUBLIC WATER.**

2 (a) It shall be City policy to increase the availability of clean, free drinking water in public
3 areas. City departments shall take all reasonable and appropriate steps to promote and facilitate
4 achievement of the goals and policies of this Chapter, including helping Event sponsors and other City
5 departments to meet the requirements of this Chapter.

6 (b) The SFPUC, in consultation with the Department of Public Health and other appropriate
7 City departments, shall investigate standards and procedures for allowing Event sponsors to access
8 additional City-controlled or -operated water supplies. The SFPUC shall report its findings and
9 recommendations to the Board of Supervisors by July 1, 2014.

10 (c) The SFPUC, in consultation with appropriate City departments, shall investigate installing
11 backflow preventers and related plumbing equipment on existing potable water systems, to facilitate
12 public access to such potable water in the park sites most frequently used for special events. The
13 SFPUC shall report its findings and recommendations to the Board of Supervisors by July 1, 2014.

14 (d) It shall be City policy that any City department undertaking a capital improvement in a
15 park, plaza, playground, or other public space shall install bottle-filling stations, drinking fountains,
16 and or potable water hook-ups for public use, if the department finds that the installation is proximate
17 and feasible with the scale and scope of the capital improvement.

18 (e) It shall be City policy to encourage the inclusion of bottle-filling stations or drinking
19 fountains for public use in Privately-Owned Public Open Spaces as defined in Planning Code
20 Section 135(a), as amended.

21
22 Section 4. Effective Date. This ordinance shall become effective 30 days after
23 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
24 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
25 of Supervisors overrides the Mayor's veto of the ordinance.

1 Section 5. Severability. If any section, subsection, sentence, clause, phrase, or word
2 of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any
3 court of competent jurisdiction, such decision shall not affect the validity of the remaining
4 portions of the ordinance. The Board of Supervisors hereby declares that it would have
5 passed this ordinance and each and every section, subsection, sentence, clause, phrase, and
6 word not declared invalid or unconstitutional without regard to whether any other portion of
7 this ordinance would be subsequently declared invalid or unconstitutional.

8

9 Section 6. Undertaking for the General Welfare. In enacting and implementing this
10 ordinance, the City is assuming an undertaking only to promote the general welfare. It is not
11 assuming, nor is it imposing on its officers and employees, an obligation for breach of which it
12 is liable in money damages to any person who claims that such breach proximately caused
13 injury.

14

15 / / /

16 / / /

17 / / /

18 / / /

19 / / /

20 / / /

21 / / /

22 / / /

23 / / /

24 / / /

25 / / /

1 Section 7. No Conflict with Federal or State Law. Nothing in this ordinance shall be
2 interpreted or applied so as to create any requirement, power, or duty in conflict with any
3 federal or state law.

4
5 APPROVED AS TO FORM:
6 DENNIS J. HERRERA, City Attorney

7
8 By: _____
9 THOMAS J. OWEN
10 Deputy City Attorney

11
12 n:\legana\as2013\1300366\00906061.doc