

1 [Yellow Pages Distribution Pilot Program]

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3 **Ordinance adding Chapter 20 to the Environment Code to establish a three-year pilot**
 4 **program to reduce waste in the distribution of Yellow Pages phone directories to**
 5 **private residences and businesses in San Francisco, and to reduce neighborhood**
 6 **blight, by restricting distribution to circumstances where (1) there is personal delivery**
 7 **of the directory to a human being, (2) there has been a request for delivery of the**
 8 **directory to the residence or business, or (3) directories are maintained for pick-up at a**
 9 **distribution center or business open to the public; and mandating a public outreach**
 10 **program to educate the public about the environmental harms associated with**
 11 **excessive distribution of Yellow Pages phone directories, develop and publicize**
 12 **alternatives to private possession of such directories, and inform the public of the**
 13 **option and means of obtaining such directories; and making environmental findings.**

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NOTE: Additions are *single-underline italics Times New Roman*;
 deletions are ~~*strike-through italics Times New Roman*~~.
 Board amendment additions are double-underlined;
 Board amendment deletions are ~~strike-through normal~~.

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

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Section 1. The San Francisco Environment Code is hereby amended by adding
 19 Chapter 20, to read as follows:

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Chapter 20: Yellow Pages Distribution Pilot Program

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Sec. 20.1. Findings and Purpose.

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Sec. 20.2. Definitions.

24

Sec. 20.3. Personal Delivery of Commercial Phone Directories; Restrictions.

25

Sec. 20.4. Public Outreach Program.

1 Sec. 20.5. Promotion of General Welfare.

2 Sec. 20.6. Conflict With State Or Federal Law.

3 Sec. 20.7. Severability.

4 Sec. 20.8. Operative Date; Sunset Provision; Departmental Report.

5
6 **SEC. 20.1. FINDINGS AND PURPOSE.**

7 (a) Every year, private residences and businesses in San Francisco cumulatively receive,
8 unsolicited, hundreds of thousands of Commercial Phone Directories, commonly known as "the Yellow
9 Pages." These unsolicited Commercial Phone Directories cumulatively weigh thousands of pounds and
10 contain millions of pages.

11 (b) The failure to target deliveries of Commercial Phone Directories to private residences and
12 businesses where an owner or occupant has indicated an interest in receiving one or more Commercial
13 Phone Directories results in significant wastage. In many cases unsolicited Commercial Phone
14 Directories that have been delivered to private residences and businesses are not used by the recipient,
15 and often are not picked up by the intended recipient. In other cases, they are only rarely used by the
16 recipient. And, even when Commercial Phone Directories are used by the recipient, in many cases the
17 same information is readily available to the recipient through electronic channels of communication.

18 (c) The wastage caused by delivery of unsolicited Commercial Phone Directories to private
19 residences and businesses greatly exacerbates the environmental harms and economic costs inherent in
20 the production and disposal of such directories.

21 (1) The wastage causes substantial and unnecessary depletion of natural resources that go into
22 the production of Commercial Phone Directories, including substantial consumption of energy used in
23 the production process. Further, overproduction of Commercial Phone Directories unnecessarily
24 pollutes the environment.

1 (2) The wastage causes substantial and unnecessary environmental harms and economic costs
2 associated with the disposal of Commercial Phone Directories, even if they are recycled, which they
3 often are not. While recycling of Commercial Phone Directories is environmentally preferable to their
4 being disposed of without recycling, the better approach from an environmental and economic
5 standpoint is to prevent wastage in the first place, and thereby reduce the need for recycling, by
6 devising a system tailored to match the production of Commercial Phone Directories with the demand
7 for such directories. Not printing a Commercial Phone Directory reduces greenhouse gases to a far
8 greater extent than printing the directory and eventually recycling it.

9 (d) Delivery of unsolicited Commercial Phone Directories to private residences and businesses
10 also creates neighborhood blight. Unsolicited deliveries often sit on the porch, the steps, in front of the
11 door to a home, or on the sidewalk, for days or even weeks. Piles of Commercial Phone Directories
12 are often left in front of multi-unit residential buildings, to be battered and degraded by the elements
13 rather than picked up by the intended recipients. The size, weight, and bulk of the product operates as
14 a particular disincentive for people to pick it up. And the size and bulk of the product creates a
15 particularly unsightly blight on City streets, especially in more densely populated areas, impeding the
16 aesthetic enjoyment of the neighborhood. Further, there is a risk that individuals, especially those with
17 impaired vision, may stumble over a Commercial Phone Directory left, unsolicited, at the home or on
18 an adjacent sidewalk, and injure themselves.

19 (e) The nature and magnitude of the environmental and related harms caused by delivery of
20 unsolicited Phone Directories is unique to Phone Directories. In the experience of San Francisco and
21 other cities, no product or object of similar size, weight, and bulk, whether made of paper or otherwise,
22 and whether containing print or otherwise, is regularly left, unsolicited, at private residences and
23 businesses throughout San Francisco. Commercial Phone Directories comprise a large subset –
24 almost certainly a majority – of the Phone Directories delivered unsolicited to private residences and
25 businesses in San Francisco.

1 (f) The information contained in Commercial Phone Directories is readily available on the
2 Internet or may easily be made available on the Internet. The large majority of private residences and
3 businesses in San Francisco have access to the Internet, and the numbers of private residences and
4 businesses with access to the Internet is expected to become even greater in the future. Access to the
5 Internet has become increasingly common and convenient for residents and businesses in San
6 Francisco with the advent of personal computers, including hand-held devices, and smart phones.

7 (g) The purpose of this Chapter is to significantly reduce the environmental and other harms
8 and related costs caused by delivery of unsolicited Commercial Phone Directories to private residences
9 and businesses in San Francisco. There is a compelling public interest in achieving this objective.

10 (h) The Pilot Program established by this Chapter directly advances the City's interest in
11 significantly reducing the environmental and other harms and related costs caused by delivery of
12 unsolicited Commercial Phone Directories to private residences and businesses in San Francisco. The
13 Pilot Program is narrowly tailored to meet this objective. It does not prohibit the publication or
14 distribution of Commercial Phone Directories but rather focuses on channeling their distribution to
15 Persons and others who find a need to use such directories. And a central feature of the program is its
16 public outreach component, which is designed in part to ensure that Persons and others who seek to
17 obtain a Commercial Phone Directory are able easily to do so.

18 **SEC. 20.2. DEFINITIONS.**

19 For purposes of this Chapter, the following definitions apply.

20 (a) "City" means the City and County of San Francisco.

21 (b) "Commercial Phone Directory" means a printed publication (a hard copy) of at least 100
22 pages (counting the front and back of a page as two pages), consisting of nonresidential phone number
23 listings and advertisements for those listed in the publication, with the listings segregated under
24 headings for similar types of businesses. A "Commercial Phone Directory" is commonly, but not
25 necessarily, printed on yellow paper.

1 (c) "Commission" means the Commission on the Environment.

2 (d) "Department" means the Department of the Environment.

3 (e) "Director" means the Director of the Department of the Environment.

4 (f) "Distribute" means to physically deliver Commercial Phone Directories to private
5 residences and/or businesses in San Francisco. "Distribute" does not include storage of Commercial
6 Phone Directories by a Distributor or Phone Company at a site under the control of the Distributor or
7 Phone Company, at which site Persons and others may come to receive Commercial Phone
8 Directories.

9 (g) "Distributor" means a company or other entity or Person contractually obligated to
10 physically deliver or cause the physical delivery of Commercial Phone Directories to private
11 residences and/or businesses in San Francisco. "Distributor" includes a Phone Company that does not
12 contract for the physical delivery of Commercial Phone Directories to private residences and/or
13 businesses in San Francisco but instead itself physically delivers the Commercial Phone Directories.
14 "Distributor" does not include a Person whose sole role in the distribution of Commercial Phone
15 Directories is limited to driving the streets and physically delivering Commercial Phone Directories.
16 "Distributor" does not include the United States Postal Service, a commercial courier, or a commercial
17 package delivery service that allows a customer to track the status of a shipment by destination, date,
18 and time of delivery.

19 (h) "Person" means a human being.

20 (i) "Phone Company" means a company or other entity that provides telephone service to
21 private residences and/or businesses in San Francisco.

22 (j) "Phone Directory" includes Commercial Phone Directories but also includes an
23 alphabetical compilation of phone listings for residences, businesses, and government offices,
24 commonly known as "the White Pages." A "Phone Directory" is a printed publication (a hard copy).

1 (k) "Pilot Program" means the Yellow Pages Distribution Pilot Program established by this
2 Chapter.

3 (l) "State law" means the entire corpus of State law, including decisions and regulations of the
4 California Public Utilities Commission.

5 **SEC. 20.3. PERSONAL DELIVERY OF COMMERCIAL PHONE DIRECTORIES;**
6 **RESTRICTIONS.**

7 (a) A Distributor may not distribute or cause to be distributed a Commercial Phone Directory
8 to a private residence or business in San Francisco unless:

9 (1) The Distributor delivers the Commercial Phone Directory to a Person at the private
10 residence or business who is an occupant or authorized representative of the private residence or
11 business and who personally accepts the Commercial Phone Directory; or

12 (2) The Distributor delivers the Commercial Phone Directory to a private residence or
13 business after having received a request from an occupant or authorized representative of the private
14 residence or business for the Commercial Phone Directory to be delivered there.

15 (b) Subsection (a) shall not be construed to prevent the placement of Commercial Phone
16 Directories in a business open to the public, with the consent of the occupant or authorized
17 representative of the business, to be available for pick-up by patrons or other members of the public.

18 (c) For purposes of the exception in subdivision (a)(2), the Distributor has a duty to maintain
19 documentation of requests for a Commercial Phone Directory to be delivered to private residences or
20 businesses. In any proceeding to determine whether a Distributor has violated subsection (a) because
21 of not qualifying for the exception in subdivision (a)(2), the absence of documentation of a request shall
22 raise an inference that the request was not made.

23 (d) A Distributor may not evade the prohibition contained in subsection (a) by:
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1 (1) Dividing a Commercial Phone Directory into two or more volumes, when at least one of the
2 volumes does not meet the pages requirement in the definition of Commercial Phone Directory but the
3 volumes combined would meet the pages requirement; or

4 (2) Including in a Commercial Phone Directory listings the distribution of which are required
5 by State law, or other information the distribution of which is required by State law.

6 (e) A Distributor who violates subsection (a) of this Section may be subject to administrative
7 penalties, as follows. The Director or a designee of the Director may issue administrative citations for
8 violation of subsection (a). San Francisco Administrative Code Chapter 100, "Procedures Governing
9 the Imposition of Administrative Fines," is hereby incorporated in its entirety and shall govern the
10 amount of fees and the procedure for imposition, enforcement, collection, and administrative review of
11 administrative citations issued under this subsection (d). The Director or a designee of the Director
12 shall impose fines as set forth in Section 100.5(a) of the San Francisco Administrative Code.

13 (f) The Director is authorized to adopt regulations to implement this Section following a public
14 hearing. At the Director's discretion, the Director may delegate this hearing function, but not the
15 authority to adopt regulations, to a designee.

16 (g) This Section shall not preclude a Distributor, Phone Company, or anyone else from using
17 any lawful means to inform Persons or others that they may request delivery of a Commercial Phone
18 Directory to a private residence or business, to publicize the process for making such a request, or to
19 inform Persons or others of the availability of Commercial Phone Directories at a distribution center
20 or business where Commercial Phone Directories are available to members of the public. These means
21 of providing information may include but are not limited to: Notices inserted in phone bills sent to
22 phone customers; notices in other communications from Phone Companies to their customers; notices
23 in Phone Directories that are not Commercial Phone Directories and that are distributed to residences
24 and businesses; notices on handbills distributed to residences and businesses in conformity with
25 provisions of local law regarding distribution of handbills; notices posted on doors, similar to notices

1 posted by commercial mail services when no one answers the door; notices sent by U.S. mail or email;
2 phone calls; advertisements on television, radio, or the Internet; and press releases.

3 **SEC. 20.4. PUBLIC OUTREACH PROGRAM.**

4 (a) The City shall develop and implement a public outreach program to educate San Francisco
5 residents and businesses about the environmental harms associated with excessive distribution of
6 Commercial Phone Directories; develop alternatives to private possession of Commercial Phone
7 Directories to obtain the information contained in those directories, and inform the public of those and
8 other alternatives; and inform the public about the option and means of obtaining a Commercial Phone
9 Directory from a Distributor or other private source. The public outreach program shall include a
10 special emphasis on outreach to seniors, the disabled, and low-income persons.

11 (b) The Department shall coordinate with other City offices, departments, boards, and
12 commissions the development and implementation of the public outreach program mandated by
13 subsection (a). These other City entities may include but are not limited to the Office of the Mayor, the
14 Office of the City Administrator, the Department of Public Works, and the Department of Technology.
15 All City offices, departments, boards, and commissions shall cooperate with and reasonably assist the
16 Department in its efforts to coordinate the development and implementation of the program.

17 (c) In developing and implementing the public outreach program mandated by subsection (a),
18 the City shall consider the following methods of providing information to the public: Phone calls from
19 the City to private residences and businesses; a notice on the City's website and the Department's
20 website; notices on regular meeting agendas of the Commission and possibly of other City boards and
21 commissions; public service announcements on local television stations and the City's television
22 station; press releases; and mailings to private residences and businesses and possibly to centers in the
23 City that house senior citizens or disabled persons. In addition, the City may consider any other
24 methods it concludes may be useful in providing information to the public that will further the goals of
25 the public outreach program as stated in subsection (a).

1 (d) In developing and implementing the public outreach program mandated by subsection (a),
2 the City shall consider the feasibility of making Commercial Phone Directories available to the public
3 in City buildings such as branches of the San Francisco Public Library. Recreation Centers, and City
4 Hall; the feasibility of making electronic copies of Commercial Phone Directories more accessible to
5 members of the public; and the feasibility of providing a service by which members of the public can
6 call a City phone number and request information in a Commercial Phone Directory.

7 (e) While subsections (c) and (d) require the City to consider various matters in developing and
8 implementing the public outreach program mandated by subsection (a), they do not require that the
9 public outreach program include any particular component.

10 **SEC. 20.5. PROMOTION OF GENERAL WELFARE.**

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

15 **SEC. 20.6. CONFLICT WITH STATE OR FEDERAL LAW.**

16 Nothing in this Chapter shall authorize the City to impose any duties or obligations in conflict
17 with limitations on municipal authority imposed by federal or State law. This Chapter shall be
18 construed so as not to conflict with applicable federal or State law. In adopting regulations pursuant
19 to subsection 20.3(e) or engaging in enforcement actions pursuant to subsection 20.3(d), the City is
20 authorized to implement this Chapter so as to avoid a conflict with applicable federal or State law.

21 **SEC. 20.7. SEVERABILITY.**

22 If any of the provisions of this Chapter or the application thereof to any person or circumstance
23 is held invalid, the remainder of those provisions, including the application of such part or provisions
24 to persons or circumstances other than those to which it is held invalid, shall not be affected thereby
25 and shall continue in full force and effect. To this end, the provisions of this Chapter are severable.

1 **SEC. 20.8. OPERATIVE DATE; SUNSET PROVISION; DEPARTMENTAL REPORT.**

2 (a) This Chapter shall become operative on October 1, 2011 and shall remain operative
3 through September 30, 2014. Thereafter, this Chapter shall no longer have the force of law.

4 (b) The Department shall report to the Board of Supervisors by no later than July 1, 2014 on
5 the efficacy of this Chapter as a means of reducing wastage in the distribution of Commercial Phone
6 Directories in San Francisco, and any other matters pertaining to this Chapter. All City offices,
7 departments, boards, and commissions shall cooperate with and reasonably assist the Department in its
8 efforts to prepare the report. This subsection (b) shall not preclude the Board of Supervisors or a
9 committee thereof, or the Commission, or any other City entity or official, from holding hearings at any
10 time on the same subject.

11
12 Section 2. Environmental Findings. The Planning Department has determined that the
13 actions contemplated in this Ordinance are in compliance with the California Environmental
14 Quality Act (California Public Resources Code section 21000 et seq.). Said determination is
15 on file with the Clerk of the Board of Supervisors in File No. _____ and is incorporated
16 herein by reference.

17
18 APPROVED AS TO FORM:
19 DENNIS J. HERRERA, City Attorney

20 **DRAFT 1/28/11**

21 By:

22 _____
23 PAUL ZAREFSKY
24 Deputy City Attorney
25