

## LEGISLATIVE DIGEST

[Environmentally Preferable Purchasing for Commodities.]

**Ordinance repealing Chapter 2 of the Environment Code which established an environmentally preferable purchasing pilot program and sections 507, 508 and 512 of Chapter 5 and Chapter 9 of the Environment Code which pertain to purchasing certain environmentally preferable commodities and enacting a new Chapter 2 of the Environment Code to establish a comprehensive City-wide Environmentally Preferable Purchasing Program for purchases of commodities; and making conforming changes in Environment Code sections 501, 506 and 511 and Administrative Code sections 21.16 and 21.30.**

### Existing Law

Over the last 15 years, the Board of Supervisors has enacted various requirements for purchasing environmentally preferable products. These requirements include specifications for the purchase of paper products, numerous office, construction, park and recreational products and batteries. These requirements are codified throughout the Environment Code.

In 1999, the Board of Supervisors established the Environmentally Preferable Purchasing pilot program ordinance (Environment Code Chapter 2) with respect to the purchase of chemical products to initiate the process of reducing the health and environmental impact of these products in City operations. The ordinance required a three-year pilot program during which City departments would survey their use of chemical products; establish standards or criteria for evaluating the most environmentally preferred products for performing a certain task; and evaluate whether the use of chemical products could be reduced by product substitution or changes in work practices. The Department of the Environment was the lead agency for coordination of the pilot program. Based on the findings of the pilot program, and as required by the ordinance, the Commission on the Environment submitted a report to the Board recommending that the Board adopt legislation enacting a City-wide Environmental Preferable Purchasing Program. All tasks required by the existing ordinance are complete.

### Amendments to Current Law

This ordinance would repeal the current pilot program ordinance and create a City-wide Environmentally Preferable Purchasing ordinance for commodities based on the pilot program and goals set forth in the ordinance and the Precautionary Principle (Chapter 1 of the Environment Code). The ordinance would require the Commission on the Environment to review all commodities regularly purchased by City departments and periodically identify "Targeted Product Categories" of commodities which may cause undesirable environmental impacts and for which alternative products should be identified and substituted. The Department of the Environment would then be required to evaluate substitute products and establish "approved alternatives" for that targeted product. Once the Department establishes a list of approved alternatives to a targeted product, City departments may only buy from that

list. The ordinance would give the City Purchaser and City departments discretion to give priority to commodities produced within the City, if any, when deciding which approved alternative to buy. The ordinance would allow for City department and public participation in each step of the listing process. Waivers may be granted in an emergency, when no approved alternative meets a department's performance specifications, or when all approved alternatives are cost prohibitive.

In order to consolidate other requirements regarding environmentally preferable purchasing of commodities into the City-wide program, this ordinance would repeal other provisions throughout the Environment Code and direct the Department of the Environment to immediately adopt such requirements as regulations effective on the date this ordinance is effective. Future changes to these requirements in regulation form, which will be necessary to make them more consistent with the new program, will be made after a public hearing in accordance with the new ordinance.

#### Background Information

On March 3, 2003, the Board of Supervisors adopted Resolution 129-03, endorsing the Precautionary Principle and requesting the Department of the Environment to propose legislation adopting the Precautionary Principle as a general City policy. In June 2003, the Board of Supervisors and Mayor adopted the Precautionary Principle as a guiding policy for all City actions (Environment Code Chapter 1). Resolution 129-03 also stated that the specific integration of a precautionary approach to the purchase of all commodities by the City would be an appropriate first step to implementing the Precautionary Principle given the City's annual purchasing power of over \$600 million and requested the Department of the Environment to submit for the Board's consideration legislation applying the precautionary principle to the purchase of commodities. The Department of the Environment, working with the Commission on the Environment, the sponsor and after numerous public hearings, submits this legislation for the Board and Mayor's consideration.

FILE NO. 050595

ORDINANCE NO.

1 [Environmentally Preferable Purchasing for Commodities.]

2 **Ordinance repealing Chapter 2 of the Environment Code which established an**  
 3 **environmentally preferable purchasing pilot program and sections 507, 508 and 512 of**  
 4 **Chapter 5 and Chapter 9 of the Environment Code which pertain to purchasing certain**  
 5 **environmentally preferable commodities and enacting a new Chapter 2 of the**  
 6 **Environment Code to establish a comprehensive City-wide Environmentally Preferable**  
 7 **Purchasing Program for purchases of commodities; and making conforming changes**  
 8 **in Environment Code sections 501, 506 and 511 and Administrative Code sections**  
 9 **21.16 and 21.30.**

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

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

15 Section 1. The San Francisco Environment Code Chapter 2 is hereby repealed  
 16 in its entirety.

17 Section 2. The San Francisco Environment Code is hereby amended by  
 18 adding Chapter 2, to read as follows:

19 SEC. 200. FINDINGS.

20 A. Under this Chapter, the City and County of San Francisco wishes to exercise its  
 21 power to make economic decisions involving its own funds as a participant in the marketplace  
 22 and to conduct its own business as a municipal corporation to ensure that purchases of  
 23 commodities and expenditures of public money are made in a manner consistent with its  
 24 human health and environmental policies.

25 B. The results of a three year pilot study implementing environmentally preferable  
purchasing for City departments demonstrated the feasibility of developing relevant human

1 health and environmental selection criteria for products used to maintain City buildings and  
2 vehicle fleets. The pilot program further demonstrated that products meeting these criteria are  
3 available, cost competitive, and effective at meeting the City's performance standards. It is the  
4 City's intention that ultimately there will be environmentally preferable alternatives for each  
5 commodity regularly purchased by the City.

6 C. The Precautionary Principle calls for full disclosure by manufacturers and  
7 suppliers so the most protective standard can be applied in the comparison of potential  
8 alternatives. Only the full disclosure of ingredients and impacts of the products and services  
9 will allow the City to make informed and protective decisions. For example, suppliers of  
10 pesticides should disclose the "inert" ingredients in products used on City property instead of  
11 limiting disclosure to the legal requirement of "active" ingredients which may make up less  
12 than 1% of the product.

13 D. The Precautionary Principle calls for a participatory and transparent process in the  
14 evaluation and selection of potential alternatives. Participation in decision-making by impacted  
15 communities is a basic tenet of the Precautionary Principle.

16 Citizens of San Francisco enacted the Sunshine Ordinance to ensure transparency in City  
17 government; the Commission on the Environment operates under the mandates of the Sunshine  
18 Ordinance in addition to the requirements of the Brown Act and Public Records Act. Above and  
19 beyond that, deliberations and decisions under this ordinance made in accordance with the Public  
20 Participation Guidelines shall be made in concert with affected community members; community  
21 involvement is as central to the process as data gathering and expert advice.

22 E. Purchases of commodities made by the City and County of San Francisco that  
23 are consistent with the Precautionary Principle will encourage market development of new,  
24 healthy, environmentally preferable technologies and products and will demonstrate the  
25

1 efficacy of this approach to other government agencies, residents and businesses which will  
2 help generate regional demand for healthy products, a healthy way of doing business, product  
3 innovation, and business development and competition.

4 F. Implementing the Precautionary Principle is both good science and good economics.  
5 Precautionary action benefits workers, stimulates innovation and supports timely action to avoid costs  
6 to public health and the environment. Precautionary business practice leads to expanded local  
7 production, job creation and the development of technologies that support job creation in the arena of  
8 environmentally preferable products. To this end, the Department of the Environment, the Small  
9 Business Commission, the Office of Contract Administration and the Human Rights Commission will  
10 work together to ensure that there is sufficient outreach, education and training provided to  
11 disadvantaged businesses in order to create equitable access and competition for city contracts affected  
12 by precautionary purchasing.

13 G. Many of the City's purchasing decisions have impacts across departmental boundaries.  
14 Therefore, interdepartmental cooperation is a key element to a successful precautionary purchasing  
15 program. City staff must work closely together to create opportunities for the exchange of ideas and  
16 the flow of information between departments and the larger community.

17 SEC. 201. GOALS. The purpose of this Chapter is to reduce negative impacts to  
18 human health and the environment through the development of specifications for City  
19 purchases that:

20 1. Reduce occupational health hazards for City staff as well as reduce exposure of  
21 City residents and visitors to potentially toxic chemicals by purchasing products for use in City  
22 operations that do not harm human health or the environment;

23 2. Reduce San Francisco's contribution to global climate change by purchasing  
24 products that lead to a reduction in greenhouse gas emissions from Commodities;

1 3. Improve the air quality for San Francisco residents and visitors by purchasing  
2 vehicles and motorized equipment that minimize emissions of air pollutants;

3 4. Protect the quality of San Francisco's ground and surface waters by eliminating  
4 the use of chemicals known to contaminate local water resources through toxicity,  
5 bioaccumulation or persistence; and

6 5. Preserve resources locally and globally through purchasing practices that  
7 include:

8 (i) Maximizing water and energy efficiency and favoring renewable energy  
9 sources;

10 (ii) Maximizing post consumer recycled content and readily recyclable or  
11 compostable materials;

12 (iii) Favoring long-term use through product durability, repairability, and  
13 reuse; and

14 (iv) Considering life cycle economics of a product that includes  
15 manufacture, transportation, use and disposal.

16 SEC. 202. DEFINITIONS. Unless otherwise defined below, words in this Chapter  
17 shall have the same meanings as those words in Chapter 21 of the Administrative Code.

18 (a) "Approved Alternatives List" shall mean the list of alternatives to a product in a  
19 Targeted Product Category identified, evaluated and approved by the Director. Products on  
20 an Approved Alternatives List will have a lesser impact on human health and the environment  
21 compared to other similar products, consistent with the Precautionary Principle as defined in  
22 Chapter 1 of the Environment Code.

23 (b) "Commission" shall mean the Commission on the Environment established by  
24 Charter section 4.118.

1 (c) "Contract" shall mean an agreement with a nongovernmental entity for the  
2 purchase of Commodities at the expense of or to be paid out of moneys deposited in the  
3 treasury or out of trust moneys under the control or collected by the City and County of San  
4 Francisco. The term "Contract" shall include a purchase order or other written instrument for  
5 the purchase of Commodities.

6 (d) "Contractor or Contracting Party" shall mean a person that enters into a  
7 Contract with the City.

8 (e) "Department" shall mean the Department of the Environment established by  
9 Charter section 4.118.

10 (f) "Director" shall mean the Director of the Department of the Environment.

11 (g) "Targeted Product Category" shall mean a broad category of products  
12 routinely purchased by the City which have been identified by the Commission as having  
13 undesirable environmental health impacts for which alternative products should be identified  
14 and substituted.

15 SEC. 203. COMMISSION AND DEPARTMENT OF THE ENVIRONMENT DUTIES.

16 (a) Public Participation Guidelines. In order to promote meaningful public  
17 participation, after consultation with technical experts, individuals with expertise in  
18 environmental protection or environmental health, community groups and the public, and not  
19 later than 90 days from the effective date of this Chapter, the Director shall, at a public  
20 meeting, adopt Public Participation Guidelines for use in making designated decisions under  
21 this Chapter. Amendments to the Public Participation Guidelines may be made by the Director  
22 in the same manner.

23 (b) Targeted Product Categories.

1                                    (i) Not later than 210 days from the effective date of this Chapter  
2 and regularly thereafter, the Director, in accordance with the Public Participation Guidelines,  
3 will consult with the Director of the Department of Public Health, the City Purchaser, City  
4 department users, technical experts, individuals with expertise in environmental protection or  
5 environmental health, community groups, labor representatives and the public to develop and  
6 present recommendations for Targeted Product Categories to the Commission on the  
7 Environment.

8                                    (ii) Not later than 270 days from the effective date of this Chapter and  
9 regularly thereafter, the Commission on the Environment will designate Targeted Product  
10 Categories at a public meeting.

11                                    (c) Approved Alternatives List for Targeted Product Categories.

12                                    (i) Criteria. For each Targeted Product Category, the Director, in  
13 accordance with the Public Participation Guidelines, will consult with the Director of the  
14 Department of Public Health, the City Purchaser, City department users, technical experts,  
15 including individuals with expertise in environmental protection or environmental health,  
16 community groups, other governmental entities, and the public to develop a comprehensive set  
17 of substantive and qualitative human health and environmental criteria by which to evaluate  
18 products in a Targeted Product Category. Criteria will be designed to effectuate the goals  
19 stated in Section 201 and will take into account non-local impacts for which information is  
20 available. The following factors may be considered in establishing the criteria: human health  
21 impacts and environmental impacts and threats of harm to human health or the environment.  
22 This includes, but is not limited to: greenhouse gas and air pollution emissions; transportation  
23 impacts; groundwater and surface water contamination, water and energy efficiency;  
24 renewable energy sources; recycled content; durability; and ability to recycle, reuse or

1 compost. The Director will adopt criteria for each Target Product Category. The Director will  
2 post the criteria for each Target Product Category on the Department's website.

3 The Director, in accordance with the Public Participation Guidelines, will regularly  
4 review and revise the criteria to reflect the current state of scientific knowledge regarding  
5 health and environmental effects.

6 (ii) Evaluation and Adoption. The Director shall create an Approved  
7 Alternatives List for each Targeted Product Category either by: objectively evaluating each  
8 potential alternative within a targeted product category based on the criteria or through a bid  
9 or solicitation based on the criteria issued by the Office of Contract Administration or other  
10 relevant department. The Director will present the Approved Alternatives List and any  
11 subsequent revisions to the Commission at a public meeting and shall notify all City  
12 departments of adoption or revision of an Approved Alternatives List.

13 (iii) The Director shall respond within 90 days to any written request to  
14 include a particular product on the Approved Alternatives List.

15 (iv) The Approved Alternatives List for each Targeted Product  
16 Category shall indicate where each included commodity is produced. In making a  
17 purchase decision, the City Purchaser and City department users, after considering  
18 other relevant factors such as cost, may at his or her discretion give priority to  
19 commodities produced within the geographic boundaries of the City.

20 (d) Rules and Regulations. After a public hearing, the Director, in consultation  
21 with the Purchaser, may promulgate rules, regulations or guidelines as required by this  
22 Chapter or as necessary or appropriate to carry out the purposes and requirements of this  
23 Chapter and may adopt forms necessary to implement this Chapter.

1 (e) Training. The Director shall implement ongoing training for City employees  
2 and contractors for the purpose of compliance with this Chapter and provide ongoing training  
3 to industrial health and safety officers, environmental staff, contracting officers and others  
4 involved in purchasing decisions and product use.

5 (f) Presentation to Board of Supervisors. Not later than 15 months from the  
6 effective date of this Chapter, the Director will prepare a status presentation for the Board of  
7 Supervisors. The Director will notify the Clerk of the Board of Supervisors that the  
8 Department is prepared to deliver its presentation and ask the Clerk to work with the President  
9 of the Board of Supervisors to calendar the presentation for the appropriate Board committee.

10 (g) Annual Review and Report to Commission and Board of Supervisors. Not later  
11 than twenty-four months from the effective date of this Chapter, and annually thereafter in  
12 February, the Director shall submit a report to the Commission and the Board of Supervisors  
13 on the progress of City departments towards full compliance with this Chapter. The annual  
14 report shall include:

15 (i) an evaluation of the progress in meeting the goals in Section 201;

16 (ii) the status and effectiveness of current efforts by City departments to  
17 implement this Chapter and additional specific actions, including legislation, needed to  
18 effectively implement this Chapter;

19 (iii) a summary of the annual reports submitted by City departments  
20 pursuant to section 205(b) and a list of waivers granted by the Purchaser during the previous  
21 period organized by department;

22 (iv) an update on the extent and efficacy of training programs for users and  
23 purchasers of Targeted Products;

1           (v) a workplan for the next reporting period with specific goals, actions and  
2 timelines necessary to implement this Chapter; and

3           (vi) The annual report required by this section shall include a  
4 recommendation by the Director, after consultation with City Departments and the public, on  
5 how to expand this chapter to city contractors.

6           SEC. 204. APPLICABILITY. This Chapter applies only to Contracts for the  
7 procurement of Commodities as governed by Chapter 21 of the Administrative Code. Once the  
8 Director has adopted an Approved Alternatives List for a product within a Targeted Product  
9 Category, each City department entering into a new Contract or extending the term of an  
10 existing Contract for the purchase of that product shall only purchase products from the  
11 Approved Alternatives List.

12           SEC. 205. DUTIES OF CITY DEPARTMENTS.

13           (a) Each City department, board and commission subject to this Chapter shall  
14 cooperate with and provide in writing to the Director all information necessary for the  
15 Director to carry out her or his duties under this Chapter. Appropriate City department  
16 personnel will attend training offered by the Director.

17           (b) Not later than twenty months from the effective date of this Chapter, and  
18 annually thereafter in December, each City department that purchases Target Products shall  
19 provide a report to the Director including the following information:

20           (i) A list of Contracts, including the amount spent and actual quantities  
21 purchased (to the extent feasible), issued for products in each Targeted Product Category in  
22 the prior period.

23           (ii) A summary of any waivers from this Chapter in the prior period.

1           (c) In addition to these obligations, each City department shall use its best efforts  
2 to incorporate Commodities from the Approved Alternatives List into existing Contracts. If the  
3 City department is unable to amend an existing Contract, the City department is authorized to  
4 enter into another Contract to procure such products, provided that the City department  
5 complies with all other applicable laws. Nothing in this Chapter is or shall be interpreted to  
6 require or authorize any City department to breach the terms of a Contract. Each City  
7 department shall document its efforts pursuant to this Section in the annual report filed under  
8 subsection (b), explaining the circumstances.

9           SEC. 206. WAIVERS. The application for a waiver shall be filed on a form specified  
10 by the Purchaser. The waiver application will be sent electronically to any person who  
11 requests such notification. The Purchaser will consult with the Director on the waiver  
12 application and shall respond to the requesting department within 5 days of receipt of a waiver  
13 application. Waivers may be issued for up to the term of the Contract. Waivers from the  
14 requirements of this Chapter are available under the following circumstances:

15           (a) Emergency. A City department may grant itself a waiver from this Chapter  
16 when the purchase of a Commodity is necessary to respond to an emergency which meets the  
17 criteria set forth in section 21.15(a) of the Administrative Code. In such case, the Director of  
18 the City department shall within two business days notify the Purchaser in writing of the  
19 emergency that prevented compliance with this Chapter, disclose the use and intensity of use of  
20 the product, describe steps being taken to safeguard public and City employee health during  
21 the emergency use and explain how such an emergency will be avoided in the future.

22           (b) Performance Standards. A City department may request a waiver from this  
23 Chapter from the Purchaser when no product on the Approved Alternatives List meets  
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1 departmental performance standards. The Purchaser shall grant a waiver upon a showing  
2 that the requesting department has:

3 (i) thoroughly tested each product on the Approved Alternatives List and  
4 none meet the department's performance standards (including timely availability); and

5 (ii) disclosed the use and intensity of use for the product and developed a  
6 reasonable plan to minimize use of the selected product and/or protect employees and public  
7 from exposure; and

8 (iii) provide a written memorandum detailing all attempts to explore and  
9 utilize listed alternatives to the selected product within the waiver period.

10 (c) Cost Prohibitive. A City department may request a waiver from this Chapter  
11 from the Purchaser when every product on the Approved Alternatives List is cost prohibitive.  
12 The Purchaser shall grant a waiver upon a showing that the requesting department has:

13 (i) demonstrated that each product on the Approved Alternatives List is cost  
14 prohibitive while taking into account the goals set forth in Section 201; and

15 (ii) disclosed the use and intensity of use for the product and developed a  
16 reasonable plan to minimize use of the selected product and/or protect employees and public  
17 from exposure; and

18 (iii) provide a written memorandum detailing all attempts to explore and  
19 utilize listed alternatives to the selected product within the waiver period.

20 (d) Other. The Purchaser may determine that a waiver should be granted upon a  
21 showing that the requesting department has demonstrated a reasonable basis for a waiver and  
22 developed a reasonable plan to minimize use of the selected product and/or protect employees  
23 and public from exposure and to investigate alternatives to the selected product during the  
24 waiver period.

1 (e) The Purchaser shall report on waivers granted to the Director and the Director  
2 shall report to the Commission at its next public meeting on:

3 (i) the product for which a City department obtained a waiver;

4 (ii) the proposed use and intensity of the product being used and the reason  
5 for the waiver;

6 (iii) steps being taken to safeguard public and City employee health during  
7 the waiver period; and

8 (iv) other waivers granted to that department.

9 (f) The Purchaser and the Director shall maintain and post a list of all waivers on  
10 their Departments' websites organized by department and shall mail the list to any person who  
11 requests such list.

12 SEC. 207. TRADE SECRETS.

13 (a) If a person believes that any information required to be reported or disclosed by this  
14 Chapter contains a trade secret, the person shall provide the information to the Director, the Purchaser  
15 (Office of Contract Administration) and other City departments requiring such information and shall  
16 notify the City in writing of that belief, detailing the basis of the belief as to each specific item of  
17 information the person claims is a trade secret and identifying the specific statute or judicial authority  
18 under which the claim is made. The person submitting the trade secret shall submit two forms of  
19 information: one with the trade secret information clearly marked and one prominently marked  
20 "public" with the trade secrets redacted. For purposes of this Chapter, "trade secret" shall have the  
21 same meaning as it has under state law. The person designating information as a trade secret shall  
22 specify a name and street address for notification purposes and shall be responsible for updating such  
23 information. The City shall not disclose any properly substantiated trade secret which is so designated  
24 by a person except as required by this Chapter or as otherwise required by law.

1           (b) Information designated as trade secret may be disclosed to an officer or employee of the  
2 City and County of San Francisco, the State of California, or the United States of America for use in  
3 connection with the official duties of such officer or employee acting under authority of law for the  
4 protection of health, without liability on the part of the City.

5           (c) When the Director or other City official or employee receives a request for information  
6 that has been designated as, or which the City determines may be, a trade secret, the City shall notify  
7 the person or business of the request. The City may request further evidence or explanation from the  
8 person as to why the information requested is a trade secret. If the City determines that the information  
9 does not constitute a trade secret, the City shall notify the person or business of that conclusion and  
10 that the information will be released by a specified date in order to provide the person or business the  
11 opportunity to obtain a court order prohibiting disclosure.

12           (d) In adopting this Chapter, the Board of Supervisors does not intend to authorize or  
13 require the disclosure to the public of any trade secrets protected under the laws of the State of  
14 California.

15           (e) This Section is not intended to empower a person or business to refuse to disclose any  
16 information, including but not limited to trade secrets, to the Director or other City Departments  
17 required under this Chapter.

18           (f) Notwithstanding any other provision of this Chapter, any officer or employee of the City  
19 and County of San Francisco, or former officer or employee or contractor with the City or employee  
20 thereof, who by virtue of such employment of official position has obtained possession or has had  
21 access to information, the disclosure of which is prohibited by this Section, and who, knowing that  
22 disclosure of the information is prohibited, knowingly and willfully discloses the information in any  
23 manner to any person or business not entitled to receive it, shall be guilty of a misdemeanor.

24           SEC. 208. ENFORCEMENT.

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1 Whenever any City department finds, after an investigation by the contracting officer and the  
2 City Attorney, that a person or entity being considered for a Contract or under Contract with the City  
3 has, in connection with the bidding, execution or performance of any Contract:

4 (1) Falsely represented to the City the nature or character of the Commodities offered, used  
5 or supplied under the Contract; or

6 (2) Knowingly provided the City with Commodities in violation of this Chapter or the rules  
7 or regulations adopted pursuant to this Chapter.

8 the contracting officer shall have the authority to impose such sanctions or take such other  
9 actions as are designed to ensure compliance with the provisions of this Chapter. For purposes of this  
10 subsection, knowingly has the same meaning as in Chapter 6, section 6.83 of the Administrative Code.

11 The City may take any enforcement action authorized by Chapters 21 or 28 of the  
12 Administrative Code, including, without limitation, debarment.

13 Nothing in this Chapter shall be construed to relieve a Contractor of responsibility for  
14 providing a satisfactory product.

15 SEC. 209. PREEMPTION. Nothing in this Chapter shall be interpreted or applied so  
16 as to create any power or duty in conflict with any federal or state law.

17 SEC. 210. SEVERABILITY. In the event that a court or agency of competent  
18 jurisdiction holds that a federal or state law, rule or regulation invalidates any clause,  
19 sentence, paragraph or section of this ordinance or the application thereof to any person or  
20 circumstances, it is the intent of the Board of Supervisors that the court or agency sever such  
21 clause, sentence, paragraph or section so that the remainder of this ordinance shall remain in  
22 effect.

23 Section 3. Chapter 5, The Resource Conservation Ordinance, and Chapter 9,  
24 Prohibiting Purchase of MTBE-Containing Motor Vehicle Fuel, of the Environment Code

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1 establish criteria for the purchase of certain commodities, including vehicle fuel, paper and  
2 writing products, batteries and numerous other products. In order to consolidate  
3 environmental purchasing requirements for commodities under Chapter 2 of the Environment  
4 Code, the Board of Supervisors is repealing those provisions of Chapters 5 and 9 which  
5 address commodities and directs the Director of the Department of the Environment to  
6 immediately adopt those requirements, including the supporting findings and definitions, as  
7 regulations effective on the effective date of this ordinance. Any subsequent modification of  
8 such requirements shall be subject to Section 203(e) of the Environment Code.

9 Section 4. The San Francisco Environment Code is hereby amended by  
10 amending Section 501 to read as follows:

11 SEC. 501. DEFINITIONS.

12 As used in this Chapter, the following words shall have the following meanings:

13 ~~“Battery” means two or more connected cells that produce a direct current by converting~~  
14 ~~chemical energy to electrical energy. For purposes of this ordinance, “battery” does not include~~  
15 ~~automotive batteries.~~

16 ~~“Battery charger” means a device that restores anew the active materials in a battery.~~

17 ~~“Battery pack” means multiple batteries joined together in a single housing.~~

18 “City department” means any department of the City and County of San Francisco, and  
19 does not include any other local agency or any federal or State agency, including but not  
20 limited to the San Francisco School District, the San Francisco Community College District,  
21 the San Francisco Redevelopment Agency and the San Francisco Housing Authority.

22 ~~“Comprehensive Procurement Guideline” or “CPG” means final guidelines, as periodically~~  
23 ~~promulgated and amended by the U.S. EPA and codified at 40 Code of Federal Regulations Part 247,~~  
24 ~~which designate products that are or can be made with recovered materials in order to assist federal~~

1 ~~procuring agencies in complying with the requirements of federal law and Executive Order 13101 as~~  
2 ~~they apply to the procurement of items with recovered materials content. As of February 22, 2002,~~  
3 ~~final CPGs exist for: paper and paper products; vehicle products (including engine coolants, re-refined~~  
4 ~~lubricating oils, and retread tires); construction products (including building insulation products,~~  
5 ~~carpet, cement and concrete containing coal fly ash and ground granulated blast furnace slag,~~  
6 ~~consolidated and reprocessed latex paint, floor tiles, patio blocks, shower and room dividers, structural~~  
7 ~~fiberboard, carpet cushion, flowable fill and railroad grade crossing surfaces), transportation products~~  
8 ~~(including channelizers, delineators, flexible delineators, parking stops, traffic barricades and traffic~~  
9 ~~cones); park and recreational products (including plastic fencing, playground surfaces, running tracks,~~  
10 ~~park benches and picnic tables, and playground equipment); landscaping products (including garden~~  
11 ~~and soaker hoses, hydraulic mulch, lawn and garden edging, yard trimmings compost, food waste~~  
12 ~~compost, and plastic lumber landscaping timbers and posts); non paper office products (including~~  
13 ~~binders, office recycling containers, office waste receptacles, plastic desktop accessories, plastic~~  
14 ~~envelopes, plastic trashbags, printer ribbons, toner cartridges, solid plastic binders, plastic clipboards,~~  
15 ~~plastic file folders, plastic clip portfolios, and plastic presentation folders); and miscellaneous products~~  
16 ~~(including pallets, sorbents, industrial drums, awards and plaques, mats, signage, including sign~~  
17 ~~supports and posts, and manual grade strapping).~~

18 "Contract" means a binding written agreement for the provision of goods and/or  
19 services to be provided at the expense of the City or to be paid out of monies deposited in the  
20 treasury or out of trust monies under control of the City between a person, firm, corporation or  
21 other entity, including a governmental entity, and a City department. This Chapter shall not  
22 apply to contracts entered into or amended to extend the term prior to October 1, 2000.

23 "Contractor" means a person, firm, corporation or other entity, including a governmental  
24 entity, that enters into a contract with a City department.

1           “Contracting officer” means that officer or employee of the City authorized under the  
2 Charter or Municipal Code to enter into a contract on behalf of the City. “Contracting officer”  
3 shall include the Mayor, each department head or general manager and other employees of  
4 the City authorized to enter into contracts on behalf of the City.

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

7           “Document Imaging” means the conversion of paper documents into electronic images  
8 on a computer, thereby reducing the amount of paper used for copying and printing. A  
9 document imaging system includes the ability to scan, store, index, retrieve and search  
10 documents.

11           “Post-consumer material” means those products generated by a business or consumer  
12 which have served their intended end use, and which have been diverted from becoming solid  
13 waste for purposes of recycling.

14           “Processed Chlorine Free” means recycled paper in which the recycled content is  
15 unbleached or bleached without chlorine or chlorine derivatives. Any virgin material portion of  
16 the paper must be totally chlorine free (i.e., unbleached or processed with a sequence that  
17 includes no chlorine or chlorine derivatives).

18           “Purchaser” means the Purchaser of the City or his or her designee.

19           ~~“Recovered Materials Advisory Notice” or “RMAN” means the information and~~  
20 ~~recommendations periodically published and amended by the U.S. EPA, based on U.S. EPA’s market~~  
21 ~~research concerning the availability, quality, and price of products listed in the CPG. Existing RMANs~~  
22 ~~can be found at 60 Federal Register 21386 (May 1, 1995) (RMAN); 62 Federal Register 60976~~  
23 ~~(November 13, 1997) (RMAN II); 61 Federal Register 26986 (May 29, 1996) (Paper RMAN IV); 63~~  
24  
25

1 ~~*Federal Register 31214 (June 8, 1998) (Paper RMAN II); 63 Federal Register 45580 (August 26, 1998)*~~  
2 ~~*(RMAN III); and 65 Federal Register 3070 (January 19, 2000) (RMAN V).*~~

3 “Recyclable material” means any material or product separated or capable of being  
4 separated at its point of discard or from the solid waste stream for utilization as a raw material  
5 in the manufacture of a new product.

6 “Recycle” or “recycling” means the process of collecting, sorting, cleaning, treating,  
7 reusing or reconstituting a material that would otherwise become a solid waste and/or  
8 hazardous waste, and returning it to the economic mainstream in the form of a raw material  
9 for new, reused or reconstituted products which may be used in the marketplace.

10 ~~*“Recycled product” means a product that is or can be made with recovered materials,*~~  
11 ~~*including those listed in the CPG and which at a minimum, meets the requirements of the federal*~~  
12 ~~*RMAN.*~~

13 “Reuse” means the secondary use of a product or its packaging for its original intended  
14 purpose or another function which does not require the product to be treated or reconstituted  
15 in any way.

16 “Solid Waste” or “Waste” has the same meaning as “solid waste” in the California  
17 Integrated Waste Management Act of 1989, Public Resources Code Section 40191.

18 “U.S. EPA” means the United States Environmental Protection Agency.

19 “Waste prevention” means discontinuing the use of an unnecessary material rather  
20 than disposing of it to the waste stream and shall include: (1) reduced resource use per unit of  
21 product; (2) increased product life; and (3) decreased consumption.

22 “Waste Reduction” means the diversion of materials, products and packaging from  
23 disposal through waste prevention, reuse, recycling and/or composting, but does not include  
24 steps taken after the material becomes solid waste or actions which would transfer the  
25

1 impacts of land disposal to air or water resources, such as transformation, incineration,  
2 pyrolysis, distillation, gasification, or biological conversion (other than composting).

3 Section 5. The San Francisco Environment Code is hereby amended by  
4 amending Section 506 to read as follows:

5 SEC. 506. PURCHASE AND USE OF PRINTING AND WRITING PAPER  
6 PRODUCTS.

7 (a) Every publication exhibit, form and letter produced by a City department,  
8 including all materials distributed to the public shall be on printing and writing paper products  
9 that contain:

10 (1) A minimum of 30% post-consumer materials for copier and bond paper  
11 (including any uncoated duplicating, printer and letterhead paper used in a variety of end use  
12 applications such as business forms and offset printing, but excluding high quality papers  
13 used for stationery, envelopes and other specialty items); and

14 (2) A minimum of 30% post-consumer materials for all other printing and writing  
15 paper products including, without limitation: publications, forms, letters, letterhead,  
16 promotional materials, advertisements, educational pamphlets, newsletters, exhibits, reports,  
17 business cards, calendars, commission and committee notices, agendas and minutes,  
18 requests for proposals or qualifications, invitations for bids, checks, tickets, high quality  
19 papers used for stationery, envelopes and other specialty items and other printed materials.

20 (3) The minimum level of post-consumer content will be reviewed annually by the  
21 Director. Pursuant to Section 511, the Director may raise, but not lower, the minimum level of  
22 post-consumer content as higher post-consumer content paper becomes available.

1           (4) All printing and writing paper products shall be on processed chlorine free paper  
2 as it becomes available at a reasonable price. The availability of processed chlorine free  
3 paper will be determined by the Director pursuant to Section 511.

4           (b) All pre-printed materials intended for distribution that are purchased or produced  
5 in quantities greater than 50 sheets after the effective date of this Chapter must include a  
6 recycled content logo and the percentage of post-consumer material in the paper.

7           (c) Each City department including the Purchaser, shall use its best efforts to  
8 incorporate the standards set forth in this Section into existing contracts for the provision of  
9 printing and writing paper and services. If the City department is unable to amend an existing  
10 contract, the City department is authorized to enter into another contract to procure products  
11 that do comply with this Section, provided that the City department complies with all other  
12 applicable laws. Nothing in this Chapter is or shall be interpreted to require or authorize any  
13 City department to breach the terms of a contract. Each City department shall document its  
14 efforts pursuant to this Section in a report filed with the Director, explaining the circumstances.

15           (d) This Section does not apply to commercial sanitary products, paperboard and  
16 packaging products, newsprint products or other products not generally considered to be  
17 printing or writing paper products. ~~Such products are covered under Section 507.~~

18           (e) The contracting officer shall require all suppliers of printing and writing paper  
19 products or services to certify the minimum content of post-consumer materials in the  
20 products to be provided in the performance of a contract.

21           (f) Unless specifically provided by court rules or other legal mandates, all pre-  
22 printed City forms and other pre-printed material shall be printed on double-sided pages.

23           (g) In all contracts for printing services for the City, the contract shall specify and  
24 require that the contractor use paper products meeting the standards set forth in this Section,  
25

1 and, unless inappropriate for the end use, that the contractor print the document on both sides  
2 of the paper.

3 (h) Any City department seeking the preparation and/or submission of any bid,  
4 report, request for proposal, quotation or other document shall specify and require the  
5 document to be submitted on paper which meets the requirements in this Chapter and printed  
6 on double-sided pages.

7 Section 6. The San Francisco Environment Code is hereby amended by  
8 repealing Section 507 in its entirety.

9 ~~SEC. 507. PURCHASE AND USE OF PRODUCTS LISTED IN THE CPG OTHER THAN~~  
10 ~~PRINTING AND WRITING PAPER PRODUCTS UNDER SECTION 506.~~

11 ~~———— (a) ——— Except for printing and writing paper products covered under Section 506, a City~~  
12 ~~department (including but not limited to City departments having responsibility for drafting or~~  
13 ~~reviewing construction specifications) that purchases or contracts to purchase any product listed in the~~  
14 ~~CPG shall purchase and contract to purchase a product that meets or exceeds the RMAN for that CPG.~~

15 ~~———— (b) ——— City departments are not required to procure products that meet or exceed the RMAN in~~  
16 ~~the following circumstances: (i) the (RMAN) product is not available in a reasonable period of time;~~  
17 ~~(ii) the (RMAN) product would fail to meet reasonable performance standards; (iii) or the (RMAN)~~  
18 ~~product is only available at an unreasonable price. “Available in a reasonable period of time” means~~  
19 ~~that the department would receive the (RMAN) product within the needed time frame without hindering~~  
20 ~~productivity. “Reasonable performance standards” means a (RMAN) product that will perform the~~  
21 ~~desired objective without overriding any City specifications for a project. If a City department relies~~  
22 ~~on one of these exceptions, within two weeks of the purchase, it must file a report with the Director, in a~~  
23 ~~form specified by the Director, explaining the circumstances and demonstrating a good faith effort to~~  
24 ~~buy products that meet the RMAN.~~

1 ~~(c) Each City department, including the Purchaser, shall use its best efforts to incorporate~~  
2 ~~the CPGs and associated RMANs into existing contracts for these products. If the City department is~~  
3 ~~unable to amend an existing contract, the City department is authorized to enter into another contract~~  
4 ~~to procure products that do comply with the RMAN, provided that the City department complies with~~  
5 ~~all other applicable laws. Nothing in this Chapter is or shall be interpreted to require or authorize any~~  
6 ~~City department to breach the terms of a contract. Each City department shall document its efforts~~  
7 ~~pursuant to this Subsection in a report filed with the Director, explaining the circumstances.~~

8 ~~(d) Notwithstanding any other provision of this Chapter, no City department is required to~~  
9 ~~purchase retreaded tires for use on passenger vehicles, police, fire, ambulance or other emergency~~  
10 ~~vehicle used in the course of protecting the health and safety of the residents of the City.~~

11 ~~(e) The contracting officer shall require all contractors vendors and suppliers of products~~  
12 ~~subject to this Section to certify that the product meets or exceeds the relevant RMAN.~~

13 ~~(f) Wherever possible, each City department that purchases or contracts to purchase paper~~  
14 ~~products subject to this Section 507 shall purchase and contract to purchase paper products that are~~  
15 ~~processed chlorine free. City departments are not required to procure paper products that are~~  
16 ~~processed chlorine free under this Subsection in any of the following circumstances: (i) the product is~~  
17 ~~not available in a reasonable period of time; (ii) the product would fail to meet reasonable~~  
18 ~~performance standards; or (iii) the product is only available at an unreasonable price.~~

19 Section 7. The San Francisco Environment Code is hereby amended by  
20 repealing Section 508 in its entirety.

21 ~~SEC. 508. PRODUCTS NOT LISTED IN THE CPG. Wherever possible, for products which~~  
22 ~~are not included in the CPGs, the City shall procure for its use products containing the maximum~~  
23 ~~amount of post-consumer material.~~

1 Section 8. The San Francisco Environment Code is hereby amended by  
2 amending Section 511 to read as follows:

3 SEC. 511. GUIDELINES.

4 (a) The Director shall act as a clearinghouse of information on recycled product  
5 availability, performance, and post-consumer material content and shall assist City  
6 departments in meeting compliance with the letter and spirit of this Chapter. *The Director shall*  
7 *maintain and make copies of the current CPG and RMAN and supporting documents available.*

8 (b) The Director, *in conjunction with the Purchaser,* shall promulgate any guidelines  
9 necessary or appropriate to carry out the purposes and requirements of this Chapter.

10 Section 9. The San Francisco Environment Code Chapter 5 is hereby  
11 amended by repealing Section 512 as follows:

12 ~~SEC. 512. BATTERIES.~~

13 ~~———— (a) ——— A City department that purchases or contracts to purchase batteries or products that~~  
14 ~~include or incorporate battery or battery packs, shall purchase and contract to purchase only the~~  
15 ~~following types of batteries and battery packs only from vendors that collect spent batteries and recycle~~  
16 ~~them in accordance with applicable laws:~~

17 ~~———— (i) ——— Rechargeable alkaline batteries~~

18 ~~———— (ii) ——— Rechargeable nickel metal hydride batteries, or~~

19 ~~———— (iii) ——— Another rechargeable battery type identified by the Director pursuant to Section 511. At~~  
20 ~~the request of the City department, a vendor must submit written certification and documentation that~~  
21 ~~collected spent batteries were recycled in accordance with applicable laws.~~

22 ~~———— (b) ——— A City department that purchases or contracts to purchase battery chargers shall~~  
23 ~~purchase and contract to purchase chargers that recharge Ni-MH batteries as well as other battery~~  
24 ~~types.~~

1 ~~———— (c) ——— Each department that purchases batteries must require in the contract that the products~~  
2 ~~be accompanied by detailed recycling instructions and any batteries containing cadmium, mercury,~~  
3 ~~lead, or other hazardous materials include a written explanation of the toxic hazards of these~~  
4 ~~substances in the wastestream.~~

5 ~~———— (d) ——— A City department that purchases or contracts to purchase products that include or~~  
6 ~~incorporate battery packs shall purchase and contract to purchase such products in which the batteries~~  
7 ~~are easily removable.~~

8 ~~———— (e) ——— City departments are not required to follow the specifications required in subsections~~  
9 ~~(a) — (d) above in the following circumstances: (i) the product or service is not available in a~~  
10 ~~reasonable period of time; (ii) the product or service would fail to meet reasonable performance~~  
11 ~~standards; or (iii) the product or service is only available at an unreasonable price. “Available in a~~  
12 ~~reasonable period of time” means that the department would receive the product or service within the~~  
13 ~~needed time frame without hindering productivity. “Reasonable performance standards” means a~~  
14 ~~product or service that will perform the desired objective without overriding any City specifications for~~  
15 ~~a project. If a City department relies on one of these exceptions, within two weeks of the purchase, it~~  
16 ~~must file a report with the Director, in a form specified by the Director, explaining the circumstances,~~  
17 ~~the product ultimately purchased and demonstrating a good faith effort to follow the specifications in~~  
18 ~~subsections (a) — (d). If the product purchased was a rechargeable Ni-Cd battery or battery pack, the~~  
19 ~~department must justify why this chemistry was necessary as opposed to rechargeable alkaline or Ni-~~  
20 ~~MH.~~

21 ~~———— (f) ——— Each City department, including the Purchaser, shall use its best efforts in incorporate~~  
22 ~~the purchase of rechargeable alkaline batteries and rechargeable nickel metal hydride batteries into~~  
23 ~~existing contracts for these products. If the City department is unable to amend an existing contract,~~  
24 ~~the City department is authorized to enter into another contract to procure these products, provided~~

1 ~~that the City department complies with all other applicable laws. Nothing in this Chapter is or shall be~~  
2 ~~interpreted to require or authorize any City department to breach the terms of a contract. Each City~~  
3 ~~department shall document its efforts pursuant to this subsection in a report filed with the Director,~~  
4 ~~explaining the circumstances.~~

5 ~~(g) — The contracting officer shall require all contractors, vendors and suppliers of products~~  
6 ~~subject to this Section to certify that the product meets or exceeds the criteria.~~

7 Section 10. The San Francisco Environment Code is hereby amended by repealing  
8 Chapter 9 in its entirety.

9 ~~SEC. 900. FINDINGS.~~

10 ~~— The Board of Supervisors makes the following findings:~~

11 ~~(a) — In response to a report on the “Health and Environmental Assessment of Methyl~~  
12 ~~Tertiary Butyl Ether (MTBE)” prepared by the University of California, Governor Davis issued~~  
13 ~~Executive Order D-5-99 requiring the California Energy Commission, in consultation with the~~  
14 ~~California Air Resources Board, to develop a timetable by July 1, 1999, for the removal of methyl~~  
15 ~~tertiary butyl ether (MTBE) from gasoline sold in the State of California at the earliest possible date~~  
16 ~~but not later than December 31, 2002.~~

17 ~~(b) — Under this Chapter, the City and County of San Francisco wishes to exercise its power~~  
18 ~~to make economic decisions involving its own funds as a participant in the marketplace and to conduct~~  
19 ~~its own business as a municipal corporation to ensure that purchases and expenditures of public~~  
20 ~~monies are made so as to encourage the marketing of non-MTBE gasoline.~~

21 ~~(c) — This Chapter applies the Precautionary Principle to the selection of fuels used in the~~  
22 ~~City fleet to minimize negative impacts on groundwater and human health.~~

23 ~~SEC. 901. DEFINITIONS.~~

24 ~~— Except as otherwise stated, the terms used in this Chapter shall have the following meaning:~~

25

1  ~~(a) "City" or "City and County" shall mean the City and County of San Francisco, or any~~  
2  ~~department, board, commission or agency thereof.~~

3  ~~(b) "Commodities Contract" shall mean an agreement for goods, supplies, materials, or~~  
4  ~~equipment to be purchased at the expense of the City.~~

5  ~~(c) "Contracting Officer" shall mean that officer or employee of the City and County~~  
6  ~~authorized under the Charter, the Administrative Code or the Municipal Code to enter into a~~  
7  ~~Commodities Contract on behalf of the City and County. "Contracting Officer" shall include the~~  
8  ~~Mayor, each department head or general manager and other employees of the City and County~~  
9  ~~authorized to enter into contracts on behalf of the City and County.~~

10  ~~(d) "Contractor" shall mean any person who enters into a Commodities Contract for the~~  
11  ~~provision of Motor Vehicle Fuel to the City.~~

12  ~~(e) "Motor Vehicle" shall mean a vehicle that is self propelled.~~

13  ~~(f) "Motor Vehicle Fuel" shall mean any substance which can be used as an energy source~~  
14  ~~to power Motor Vehicles. Motor Vehicle Fuel shall include but is not limited to gasoline and diesel~~  
15  ~~fuel.~~

16  ~~(g) "MTBE" shall mean the chemical commonly known as methyl tertiary butyl ether.~~

17  ~~(h) "Person" shall mean a natural person, a firm, joint stock company, business concern,~~  
18  ~~association, partnership or corporation, its or their successors or assigns, or agents~~

19  
20  ~~SEC. 902. PROHIBITING PURCHASE OF MTBE CONTAINING MOTOR VEHICLE FUEL.~~

21  ~~(a) From the effective date of this Chapter, the City shall not enter into any new~~  
22  ~~Commodities Contracts allowing for the purchase of Motor Vehicle Fuel that contains MTBE.~~

23  ~~(b) From the effective date of this Chapter, the City shall not modify any existing~~  
24  ~~Commodities Contract for the purchase of Motor Vehicle Fuel containing MTBE to extend its term.~~

1 ~~———— (c) ——— From the effective date of this Chapter, all Commodities Contracts entered into by the~~  
2 ~~City for the purchase of Motor Vehicle Fuel shall require the purchased Motor Vehicle Fuel to be free~~  
3 ~~of MTBE.~~

4 ~~SEC. 903. CONTRACT REQUIREMENTS.~~

5 ~~———— Every Commodities Contract for Motor Vehicle Fuel entered into by City shall provide the~~  
6 ~~following:~~

7 ~~———— (a) ——— Contractor agrees that it is not and will not be supplying any Motor Vehicle Fuel to City~~  
8 ~~that contains MTBE.~~

9 ~~———— (b) ——— Failure to comply with the foregoing requirement shall constitute a material breach by~~  
10 ~~Contractor of the terms of the Commodities Contract. Such failure shall be determined by the City in~~  
11 ~~its sole discretion.~~

12 ~~———— (c) ——— In the event that Contractor is found to be in breach of this provision, Contractor shall~~  
13 ~~be liable for liquidated damages in an amount equal to the Contractor's net profit under the~~  
14 ~~Commodities Contract, or five percent of the total amount of the contract dollars, whichever is greater.~~  
15 ~~Such liquidated damages shall be payable upon demand, and may be withheld from monies owed to~~  
16 ~~Contractor under the Commodities Contract.~~

17 ~~———— (d) ——— Nothing in this section shall be construed to limit any other remedies available at law to~~  
18 ~~City.~~

19 ~~SEC. 904. ADMINISTRATION AND ENFORCEMENT.~~

20 ~~———— Whenever the City and County discovers, after an investigation by the Contracting Officer and~~  
21 ~~the City Attorney, that a person or entity being considered for a Commodities Contract or under a~~  
22 ~~Commodities Contract with the City and County has, in connection with the bidding, execution or~~  
23 ~~performance of any Commodities Contract (1) falsely represented to the City and County the nature or~~  
24 ~~character of the Motor Vehicle Fuel offered to or supplied under the Commodities Contract to the City,~~

1 ~~or (2) provided the City with Motor Vehicle Fuel containing MTBE in violation of this ordinance, the~~  
2 ~~rules and regulations adopted pursuant to this ordinance, or contract provisions pertaining to the~~  
3 ~~prohibition against providing MTBE containing Motor Vehicle Fuel to the City, the Contracting~~  
4 ~~Officer shall have the authority to impose such sanctions or take such other actions as are designed to~~  
5 ~~ensure compliance with the provisions of the ordinance which shall include, but are not limited to:~~

6 ~~—— (a) —— Refusal to certify the award of a Commodities Contract;~~

7 ~~—— (b) —— Termination or Suspension of the Commodities Contract;~~

8 ~~—— (c) —— Ordering the withholding of funds due the Contractor under any Commodities Contract~~  
9 ~~with the City and County;~~

10 ~~—— (d) —— Ordering the revision of a Commodities Contract based upon a material breach of~~  
11 ~~contract provisions or pertaining to representations made in bidding, execution or performance of the~~  
12 ~~Commodities Contract;~~

13 ~~—— (e) —— Disqualification of the Contractor from eligibility for providing commodities or other~~  
14 ~~services to the City and County for a period not to exceed five years.~~

15 ~~SEC. 905. SEVERABILITY.~~

16 ~~—— If any section, subsection, clause, phrase or portion of this Chapter is for any reason held~~  
17 ~~invalid or unconstitutional by any court or federal or State agency of competent jurisdiction, such~~  
18 ~~portion shall be deemed a separate, distinct and independent provision and such holding shall not~~  
19 ~~affect the validity of the remaining portions thereof.~~

20 ~~SEC. 906. EFFECTIVE DATE.~~

21 ~~—— This legislation shall become effective on January 1, 2002. The Board of Supervisors~~  
22 ~~encourages all city contracting officers to comply with and implement this legislation as far in advance~~  
23 ~~of the effective date as is possible.~~

1 Section 11. The San Francisco Administrative Code is hereby amended by amending  
2 Section 21.16, to read as follows:

3 Sec. 21.16. USE OF PURCHASING AGREEMENTS OF AND RECIPROCAL  
4 AGREEMENTS WITH OTHER PUBLIC AND NON-PROFIT AGENCIES; SOLICITATIONS  
5 FOR MULTIPLE DEPARTMENTS.

6 (a) Notwithstanding any other provisions of this *Municipal* Code, in cases where the  
7 Purchaser deems that it is in the City's best interests to do so, the Purchaser is authorized,  
8 subject to the Board of Supervisors' approval by Resolution, to sell to, acquire from,  
9 participate in, sponsor, conduct or administer cooperative purchasing agreements with or  
10 made available by any public agency or non-profit made up of multiple public agencies in  
11 California or elsewhere, and may enter into reciprocal agreements with such agencies for the  
12 cooperative use of Commodities or Services or the common use or lease of facilities, under  
13 the terms agreed upon between the parties.

14 (b) Notwithstanding any other provisions in this *Municipal* Code , the Purchaser may  
15 utilize the competitive procurement process of any other public agency or non-profit made up  
16 of multiple public agencies to make purchases of Commodities or Services for the use of the  
17 City under the terms established in that agency's competitive procurement process and as  
18 agreed upon by the City and the procuring agency, upon making a determination that (i) the  
19 other agency's procurement process was competitive or the result of a sole source award,  
20 and (ii) the use of the other agency's procurement would be in the City's best interests.

21 (c) Departments may utilize the results of competitive Solicitation by other City  
22 departments if such potential use by other City departments is specified in the Solicitation.

23 Section 12. The San Francisco Administrative Code is hereby amended by amending  
24 Section 21.30, to read as follows:

25

1           Sec. 21.30. SOFTWARE LICENSES, SUPPORT, ESCROW, FINANCE, AND  
2 EQUIPMENT MAINTENANCE AGREEMENTS.

3           (a)     The Board of Supervisors hereby approves the execution of perpetual,  
4 nonexclusive software licensing agreements which warrant performance of the software  
5 according to specifications and which are for an amount of less than ten million dollars,  
6 including any associated escrow agreement for source code or finance agreement, without  
7 further Board approval.

8           (b)     Software licensing procurements are not subject to the contracting requirements  
9 of the Administrative *or Environment* Code, but shall be subject to the requirements established  
10 by Section 21.03(j) and Chapter 67. For the purpose of this section, software licensing  
11 procurements shall be deemed to include both the licensed software product, any escrow  
12 agreement for source code, finance agreements, and support services for such product where  
13 support for that product is available only from the licensor.

14          (c)     Agreements for the development of software shall include acceptance testing of  
15 the software and/or performance criteria, and shall condition payments on successful  
16 completion of the acceptance test or satisfaction of the performance criteria specified in the  
17 contract.

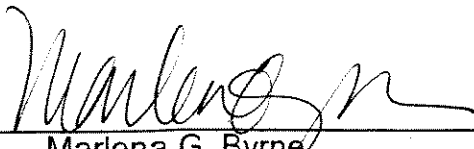
18          (d)     Where a vendor has proprietary rights to software or where maintenance of  
19 equipment by a particular vendor is required to preserve a warranty, software support and  
20 equipment maintenance agreements entered into with that vendor shall be treated as a sole  
21 source for the purposes of any contract requirements included in the Municipal Code.

22          (e)     A Contracting Officer is authorized to make payment for software license fees  
23 and software support, equipment maintenance and associated escrow and finance fees in  
24 advance of receiving services under a contract.

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APPROVED AS TO FORM:  
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Deputy City Attorney