

1 [Environment Code - Antibiotic Use in Food Animals]

2
3 **Ordinance amending the Environment Code to require certain retailers of raw meat**
4 **and poultry to report the use of antibiotics in such products to the Department of the**
5 **Environment, and require City departments to report the use of antibiotics in meat**
6 **purchased by the City to the Department of the Environment.**

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

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

15 Section 1. The Environment Code is hereby amended by adding Chapter 27, entitled
16 “Antibiotic Use in Food Animals,” consisting of Sections 2701 through 2709, to read as
17 follows:

18 **CHAPTER 27: ANTIBIOTIC USE IN FOOD ANIMALS**

19 **SEC. 2701. FINDINGS.**

20 *(a) The overuse of antibiotics, also known as antimicrobial drugs, in human medicine and in*
21 *meat and poultry production poses a pressing environmental and public health threat by allowing*
22 *antibiotic-resistant bacteria to multiply and spread. In 2013, the Centers for Disease Prevention and*
23 *Control (“CDC”) identified antibiotic resistance as one of the top five health threats facing the country*
24 *in the near future.*

25 *(b) In a 2013 report on antibiotic resistance threats in the United States, the CDC estimated*
that every year at least 2 million people contract antibiotic-resistant infections, and at least 23,000

1 people die as a result of these infections. Some researchers have estimated these infections cost the
2 United States as much as \$55 billion annually due to excess healthcare costs and lost productivity.

3 (c) Increasingly, antibiotic-resistant bacteria are leading to infections that can be difficult to
4 treat, require longer and more expensive hospital stays, and are more likely to be fatal. Without
5 effective antibiotics, procedures such as chemotherapy, dialysis, and many surgeries become much
6 riskier for patients because of the high risk of bacterial infections associated with these procedures.

7 (d) While improper use of antibiotics in the healthcare sector is a contributing factor,
8 organizations such as CDC, the Food and Drug Administration (“FDA”) and the World Health
9 Organization (“WHO”) recognize that the overuse and misuse of antibiotics in food animals is a
10 major source of the antibiotic-resistant bacteria that affect humans. In a 2015 American Academy of
11 Pediatrics (“AAP”) technical report, the authors stated that the “use of antimicrobial agents in
12 agriculture can harm public health, including child health, through the promotion of resistance.”

13 (e) Scientists recognize a growing “reservoir” of antibiotic resistance in our communities and
14 environment. A significant portion of antibiotics administered to livestock are excreted in urine and
15 manure, which are then spread as fertilizer on agricultural land. From there, antibiotics can run off
16 into waterways and spread in other ways through the environment. This can lead to the proliferation
17 and spread of resistant bacteria.

18 (f) Antibiotic-resistant bacteria have been found in drinking water near livestock facilities, in
19 the top soil of dairies, and in the air downwind from industrial swine facilities and cattle feedlots. In
20 addition to traveling off farms in water, air, and soil, antibiotic-resistant bacteria can be found on
21 fruits and vegetables where manure has been applied to crops. Furthermore, insects and rats can
22 carry resistant bacteria away from farms. Workers can also unwittingly carry antibiotic-resistant
23 bacteria from livestock production facilities or processing plants into their communities. Antibiotic-
24 resistant bacteria can pass their resistant genes on to other bacteria. This allows some bacteria,
25 including bacteria in the human gut, to become resistant to antibiotics that they have never

1 encountered. Several recent studies indicate that living near livestock operations or near fields
2 treated with manure can increase individuals' risk of contracting antibiotic-resistant infections or
3 being colonized by antibiotic-resistant bacteria.

4 (g) In addition, scientists and governmental agencies routinely find antibiotic-resistant
5 bacteria on animals at slaughter and on raw meat in grocery stores. In 12 years of testing through the
6 National Antimicrobial Resistance Monitoring System ("NARMS"), the FDA has identified
7 antibiotic-resistant bacteria that can cause illness on retail pork, chicken, ground beef, and ground
8 turkey every year. For example, in the most recent reported testing in 2012, 33% of Salmonella, 60%
9 of Enterococcus faecium, 30% of E. coli and, 11% of Campylobacter coli found in chicken were
10 multidrug resistant (resistant to at least three antibiotic classes). WHO and CDC have deemed
11 antibiotic-resistant infections from food pathogens a serious threat.

12 (h) A recent example illustrates the risks of injudicious use of antibiotics. In 2015, a study in
13 China identified plasmid encoded colistin resistance (mcr-1), which is easily transferable to other
14 bacteria, in a significant fraction of pig samples that had been collected for routine surveillance.
15 Scientists believe the resistance was a result of colistin in animal feeds. The same colistin resistance
16 was detected in hospital patients. A couple of months later, alarmed scientists around the world had
17 discovered the same colistin resistance in 19 countries, including in child and elderly patients, in the
18 guts of healthy humans, in water, on retail meat, and in animals. Because the colistin gene was
19 detected more often in animals than in people, the authors of the original study say it is likely that this
20 form of colistin resistance originated in animals and spread to people.

21 (i) In January 2017, FDA completed implementation of its Guidance 213, publishing
22 regulations that removed growth promotion as a permitted use for antibiotic products administered to
23 poultry and livestock. All antibiotics to be administered in feed and water may only be used under the
24 authorization of a licensed veterinarian and will no longer be available over the counter. However,
25 antibiotics in every medically-important class that was approved for growth promotion in livestock

1 production will remain available for use at similar or the same doses for disease prevention. Even
2 under Guidance 213, antibiotic products could continue to be administered to animals that are not
3 sick in low doses on a routine basis in their feed and/or water prophylactically. Furthermore,
4 Guidance 213 does not require use reduction targets or a means to track progress toward reduction of
5 the use of antibiotics in livestock operations.

6 (j) According to 2009-2014 domestic sales and distribution data collected from
7 pharmaceutical companies by the FDA, sales of medically-important antibiotics for food animals have
8 increased every year and by 23% over the five-year period. From 2013 to 2014, the first year for
9 voluntary implementation of Guidance 213, antibiotic sales of medically-important antibiotics
10 increased by 3%.

11 (k) Both the Netherlands and Denmark have achieved significant reductions in livestock
12 antibiotic use only after both routine disease prevention and growth promotion uses were banned.
13 Both countries have continued to increase their output of domestic livestock production. Between
14 2012 and 2013, the Netherlands reduced livestock antibiotic use by 20.5% in its four main livestock
15 sectors with no decline in output. Between 1992 and 2008, Denmark reduced antibiotic use in swine
16 production by almost 50% while still experiencing a nearly 50% increase in production.

17 (l) There is no federal program in the United States to collect comprehensive and
18 representative data on antibiotic use in livestock or poultry, nor any federal regulatory proposal to do
19 so. The only information available is sales data that does not break down use by species or medical
20 reason for use.

21 (m) In 2015, Governor Brown signed SB 27, a first-in-the nation law, which puts all
22 medically-important antibiotics under veterinary oversight and restricts prophylactic use of antibiotics
23 in livestock so that antibiotics may not be administered routinely. In addition, SB 27, codified at
24 Section 14400 et seq. of the California Food and Agriculture Code, directs the California Department
25 of Food and Agriculture to monitor antibiotic use, sales, and antibiotic resistance. However, the law

1 applies to poultry and livestock produced in California only.

2 (n) The marketplace remains fragmented and confusing for consumers. Other than for
3 products labeled “Organic” or “No Antibiotics Administered,” antibiotic use practices remain
4 opaque or misleading. For example, meat and poultry products may have been produced with regular
5 use of antibiotics yet labeled “natural,” and products may claim to be produced without the use of
6 “growth-promoting antibiotics” while using antibiotics routinely for disease prevention with
7 growth-promoting effects. Should producers choose to label their products as compliant with SB 27,
8 such labels will add to this confusing mix.

9 (o) San Francisco can play a pivotal role in addressing the inappropriate use of antibiotics in
10 meat production by increasing transparency of antibiotic use practices by collecting, analyzing, and
11 explaining the myriad policies on antibiotic use for raising livestock and poultry and the implications
12 of different levels of antibiotic use for environmental health, antibiotic resistance and public health.

13 **SEC. 2702. DEFINITIONS.**

14 For the purposes of this Chapter 27, the following definitions apply:

15 “Antibiotic” means any antimicrobial drug that works against bacteria, is approved by the
16 United States Food and Drug Administration (“FDA”), and is currently marketed for use in or on
17 Meat or Poultry animals as approved in 21 C.F.R. §§ 558.55 et seq. and identified in the FDA’s 2014
18 Summary Report On Antimicrobials Sold or Distributed for Use in Food-Producing Animals and
19 subsequent annual reports.

20 “Antibiotics Not Currently Considered Medically Important” means any antibiotic and its
21 associated class identified as such in the FDA’s 2014 Summary Report On Antimicrobials Sold or
22 Distributed for Use in Food-Producing Animals, and subsequent FDA annual reports.

23 “Antibiotic Use Policy” means a description of the antibiotic use practices, whether or not
24 written or formalized, of a Producer of each Product Group sold in a Grocer’s stores.

25 “City” means the City and County of San Francisco.

1 “Brand” means a distinguishing symbol, mark, logo, name, word, sentence or a combination
2 of these items that companies use to distinguish their product from others in the market.

3 “Department” means the Department of the Environment.

4 “Director” means the Director of the Department of the Environment or his or her designee.

5 “Disease Control” means metaphylaxis, i.e., the administration of an antibiotic to a group of
6 animals that are in contact with an animal or animals showing clinical signs of illness to protect the
7 group from the spread of the disease.

8 “Disease Prevention” means prophylaxis, i.e., the administration of an antibiotic to animals,
9 none of which are exhibiting clinical signs of disease.

10 “Grocer” means a person, firm, corporation, partnership, or other entity that owns and/or
11 operates in the City a grocery store, whether general or specialty, as defined in Planning Code
12 Section 102, and also owns or operates 25 or more grocery stores anywhere.

13 “Growth Promotion” means the administration of antibiotics to an animal to increase the
14 animal’s weight gain or growth, to increase feed efficiency, or for other production purposes not
15 related to Disease Control, Prevention, or Treatment.

16 “Meat” means the edible part of the carcass of any mammal, such as cattle, calf, sheep, lamb,
17 goat, rabbit, buffalo, or swine.

18 “Medically Important Antibiotic” means any antibiotic and its associated class that is listed in
19 Appendix A of FDA’s Guidance for Industry #152.

20 “Poultry” means the edible part of the carcass of any bird.

21 “Producer” means a person or entity who: (1) operates a business raising Meat or Poultry
22 animals that are used to produce any Product Group offered for sale by a Grocer; or (2) is otherwise
23 engaged in the business of obtaining live animals used to produce any Product Group offered for sale
24 by Grocers for the purpose of either slaughtering the Meat or Poultry animals, or selling the Meat or
25 Poultry animals for slaughter.

1 “Product Group” means Raw Meat or Poultry of the same species of animal(s), brand, and sub-
2 brand.

3 “Raw” means not cooked or cured.

4 “Routine Use” means regular administration of Antibiotics for Disease Prevention and/or
5 Growth Promotion.

6 “Sub-brand” means a brand whose attributes are distinct, yet related to a broader main
7 brand.

8 “Third-Party Certification” means certification by an organization that is not affiliated with the
9 Grocer and that addresses antibiotic use by producers of a Product Group sold by the Grocer. The
10 following third party certifications are accepted under this Chapter: U.S. Department of Agriculture
11 (“USDA”) Organic, USDA No Antibiotics Administered Process Verified (or equivalent USDA
12 “process verified” claim), Global Animal Partnership, Certified Responsible Antibiotic Use, Humane
13 Certified, and Animal Welfare Approved. The Director may periodically update the list of acceptable
14 certifications.

15 “Treatment” means the administration of Antibiotics to animals when they are sick, i.e.,
16 exhibiting clinical signs of bacterial disease.

17 **SEC. 2703. ANTIBIOTIC USE REPORTS—REPORTING AND DOCUMENTATION OF**
18 **ANTIBIOTIC USE POLICIES FOR RAW MEAT PRODUCTS.**

19 (a) Beginning 180 days after enactment of this Chapter 27 and annually thereafter, each
20 Grocer shall report to the Department on a form prescribed by the Director the Antibiotic Use Policy
21 for each Product Group sold in the City during the previous year. The form shall require reporting of
22 information including, but not limited to, the different purposes for which antibiotics are used, whether
23 the use has a Third-Party Certification, the average number of days of antibiotic use per animal, the
24 percentage of animals treated with antibiotics, the number of animals raised, and the total volume of
25 antibiotics administered. The reporting shall distinguish between use of Medically Important

1 Antibiotics, and Antibiotics Not Currently Considered Medically Important. If there is no change to the
2 Antibiotic Use Policy information from the previous year for a Product Group, the Grocer may report
3 that fact in its response on the Department's form. A Grocer shall fill out a separate form for each
4 distinct retail banner or subsidiary store operated and/or owned by the Grocer.

5 (b) Upon a written petition from a Grocer showing, based on substantial evidence, that the
6 reporting of certain required information is not feasible without significant hardship, the Director may
7 exercise reasonable discretion to waive some or all of the reporting requirements for a period of time
8 specified by the Director. Any waiver shall be crafted as narrowly as feasible, to maximize disclosure
9 as required by this Chapter 27. If a petition is granted, in responding to the form for the relevant
10 Product Group, the Grocer shall indicate that it has a waiver for the relevant portions of the form.
11 Where a written petition does not receive a response from the Director within 60 days of the date of its
12 petition, the petition shall be deemed approved to grant a waiver for one year.

13 (c) Grocery stores and butchers that do not meet the definition of "Grocer" may elect to
14 participate in the reporting process set forth in this Section 2703, and the Department shall encourage
15 such participation.

16 (d) Five years from enactment of this Chapter, the Director shall evaluate whether the
17 reporting program continues to provide useful information to the public. Such review shall occur every
18 two years thereafter.

19 (e) Each Grocer shall retain documentation of the Antibiotic Use Policy for each Product
20 Group sold in its stores. The following shall be sufficient documentation:

21 (1) A written statement from the Producer of each Product Group that provides
22 information sufficient to address the queries in the Department's form;

23 (2) A Third-Party Certification that confirms the Producer's responses to the
24 Department's form; and/or

25 (3) A store-wide Antibiotic Use Policy that applies to all Meat and Poultry products

1 sold in the store, or that applies to all products in a particular category of Meat or Poultry sold in
2 the store, such as chicken, turkey, pork, or beef; and the process, in writing, by which the Grocer
3 enforces this policy, including any Third-Party Certifications used, written statements from
4 Producers, purchasing specifications, or equivalent information that demonstrates enforcement of
5 the store-wide policy.

6 For a Product Group for which there has been no change to the Antibiotic Use Policy from the
7 previous year, the Grocer shall retain documentation establishing that there has been no change.

8 **SEC. 2704. ANTIBIOTIC USE REPORTS—ANALYSIS AND PUBLICATION OF FINDINGS.**

9 The Department shall analyze the antibiotic use reports collected pursuant to Section 2703, to
10 educate the public about the Antibiotic Use Policies associated with different Meat and Poultry Product
11 Groups and their availability in different grocery stores, distinguish between Medically Important
12 Antibiotics and Antibiotics Not Currently Considered Medically Important, and inform the public's
13 purchasing decisions. The Department shall publish its findings on its website, and may disseminate its
14 findings through other means it deems appropriate.

15 **SEC. 2705. ANTIBIOTIC USE REPORTS—ENFORCEMENT AND PENALTIES.**

16 (a) The Director shall administer and enforce this Chapter 27.

17 (b) If the Director determines that a Grocer has violated this Chapter 27 or a regulation
18 adopted pursuant thereto, the Director shall send a written warning, as well as a copy of this Chapter
19 and any regulations adopted pursuant thereto, to the Grocer, specifying the violation. The Grocer
20 shall have 30 days after receipt of the warning to correct the violation.

21 (c) If, after having received a warning in accordance with subsection (b), the Grocer fails to
22 correct the noticed violation within 30 days after receipt of the warning, the Director may impose
23 administrative penalties, including fines for violations of this Chapter 27 and/or of any regulation
24 adopted pursuant thereto, and/or suspension or revocation of any permits held. Administrative
25 Code Chapter 100, "Procedures Governing the Imposition of Administrative Fines," as amended, is

1 hereby incorporated in its entirety and shall govern the imposition, enforcement, collection, and review
2 of administrative fines imposed to enforce this Chapter or any rule or regulation adopted pursuant to
3 this Chapter. Each day a Grocer fails to correct a violation shall constitute a separate violation for
4 these purposes. Grocers and Producers shall be jointly and severally liable for delays in submitting
5 required reports and for false statements made in reports to the Director or in the documentation
6 required to comply with this Chapter.

7 (d) The City Attorney or a Grocer may bring a civil action to enjoin violations of or compel
8 compliance with any requirement of this Chapter 27 or any rule or regulation adopted pursuant to this
9 Chapter, as well as for payment of civil penalties and any other appropriate remedy. The court shall
10 award reasonable attorney fees and costs to the City Attorney or Grocer that is the prevailing party in
11 a civil action brought under this subsection (d). A Grocer may institute a civil action under this
12 subsection (d) only if:

13 (1) The Grocer has filed a complaint with the Director containing sufficient information
14 for the Director to assess its accuracy;

15 (2) 90 days have passed since the filing of the complaint without the Director issuing a
16 warning or otherwise initiating remedial action;

17 (3) After the 90-day period referenced in subsection (d)(2) has passed, the Grocer has
18 provided 30-day written notice to the Director and the City Attorney's Office of its intent to initiate civil
19 proceedings;

20 (4) By the end of the 30-day period referenced in subsection (d)(3), the City Attorney's
21 Office has not provided notice to the Grocer of the City's intent to initiate civil proceedings; and,

22 (5) The Grocer has executed an agreement indemnifying and holding harmless the City
23 in connection with the action, in a form approved by the City Attorney's Office.

24 (e) Any Grocer who knowingly and willfully violates the requirements of this Chapter 27 or any
25 rule or regulation adopted pursuant to this Chapter is guilty of a misdemeanor and upon conviction

1 thereof is punishable by a fine of not less than \$50 and not more than \$500 for each day per violation,
2 or by imprisonment in the County Jail for a period not to exceed six months, or by both such fine and
3 imprisonment.

4 (f) Any Grocer in violation of this Chapter 27 or any rule or regulation adopted pursuant to
5 this Chapter shall be liable to the City for a civil penalty in an amount not to exceed \$1,000 per day per
6 violation. Each day in which the violation continues shall constitute a separate violation. A civil
7 penalty shall not be assessed pursuant to this subsection (f) for the same violation for which the
8 Director assessed an administrative penalty pursuant to subsection (c).

9 (g) In determining the appropriate penalties, the court or the Director shall consider the extent
10 of harm caused by the violation, the nature and persistence of the violation, the frequency of past
11 violations, any action taken to mitigate the violation, and the financial burden to the violator.

12 (h) No criminal, civil, or administrative action under this Section 2705 may be brought more
13 than four years after the date of the alleged violation, except where evidence of the violation has been
14 hidden or was otherwise unavailable in the exercise of reasonable diligence.

15 **SEC. 2706. CITY PROCUREMENT OF RAW MEAT—REPORTS OF CURRENT PRACTICES**
16 **AND PUBLICATION OF RECOMMENDATIONS.**

17 (a) No later than 90 days after enactment of this Chapter 27, all City departments procuring
18 Raw Meat and/or Poultry shall both conduct an audit of their Meat and Poultry purchases in the
19 previous calendar year and submit a report to the Department of the Environment with the following
20 information:

21 (1) Percentages of Meat and Poultry procured that were produced with and without the
22 Routine Use of Antibiotics, distinguishing between Meat and Poultry raised without any Antibiotics and
23 Meat and Poultry raised without Routine Use of Medically Important Antibiotics whenever feasible;

24 (2) A list of current suppliers, and whether those suppliers currently offer Meat and/or
25 Poultry raised without the Routine Use of Antibiotics, distinguishing between Meat and/or Poultry

1 raised without any Antibiotics and Meat and/or Poultry raised without Routine Use of Medically
2 Important Antibiotics, and whether the suppliers could cease Routine Use of Medically Important
3 Antibiotics within three years' time;

4 (3) The estimated cost of obtaining Meat and/or Poultry raised without the Routine Use
5 of Antibiotics, distinguishing between Meat and/or Poultry raised without any Antibiotics and Meat
6 and/or Poultry raised without Routine Use of Medically Important Antibiotics; and

7 (4) The expected timeline if the department were to transition to procurement of only
8 Meat and/or Poultry raised without the Routine Use of Medically Important Antibiotics.

9 (b) No later than 180 days after enactment of this Chapter 27, the Department of the
10 Environment shall compile the departmental reports required by this Section 2706 and publish an
11 analysis regarding opportunities for and feasibility of a City-wide procurement policy for Meat and
12 Poultry raised without the Routine Use of Medically Important Antibiotics. The Department shall
13 submit a copy of its analysis to the Board of Supervisors and the Mayor.

14 **SEC. 2707. RULEMAKING.**

15 (a) The Director, after a public hearing, shall adopt and may amend guidelines, rules,
16 regulations, and/or forms as the Director deems necessary to implement this Chapter 27.

17 (b) No later than 90 days after enactment of this Chapter 27, the Department shall issue
18 regulations specifying the contents and format for the form required by Section 2703.

19 **SEC. 270. UNDERTAKING FOR THE GENERAL WELFARE.**

20 In enacting and implementing this Chapter 27, the City is assuming an undertaking only to
21 promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an
22 obligation for breach of which it is liable in money damages to any person who claims that such breach
23 proximately caused injury.

24 **SEC. 2709. SEVERABILITY.**

1 If any section, subsection, sentence, clause, phrase, or word of this Chapter 27, or any
2 application thereof to any person or circumstance, is held to be invalid or unconstitutional by a
3 decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining
4 portions or applications of the chapter. The Board of Supervisors hereby declares that it would have
5 passed this chapter and each and every section, subsection, sentence, clause, phrase, and word not
6 declared invalid or unconstitutional without regard to whether any other portion of this chapter or
7 application thereof would be subsequently declared invalid or unconstitutional.

8
9 Section 2. Effective Date. This ordinance shall become effective 30 days after
10 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
11 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
12 of Supervisors overrides the Mayor's veto of the ordinance.

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

16 By: _____
17 NEHA GUPTA
18 Deputy City Attorney

19 n:\legana\as2017\1600798\01200894.docx