

1 [Mandatory Recycling and Composting.]

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3 **Ordinance amending the San Francisco Environment Code by adding Chapter 19,**
4 **Sections 1901 through 1912, entitled "Mandatory Recycling and Composting**
5 **Ordinance," amending the San Francisco Public Works Code by amending Section 173,**
6 **and amending the San Francisco Health Code by amending Sections 291, 291.1, 291.2,**
7 **291.4, 291.7, 291.11, 291.12, 291.15, 291.17, and 293.1, and by repealing current**
8 **Sections 291.9 and 291.16 and adding a new Section 291.16, all to: (1) require all**
9 **persons located in San Francisco to separate recyclables, compostables and landfilled**
10 **trash and participate in recycling and composting programs; (2) provide enforcement**
11 **mechanisms and penalties for violations; (3) ensure that all properties subscribe to**
12 **refuse collection service; and (4) authorize a Department of Public Health inspection**
13 **fee of \$167 per hour; and making environmental findings and setting an operative date.**

14 Note: Additions are *single-underline italics Times New Roman*;
15 deletions are *strikethrough italics Times New Roman*.
16 Board amendment additions are double underlined.
Board amendment deletions are ~~strikethrough normal~~.

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

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19 Section 1. **Findings.** The Board of Supervisors finds and declares:

20 1. The City and County of San Francisco has a duty to protect the natural
21 environment, the economy, and the health of its citizens.

22 2. The California Integrated Waste Management Act of 1989 requires cities and
23 counties to reduce, reuse and recycle (including composting) solid waste generated in the
24 state to the maximum extent feasible before any incineration or landfill disposal of waste, to
25 conserve water, energy and other natural resources, and to protect the environment.

1 3. The California Integrated Waste Management Act of 1989 mandates that each local
2 jurisdiction in the state divert 50% of discarded materials from landfill. Every city and county
3 in California could face fines up to \$10,000 a day for not meeting the 50% diversion goal. In
4 2001, the California Integrated Waste Management Board adopted a Strategic Directive
5 statewide zero waste goal.

6 4. The State of California regulates hazardous waste (e.g., paint, batteries, electronics)
7 and sets management standards, including banning landfill disposal of hazardous waste, to
8 protect public health and the environment, and conserve natural resources. As a result,
9 services to collect and recycle hazardous waste materials include more than 100
10 neighborhood drop-off sites throughout the city for various materials, a year-round facility that
11 accepts all materials, and an appointment-based home pick-up service.

12 5. For each ton of municipal waste landfilled, about 71 tons of waste have been
13 created “upstream” from the mining, manufacturing and distribution of materials in the product
14 lifecycle, resulting in significant resource depletion, pollution and climate-changing impacts.

15 6. Organic or compostable waste that is buried in the anaerobic conditions of landfills
16 creates methane gas along with the leaching of toxins. Methane gas is at least 21 times as
17 potent as carbon dioxide in changing the planet’s climate. Twenty percent of San Francisco’s
18 planned reductions in climate-changing emissions come from diverting additional solid waste
19 from landfill.

20 7. The Board of Supervisors has adopted goals of 75% diversion from landfill by 2010
21 and zero waste to landfill or incineration by 2020. This policy includes urging greater
22 consumer responsibility, including mandatory participation in diversion programs.

23 8. People who live in, work in, or visit San Francisco generate over 2 million tons of
24 solid waste annually. While the city has an overall landfill diversion rate of 70% (as reported
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1 to the State), most residents and businesses divert closer to 50% through recycling and
2 composting, resulting in over 660,000 tons per year of material from San Francisco being
3 landfilled in 2006.

4 9. Growth in the rate of landfill diversion in San Francisco has leveled off in recent
5 years, with an increase of less than 1% from 2005 to 2006, and continued voluntary diversion
6 participation alone will not likely enable the City to meet its 75% diversion goal by 2010.

7 10. San Francisco's agreement with the Altamont Landfill in Alameda County provides
8 for waste disposal of up to 15 million tons. At the end of 2007, nearly 12 million tons of this
9 contract capacity had been used, leaving about 3 million tons of capacity remaining. At the
10 current disposal rate at the Altamont Landfill there are about 5 years left (until 2013) on the
11 City's landfill contract. Increased diversion will extend the life of this landfill contract with its
12 favorable low disposal costs, while any new landfill contract will likely increase disposal costs
13 and subsequently trash collection rates in San Francisco.

14 11. After years of voluntary, convenient, nation-leading, award-winning programs and
15 outreach and financial incentives, a comprehensive study found that 36% of what San
16 Francisco sends to landfills is compostable (primarily food scraps) and 31% is recyclable
17 (mostly paper), and this breakdown essentially applies to all sectors (residential, commercial
18 and City government).

19 12. There are facilities in the City and surrounding areas that can effectively reuse,
20 recycle, compost or otherwise process and market most materials discarded in San Francisco
21 and thereby divert such materials from landfill while creating jobs.

22 13. Many state and local governments have mandated recycling of various materials
23 and composting of yard trimmings, or conversely banned them from landfill, resulting in
24 significant increases in waste diversion.

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1 14. State legislation that would have mandated owners or managers of multifamily
2 buildings to provide recycling collection for their tenants was vetoed by the Governor because,
3 as he stated, local jurisdictions already have the authority to mandate this participation locally.

4 15. The Board of Supervisors passed a mandatory Construction and Demolition Debris
5 Recovery Ordinance (No. 27-06), effective July 1, 2006, which helped divert more than 26,000
6 additional tons from landfill in its first year of implementation.

7 16. In keeping with the Precautionary Principle, codified in Chapter 1 of the
8 Environment Code, this Chapter requires diversion of recyclable or compostable materials
9 from landfill for beneficial use as a deterrent to unsafe and wasteful practices. In this way, the
10 City will create and maintain a healthy, viable environment for current and future generations,
11 and will become a model of sustainability.

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13 Section 2. The San Francisco Environment Code is hereby amended by adding
14 Chapter 19, Sections 1901 through 1912, to read as follows:

15 **SEC. 19014801. TITLE.**

16 *This Chapter shall be entitled "Mandatory Recycling and Composting".*

17
18 **SEC. 19024802. DEFINITIONS.**

19 *For the purposes of this Chapter, the following words have the following meanings:*

20 *(a) "Adequate Refuse Collection Service" means that a dwelling or commercial property is*
21 *serviced by a Collector for recyclables, compostables, and trash, and that the level of service is*
22 *sufficient to contain the refuse generated at that dwelling or commercial property.*

23 *(b) "City" means the City and County of San Francisco.*

1 (c) "Collection" means taking physical possession of and removing discarded material from
2 the place of generation for subsequent off-site management of that material.

3 (d) "Collection Container" means the receptacle that is provided, designated and serviced by
4 the collector for the collection of recyclables, compostables or trash.

5 (e) "Collector" means a person, firm or corporation licensed and permitted to collect refuse by
6 the Director of Public Health pursuant to the provisions of the Refuse Collection and Disposal
7 Ordinance adopted November 8, 1932, as amended, and any other collectors of discarded material not
8 excluded under that ordinance.

9 (f) "Commercial Property" means a parcel or any portion of real property where refuse is
10 generated that is not a dwelling, including schools, institutions, and City properties.

11 (g) "Compostable" means any material that can be broken down into, or otherwise become
12 part of, usable compost (e.g., soil-conditioning material) in a safe and timely manner as accepted in
13 San Francisco's compostables collection program, such as food scraps, soiled paper and plant
14 trimmings. Compostable materials can also include disposable plastic food service ware and bags if
15 labeled "Compostable", in accordance with the Food Service Waste Reduction Ordinance (No.
16 295-06) and Department of the Environment regulations for easy identification, meeting the ASTM
17 Standard Specification (D6400) for compostable plastics, and consistent with State labeling law
18 (California Public Resources Code Section 42359) that any plastic bag or food container labeled
19 "Compostable" must meet the ASTM Standard Specification for compostable plastics.

20 (h) "Construction and Demolition Debris" means building materials generated from
21 construction and demolition activities including, but not limited to, fully-cured asphalt, concrete, brick,
22 rock, soil, lumber, gypsum wallboard, cardboard and other associated packaging, roofing material,
23 ceramic tile, carpeting, fixtures, plastic pipe, metals, tree stumps, and other vegetative matter resulting
24 from land clearing and landscaping for construction, deconstruction, demolition or land developments.

1 Hazardous waste, as defined in California Health and Safety Code Sections 25100 et seq., is not
2 construction and demolition debris for purposes of this Chapter.

3 (i) "Customer" means any person being served food from a food vendor or event.

4 (j) "Department" means the San Francisco Department of the Environment.

5 (k) "Designated" means clearly labeled and color-coded for a material type, such as labeled
6 blue receptacles for recyclables, green for compostables and black for trash.

7 (l) "Director" means the Director of the Department of the Environment or his or her designee.

8 (m) "Disposable Food Service Ware" means all containers, bowls, plates, trays, carton, cups,
9 lids, straws, forks, spoons, knives, napkins and other items that are designed for one-time use for
10 servicing food.

11 (n) "Dwelling" means a residence, flat, apartment, or other facility, used for housing one or
12 more persons.

13 (o) "Event" means any function that serves food and is permitted through any agency,
14 including, but not limited to, the Department of Parking and Traffic, the Recreation and Park
15 Department, the Port of San Francisco or, to the extent permitted by law, the National Park Service.

16 (p) "Food Vendor" means any and all sales outlets, stores, shops, vehicles or other places of
17 business located or operating in the city that operate primarily to sell or convey foods or beverages to
18 consumers, and stores that sell food or beverages in combination with a gasoline station.

19 (q) "Manager" means the authorized agent for the owner of a building, structure or property,
20 who is responsible for the day-to-day operation of said building, structure or property.

21 (r) "Multifamily Property" means a property that includes multiple residential households and
22 has a single account with collector(s) for recyclables, compostables and trash.

1 (s) "Person" means a natural person (including a resident, employee, or visitor), a firm,
2 business concern, association, partnership, corporation or governmental entity, including the City and
3 County of San Francisco and its departments, boards and commissions, and successors or assigns.

4 (t) "Public Trash Container" means any receptacle installed by a public agency at a sidewalk,
5 park or other public area and that is not under the control, unless otherwise required by this Chapter,
6 of a multifamily or commercial property, food vendor or event manager.

7 (u) "Recyclable" means any material that can be sorted and reconstituted, for the purpose of
8 using the altered form in the manufacture of a new product, as accepted in San Francisco's recycling
9 collection program, such as paper, bottles and cans. Recycling does not include burning, incinerating,
10 converting, or otherwise thermally destroying solid waste.

11 (v) "Refuse" has the meaning set forth in the Refuse Collection and Disposal Ordinance
12 adopted November 8, 1932, as amended, and includes recyclables, compostables, and trash, but not
13 construction and demolition debris or hazardous waste, all as defined in this Chapter.

14 (w) "Source Separate" means to divide refuse at the place of discard generation, prior to
15 collection, into separate containers that are designated for recyclables, compostables or trash.

16 (x) "Transfer Station" means a facility that is permitted under Health Code Section 294 to
17 receive discarded materials and transport them to a landfill for disposal.

18 (y) "Trash" means material that is designated for landfill disposal by the collector and does
19 not include either recyclable or compostable materials. The term "trash" does not include hazardous
20 waste, as defined in California Health and Safety Code Sections 25100 et seq., or construction and
21 demolition debris as defined in this Chapter.

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23 **SEC. 19034803. SOURCE SEPARATION OF REFUSE REQUIRED.**
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1 All persons in San Francisco must source separate their refuse into recyclables, compostables
2 and trash, and place each type of refuse in a separate container designated for disposal of that type of
3 refuse. No person may mix recyclables, compostables or trash, or deposit refuse of one type in a
4 collection container designated for another type of refuse, except as otherwise provided in this
5 Chapter.

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7 **SEC. 19041804. REQUIREMENTS FOR OWNERS OR MANAGERS OF MULTIFAMILY AND**
8 **COMMERCIAL PROPERTIES.**

9 (a) Owners or managers of multifamily or commercial properties must provide Adequate
10 Refuse Collection Service to the tenants, employees, contractors, and customers of the properties.

11 (b) Owners or managers of multifamily or commercial properties must supply appropriate
12 containers, placed in an appropriate location, to make source separation of refuse convenient for the
13 tenants, employees, contractors, and customers of the properties. The containers must:

14 (1) Be of appropriate number and size in light of the recyclable, compostable, and trash
15 quantities reasonably anticipated to be generated at the location;

16 (2) Bear appropriate signage and be color coded to identify the type of refuse to be
17 contained—blue for recyclables, green for compostables, and black for trash—and meet any additional
18 design criteria established by the Department by regulation; and,

19 (3) Be placed as close together as possible, to provide equally convenient access to
20 users.

21 (c) Owners or managers of multifamily or commercial properties must provide information
22 and/or training for new tenants, employees and contractors, including custodians, on how to source
23 separate recyclables, compostables and trash, and must re-educate existing tenants, employees and
24 contractors at least once a year.

1 (d) New construction or expansion of multifamily or commercial properties may be subject to
2 Department of Building Inspection requirements, such as Administrative Bulletin 088 and Building
3 Code Chapter 13, Section 1304C, to provide adequate space for recyclables and compostables, which
4 includes requiring any chute systems to keep compostables, recyclables and trash separate.

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6 **SEC. 19051805. REQUIREMENTS FOR OWNERS OR MANAGERS OF FOOD VENDORS**
7 **AND EVENTS.**

8 (a) Owners or managers of food vendors and events must provide Adequate Refuse Collection
9 Service to their employees, contractors and customers.

10 (b) Owners or managers of food vendors and events must supply appropriate containers,
11 placed in appropriate locations, to make source separation of recyclables, compostables, and trash
12 convenient for the employees, contractors, and customers of the food vendors and events. The
13 containers must:

14 (1) Be of appropriate number and size in light of the recyclable, compostable, and trash
15 quantities reasonably anticipated to be generated at the location;

16 (2) Bear appropriate signage and be color coded to identify the type of refuse to be
17 deposited—blue for recyclables, green for compostables, and black for trash—and meet any additional
18 design criteria established by the Department by regulation; and,

19 (3) Be placed as close together as possible to provide equally convenient access to
20 users.

21 (c) Owners or managers of food vendors and events must provide information and/or training
22 for new tenants, employees, and contractors, including custodians, on how to source separate
23 recyclables, compostables, and trash, and must re-educate existing tenants, employees, and contractors
24 at least once a year.

1 (d) Food vendors that provide disposable food ware must have at least one container each for
2 recyclables, compostables and trash for use by customers and visitors, placed inside near a main exit.
3 Food vendors meeting the requirements of this Section are exempt from the requirement of Public
4 Works Code Section 173 to place “a litter receptacle outside each exit.” Multiple food vendors that
5 provide disposable food service ware and share a common eating area may share an appropriate
6 number, size, and placement of containers for recyclables, compostables and trash for convenient use
7 by customers or visitors.

8 (e) Food vendors and events must not put any fats, oils or grease in trash collection containers.

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10 **SEC. 19061806. REQUIREMENTS FOR REFUSE COLLECTORS, TRANSFER STATIONS,**
11 **AND PROCESSING FACILITIES.**

12 (a) All collectors must appropriately designate the collection containers they provide to
13 customers for source separation of recyclables, compostables and trash. The containers must:

14 (1) Bear appropriate signage that allows users to clearly and easily identify which
15 containers to use for recyclables, compostables or trash;

16 (2) Be color-coded—blue for recyclables, green for compostables and black for trash;
17 and,

18 (3) Bear the name of the collector to whom the container belongs.

19 (b) (1) If a collector finds materials that are not the correct type as designated for that
20 container, such as recyclables or compostables in a trash container, or trash in a compostables or
21 recyclables container, the collector then must leave a tag on the container identifying the incorrect
22 materials.

23 (2) If the collector continues to find incorrect materials in a collection container after
24 the collector has left a previous tag for that customer and that type of container, the collector must
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1 leave another tag on the container identifying the incorrect materials and send a written notice to the
2 person who subscribes for that collection service.

3 (3) If the collector continues to find incorrect materials in a collection container after
4 the collector has already left two or more tags for that customer and that type of container, the
5 collector may refuse to empty the container, subject to California Code of Regulations Title 14,
6 Section 17331, or as determined by the Director of Public Health or his or her designee. If the
7 container is not emptied, the collector must leave a tag and send a written notice to the person who
8 subscribes for the collection service, identifying the incorrect materials and describing what action
9 must be taken for the materials to be collected; provided, however, that a collector may not refuse on
10 this basis to empty containers from multifamily or commercial properties with multiple tenants and
11 joint account collection service.

12 (4) The collector shall, upon request, provide to the Director a list of the names and
13 addresses of those persons who have received tags or notices or whose containers have not been
14 emptied due to non-compliance with this Chapter, or copies of the tags or notices issued by the
15 collector. The collector shall also provide to the Director, upon request, a list of the names, addresses,
16 and service levels of the collector's customers and any additional information required by the Director.

17 (c) Within 90 days of the end of each calendar year, each collector must submit to the
18 Department, on a form specified by the Director, an annual report of all tons collected by material type
19 and to whom the material was sent.

20 (d) No person may deliver recyclables or compostables, including those mixed with trash, to a
21 landfill or transfer station for the purpose of having those materials landfilled, except as follows:

22 (1) A collector may drop off recyclables or compostables at the San Francisco transfer
23 station for landfill if the transfer station has agreed to provide to the Director, upon request, audits of
24 collection vehicles for a specified period going forward in time. The transfer station's audit shall
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1 report the quantity of recyclables or compostables, stated as estimated tons per load or as a percentage
2 of the loads, deposited at the transfer station by collection vehicles specifically identified in the request
3 over a reasonable period of time occurring after the request.

4 (2) A processing facility that sorts and reconstitutes recyclables for the purpose of using
5 the altered form in the manufacture of a new product or turns compostables into usable and marketable
6 compost (e.g., soil-conditioning) material may send to a landfill a minor portion of those materials that
7 constitutes unmarketable processing residuals, if the processing facility provides to the Director, upon
8 request, audits of specific collection vehicles for a specific period going forward in time, of the
9 quantities of recyclables or compostables sent to the landfill from the processing facility.

10 (e) No person may deliver trash from the city, including trash mixed with recyclables or
11 compostables, to a processing facility, unless the processing facility has agreed to provide to the
12 Director, upon request, audits of collection vehicles for a specified period going forward in time. The
13 processing facility's audit shall report the quantity of trash, stated as estimated tons per load or as a
14 percentage of the loads, deposited at the processing facility by collection vehicles specifically identified
15 in the request over a reasonable period of time occurring after the request.

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17 **SEC. 19074807. REQUIREMENT TO SUBSCRIBE TO REFUSE COLLECTION SERVICE.**

18 Owners of residential, multifamily or commercial properties, events or other facilities that
19 generate refuse must subscribe to and pay for Adequate Refuse Collection Service, and provide an
20 accessible location for sufficient levels of service with collector(s) for source separated recyclables,
21 compostables and trash, except as otherwise provided in this Chapter. Owners of such properties are
22 responsible for any failure to subscribe to or pay for sufficient levels of refuse collection service. The
23 Director of Public Health, pursuant to Health Code Article 6, as amended, shall enforce requirements
24 for adequate and continuous refuse collections services.

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SEC. 19081808. ENFORCEMENT.

(a) The Director and his or her designee may administer all provisions of this Chapter and enforce those provisions by any lawful means available for such purpose, except as otherwise provided in this Chapter.

(b) To the extent permitted by law, the Director may inspect any collection container, collection vehicle load, or receiving facility for collected trash, recyclables or compostables.

(c) Except as otherwise provided in this Chapter, the Director of the Department of Public Health or his or her designee may impose administrative fines for violations of those provisions of this Chapter, or of rules and regulations adopted pursuant to this Chapter, that pertain to the jurisdiction of the Department of Public Health.

(d) Except as otherwise provided in this Chapter, the Director of Public Works or his or her designee may impose administrative fines for violations of those provisions of this Chapter, or of any rule or regulation adopted pursuant to this Chapter, that pertain to the jurisdiction of the Department of Public Works.

(e) San Francisco Administrative Code Chapter 100, "Procedures Governing the Imposition of Administrative Fines," as amended, is hereby incorporated in its entirety and shall govern the imposition, enforcement, collection, and review of administrative citations issued to enforce this Chapter and any rule or regulation adopted pursuant to this Chapter; provided, however, that:

(1) The Director of Public Works or the Director of Public Health may adopt regulations providing for lesser penalty amounts than those provided in Administrative Code Section 100.5;

(2) The fine for any violation at a dwelling or commercial property that generates less than one cubic yard of refuse per week may not initially exceed \$100; and,

1 (3) No person who is the owner, tenant, manager, employee, contractor, or visitor of a
2 multifamily or of a multi-tenant commercial property shall be subject to fines or penalties for violation
3 of Section ~~19034803~~, unless and until the Director of the Department of the Environment has adopted
4 specific regulations setting out the liability of such persons. The Director shall not adopt such
5 regulations prior to July 1, 2011.

6 (f) The City shall use administrative penalties collected under this Chapter, including recovery
7 of enforcement costs, to fund implementation and enforcement of this Chapter. Remedies under this
8 Chapter are in addition to and do not supersede or limit any and all other remedies, civil or criminal.

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10 **SEC. ~~19094809~~. FORMS, REGULATIONS AND GUIDELINES.**

11 (a) After public notice and a public hearing, the Director may adopt necessary forms,
12 regulations, and guidelines to implement this Chapter.

13 (b) The Department shall provide assistance regarding compliance with this Chapter.

14 (c) The Department shall provide information on its website regarding what materials are
15 accepted as recyclables, compostables, and trash under this Chapter.

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17 **SEC. ~~19104840~~. EXCEPTIONS**

18 (a) A property owner or manager may seek a waiver from the Director of all or portions of this
19 Chapter, if the applicant submits documentation, using a form specified by the Director and including a
20 signed affidavit under penalty of perjury, that shows that the property does not have adequate storage
21 space for containers for recyclables, compostables or trash. In cases where after on-site verification
22 space limitations are determined to exist, the Director shall evaluate the feasibility of sharing
23 containers for recyclables, compostables or trash with contiguous properties, and, where feasible,
24 requiring container sharing in lieu of providing a waiver.

1 **(b) Except as otherwise required by the Director, a collector may drop-off compostables or**
2 **recyclables at the San Francisco transfer station that have been collected from public trash containers.**
3 **The Director may require public trash containers to have a recyclables receptacle attached.**
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5 **SEC. 19114844. DISCLAIMER OF LIABILITY.**

6 **The degree of protection required by this Chapter is considered to be reasonable for regulatory**
7 **purposes. The standards set forth in this Chapter are minimal standards and do not imply that**
8 **compliance will ensure safe handling of recyclables, compostables or trash. This Chapter shall not**
9 **create liability on the part of the City, or any of its officers or employees for any damages that result**
10 **from reliance on this Chapter or any administrative decision lawfully made in accordance with this**
11 **Chapter. All persons handling discarded materials within the city should be and are advised to**
12 **conduct their own inquiry as to the handling of such materials. In undertaking the implementation of**
13 **this Chapter, the City is assuming an undertaking only to promote the general welfare. It is not**
14 **assuming, nor is it imposing on its officer and employees, an obligation for breach of which it is liable**
15 **in money damages to any person who claims that such breach proximately caused injury.**
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17 **SEC. 19124842. DUTIES ARE DISCRETIONARY.**

18 **Subject to the limitations of due process and applicable requirements of State or federal laws,**
19 **and notwithstanding any other provisions of this Code, whenever the words “shall” or “must” are used**
20 **in establishing a responsibility or duty of the City, its elected or appointed officers, employees or**
21 **agents, it is the legislative intent that such words establish a discretionary responsibility or duty**
22 **requiring the exercise of judgment and discretion.**
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1 Section 3. The San Francisco Public Works Code is hereby amended by amending
2 Section 173, to read as follows:

3 **SEC. 173. PLACEMENT AND MAINTENANCE OF LITTER RECEPTACLES.**

4 (a) It is the intent of this Section to ensure that public areas are kept clean and free
5 from litter.

6 (b) Any person, firm or corporation operating a grocery store, a liquor store or an
7 establishment selling food or beverages for consumption off the premises shall place and
8 maintain a litter receptacle outside of each exit from said premises for the use of the patrons
9 thereof during business hours; *provided, however, that a person, firm, or corporation is not*
10 *required under this Section to place and maintain a litter receptacle outside each exit if that person,*
11 *firm, or corporation places and maintains a set of three containers for recyclables, compostables and*
12 *trash for use by customers and visitors as specified in Chapter ~~19~~ 48 of the Environment Code.*

13 (c) Any person, firm, corporation, or property owner operating a place of employment
14 shall provide and maintain adjacent to the place of employment sufficient ashtrays or other
15 receptacles for the disposal of cigarettes, cigars, and other similar combustible products used
16 by employees and patrons who smoke. The Director of Public Works shall authorize the
17 placement of such ashtrays or other receptacles in the public right-of-way where necessary.

18 (d) The design, capacity, location, and number of ashtrays and receptacles shall be
19 prescribed by the Director of Public Works. Decals may be placed upon said receptacles
20 subject to the limitations set forth in Section 171 of this Article.

21 (e) The receptacle shall be emptied when full and at the close of business each day
22 and the contents thereof shall be stored or set out for collection in the same manner as other
23 refuse generated in the operation of the business. Each receptacle shall be maintained in a
24 clean and sanitary condition.

1 (f) Violation of this Section shall constitute an infraction and shall be punishable by a
2 fine of not less than \$80 nor more than \$100; for a second offense by a fine not less than
3 \$150 nor more than \$200; and for each additional offense by a fine not less than \$250 nor
4 more than \$500. In the alternative, an administrative penalty not to exceed \$250 may be
5 assessed for each violation. Such penalty shall be assessed, enforced and collected in
6 accordance with Section 39-1 of the Police Code.

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8 Section 4. The San Francisco Health Code is hereby amended, by amending Sections
9 291, 291.1, 291.2, 291.4, 291.7, 291.11, 291.12, 291.15, and 291.17, and by repealing the
10 current Section 291.16 and adding a new Section 291.16, to read as follows:

11 **SEC. 291. OWNER RESPONSIBILITY FOR MAINTENANCE OF REFUSE COLLECTION**
12 **SERVICE TO DWELLINGS AND COMMERCIAL PROPERTIES; DEFINITIONS.**

13 Unless the context otherwise specifies or requires, the terms defined in this Section
14 shall, for all purposes of this Article, have the meanings herein specified, the following
15 definitions to be equally applicable to both the singular and plural forms of any of the terms
16 herein defined:

17 (a) The term "City" means the City and County of San Francisco;

18 (b) The term "Collector" means a refuse collector duly licensed pursuant to the
19 provisions of the Initiative Ordinance;

20 *(c) The term "Commercial Property" means a parcel or any portion of real property where*
21 *Refuse is generated that is not a Dwelling, including schools, institutions, and City properties.*

22 *(d) ~~(e)~~* The term "Director" means the Director of Health of the City, or his authorized
23 agents;

1 ~~(e)~~ The term "dwelling" means a residence, flat, apartment, or other facility, used for
2 housing one or more persons in the City and County of San Francisco;

3 ~~(f)~~ The term "Initiative Ordinance" means the Initiative Refuse Collection and
4 Disposal Ordinance adopted November 8, 1932, as amended; and

5 ~~(g)~~ The term "Owner" when used with reference to a dwelling shall mean, and shall
6 conclusively be deemed to be, the legal Owner of the dwelling and when used in reference to a
7 commercial property shall mean, and shall conclusively be deemed to be, the legal Owner of the
8 commercial property.

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10 **SEC. 291.1. OWNER RESPONSIBLE FOR REFUSE COLLECTION SERVICE.**

11 The owner of any dwelling or commercial property shall subscribe to and pay for adequate
12 refuse collection service rendered to such dwelling or commercial property by a collector and
13 shall provide at a location accessible to the collector for an adequate container or containers
14 for deposit of refuse of such capacity as the Director of Public Works may prescribe. The
15 necessity for and type of refuse collection service required and the rates charged therefor
16 shall be governed by the Initiative Ordinance, Chapter 1948 of the Environment Code, and any
17 applicable rules and regulations adopted by the Director of Public Health.

18 Nothing in this Section is intended to prevent an arrangement or the continuance of an
19 existing arrangement, under which payments for refuse collection service are made by a
20 tenant or tenants, or any agent, in behalf of the Owner. However, any such arrangement will
21 not affect the Owner's obligation to the City.

22

23 **SEC. 291.2. FAILURE TO INITIATE SERVICE, MAINTAIN ADEQUATE SERVICE, OR TO**
24 **PROVIDE SUFFICIENT REFUSE CONTAINERS.**

25

1 When an owner fails to initiate adequate refuse collection service within 15 days of
2 occupancy of a Dwelling or commercial property by any person, including a business entity, or
3 fails to maintain adequate refuse collection service, the Director will evaluate the need for service and
4 what would constitute adequate service in this context, and, where appropriate, give the Owner an
5 order from the Director ~~notification~~ that such service or additional service is required. In
6 determining the need for service or additional service, the Director may make use of any relevant
7 information or evidence, including information provided by the Collector regarding the existing level of
8 service. A copy of the Director's order ~~said notice~~ will be sent to the Collector. If the Owner
9 does not arrange with the Collector for service within 15 days from the date of mailing of the
10 order, or request within that time a hearing before the Director to dispute a service or change of
11 service requirement ~~notice~~, then the Collector shall, consistent with the Director's order, initiate,
12 maintain, or increase ~~and continue~~ refuse collection service for said dwelling or commercial
13 property.

14 When in the judgment of the Director additional refuse containers are required, they
15 shall be provided by the Owner upon written notification from the Director.

16 The Director, in consultation with the Department of the Environment and after a public notice
17 and hearing, may adopt forms, regulations, and guidelines to ensure the payment and collection of
18 refuse services from any commercial property managers who fail to initiate or maintain sufficient
19 refuse service, including standards and criteria for determining whether a Commercial property has
20 provided for sufficient refuse service, or to otherwise implement and enforce Sections 291 et seq.

21 The Director of Public Health, or his or her designee, may impose administrative fines for
22 violations of Sections 291.1 and 291.2, or any rules or regulations adopted by the Director to
23 implement and enforce Sections 291 et seq. San Francisco Administrative Code Chapter 100,
24 "Procedures Governing the Imposition of Administrative Fines," as amended, is hereby incorporated in
25

1 its entirety and shall govern the imposition, enforcement, collection, and review of administrative
2 citations issued to enforce this Chapter and any rule or regulation adopted pursuant to this Chapter;
3 provided, however, that the Director may adopt regulations providing for lesser penalties than those
4 provided in Administrative Code Section 100.5.

5 No person who is the owner, tenant, manager, employee, contractor, or visitor of a multifamily
6 dwelling or of a multi-tenant commercial property shall be subject to fines or penalties for failure to
7 provide adequate refuse collection service, unless and until the Director has adopted specific
8 regulations establishing the responsibilities of such persons under this Article.

9 The fine for any violation at a dwelling or commercial property which generates less than one
10 cubic yard of refuse per week may not initially exceed \$100.

11 In addition to any administrative penalty assessed pursuant to this Article, the Director may
12 assess the responsible Owner the reasonable enforcement costs incurred by the City, including
13 reasonable attorneys' fees. The imposition of enforcement costs is within the discretion of the Director.

14

15 **SEC. 291.4. COLLECTOR ENTITLED TO PAYMENT FOR SERVICES RENDERED.**

16 Pursuant to the provisions of the Initiative Ordinance, the Collector shall be entitled to
17 payment from the owner for services rendered. When the Owner has been directed to
18 initiate service but fails to provide an adequate container or containers at an accessible
19 location and the Collector attempts to collect refuse from the dwelling or commercial property,
20 then such attempt shall be deemed the rendering of collection service for which Collector is
21 entitled to compensation in the same manner and amount as if refuse had actually been
22 collected. Should there be failure to make payment for any service rendered to any dwelling
23 by the Collector, or rendered to a commercial property pursuant to an order of the Director of

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1 Public Health under Section 291.2, the means for effecting payment shall be in accordance
2 with the procedure set forth hereunder.

3

4 **SEC. 291.7. PAYMENT BY DEPARTMENT OF PUBLIC HEALTH LIEN.**

5 Following ~~Within 45 days following~~ the receipt of the complaint filed in accordance with
6 Section 291.5, the Director shall, regardless of any sale or other transfer of property following
7 the date of receipt of such complaint, process the complaint for payment to the Collector from
8 a continuing appropriation account so provided herein under Section 291.14, and the Owner
9 shall be liable to the City for fees paid. The payment by the City will, upon the recording
10 thereof in the manner herein provided, create a lien on the real property to which the service
11 was rendered. The lien will be officially recorded in the County Recorder's files, the lien to
12 carry and will include additional charges for administrative expenses of \$50 or 10 percent of
13 the amount owned, whichever is higher, plus any applicable recording fees, and interest at a rate
14 of 1 1/2 percent per full month compounded monthly from the date of the recordation of the
15 lien on all fees and charges due. The Owner shall be notified by the Director that the fees and
16 charges are due to the City. In addition, the Owner shall be notified that if the fees and
17 charges remain unpaid, subsequent proceedings may be taken to make said fees and
18 charges a special assessment on the real property to which said refuse collection service was
19 rendered.

20

21 ~~SEC. 291.9. DIRECTOR'S HEARING.~~

22 ~~Prior to the report of delinquent collection services fees being submitted to the Board of~~
23 ~~Supervisors, the Director shall cause a hearing to be held as to each owner of the real~~

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1 property to which service was rendered. At such hearing, the Owner may make any protest or
2 objection regarding inclusion on the list.

3 The Director shall fix a date, time and place of hearing and shall cause a notice, at least 10
4 days prior to said hearing, to be mailed to the Owners.

5 At the conclusion of the hearing, the Director shall issue a report of delinquent charges
6 together with his recommendation as to any charge.

7

8 **SEC. 291.11. REPORTS OF DELINQUENCIES TRANSMITTED TO THE DIRECTOR**
9 **BOARD OF SUPERVISORS.**

10 Any charges that remain unpaid by a residential property owner or a commercial
11 property owner pursuant to an order of the Director under Section 291.2 for a period of 60 or
12 more days after the date upon which they were billed are delinquent and may be collected in
13 the manner set forth in this Article. A report of delinquent charges shall be transmitted to *the*
14 *Board of Supervisors* by the Director. Upon receipt by the *Director Board of Supervisors* of the
15 report, *he or she* ~~it~~ shall fix a time, date and place for hearing the report and any protests or
16 objections thereto.

17

18 **SEC. 291.12. HEARING.**

19 The *Director Board of Supervisors* shall cause notice of the hearing to be mailed to the
20 Owner of the real property to which the service was rendered not less than 10 days prior to
21 the date of hearing. At the time fixed for the report, the *Director Board of Supervisors* shall hear
22 it with any objections of the Owner liable to be assessed for delinquent accounts. The
23 *Director Board of Supervisors* may make such revisions, corrections or modifications of the
24 report as it may deem just and in the event that the *Director Board of Supervisors* is satisfied

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1 with correctness of the report (as submitted or as revised, corrected or modified), the Director
2 shall confirm the report it shall be confirmed or rejected by resolution. The decision of the Director
3 Board of Supervisors on the report and on all protests or objections thereto shall be final and
4 conclusive.

5

6 **SEC. 291.15. MANNER OF GIVING NOTICES.**

7 Any notice required to be given hereunder by the City, the Director or any Collector to
8 an Owner shall be sufficiently given or served upon the Owner for all purposes hereunder if
9 personally served upon the Owner or if deposited, postage prepaid, in a post office letter box
10 addressed to the "Owner" at the official address of the Owner maintained by the Tax Collector
11 of the City for the mailing of tax bills or, if no such address is available, to the Owner at the
12 address of the dwelling or commercial property.

13

14 **SEC. 291.16. INSPECTION FEE.**

15 If the Director of Public Health causes a Dwelling or a Commercial Property to be inspected to
16 determine whether the Owner has complied with Section 291.1, the Owner of the Dwelling or
17 Commercial Property shall pay an inspection fee equal to \$167 per hour of Department of Public
18 Health staff time spent during the inspection.

19

20 **SEC. 291.16. PENALTY.**

21 Notwithstanding the provisions of Section 291.3 of this Article, any person who shall violate any
22 of the provisions of Sections 291.1 or 291.2 of this Article shall be guilty of an infraction or a
23 misdemeanor. If charged as an infraction, upon conviction thereof, said person shall be punished for

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1 ~~the first offense by a fine of not less than \$10 nor more than \$50; and for a second and each additional~~
2 ~~offense by a fine of not less than \$20 nor more than \$100.~~

3 ~~If charged as a misdemeanor, upon conviction thereof, said person shall be punished by~~
4 ~~imprisonment in the County Jail not exceeding one year or a fine not exceeding \$1,000. The complaint~~
5 ~~charging such violation shall specify whether the violation is a misdemeanor or infraction, which~~
6 ~~decision shall be solely that of the District Attorney.~~

7

8 **SEC. 291.17. SEVERABILITY.**

9 If any part or provisions of Sections 291 through ~~291.16~~ 291.16 or application thereof, to
10 any person or circumstance is held invalid, the remainder of the Section, including the
11 application of such part or provision to other persons or circumstances shall not be affected
12 thereby and shall continue in full force and effect. To this end the provisions of the Sections
13 are severable.

14

15 Section 5. The San Francisco Health Code is hereby amended by amending
16 Section 293.1, to read as follows:

17 **SEC. 293.1. VIOLATIONS.**

18 It shall be unlawful for any person other than the Collector, an authorized City employee
19 for enforcement purposes, or the generator of recyclable materials ~~City's authorized curbside~~
20 ~~recycling program collectors~~ to take, remove, move or otherwise appropriate recyclable materials
21 that have been placed in a container designated by a Collector for recyclables or to take, remove,
22 move, or otherwise appropriate the container that is placed for collection ~~the container in which~~
23 ~~recyclable materials are placed for collection and the matters contained therein~~. The City and its

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1 duly authorized collectors shall have the exclusive right to collect recyclable materials placed
2 for collection in public sidewalk and street areas.

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4 Section 6. **Environmental Findings.** On _____, 2008, the Planning
5 Department determined that the actions contemplated in this Ordinance are categorically
6 exempt under the California Environmental Quality Act (California Public Resources Code
7 sections 121000 et seq.). Said determination is on file with the Clerk of the Board of
8 Supervisors in File No. _____ and is incorporated herein by reference.

9
10 Section 7. **Severability.** If any part or provision of this ordinance, or the application
11 thereof to any person or circumstance, is held invalid, the remainder of the ordinance,
12 including the application of such part or provision to other persons or circumstances shall not
13 be affected thereby and shall continue in full force and effect. To this end the provisions of the
14 ordinance are severable.

15
16 Section 8. **Operative Date.** The operative date of this ordinance shall be 90 days
17 after its effective date.

18
19
20 APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

21
22 By: _____
23 CECILIA T. MANGOBA
Deputy City Attorney

24
25
Mayor Newsom
BOARD OF SUPERVISORS