

[Environment Code - Repealing Yellow Pages Distribution Pilot Program]

**Ordinance amending the Environment Code by repealing Yellow Pages Distribution Pilot Program.**

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 ~~strikethrough normal~~.

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

Section 1. The San Francisco Environment Code is hereby amended by repealing Sections 2101 through 2109 in their entirety:

**SEC. 2101. FINDINGS AND PURPOSE.**

(a) ~~Every year, private residences and businesses in San Francisco cumulatively receive, unsolicited, hundreds of thousands of Commercial Phone Directories, commonly known as "the Yellow Pages." The best estimate of the number of unsolicited Commercial Phone Directories annually distributed in San Francisco is 1.6 million. These unsolicited Commercial Phone Directories cumulatively weigh thousands of pounds and contain millions of pages.~~

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

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

4                   —— ~~(1) The wastage causes substantial and unnecessary depletion of natural resources that~~  
5 ~~go into the production of Commercial Phone Directories, including substantial consumption of energy~~  
6 ~~used in the production process. Further, overproduction of Commercial Phone Directories~~  
7 ~~unnecessarily pollutes the environment.~~

8                   —— ~~(2) The wastage causes substantial and unnecessary environmental harms and economic~~  
9 ~~costs associated with the disposal of Commercial Phone Directories, even if they are recycled, which~~  
10 ~~they often are not. Further, recycling of Commercial Phone Directories poses special difficulties~~  
11 ~~because of their bulk, weight, and composition. While recycling of Commercial Phone Directories is~~  
12 ~~environmentally preferable to their being disposed of without recycling, the better approach from an~~  
13 ~~environmental and economic standpoint is to prevent wastage in the first place, and thereby reduce the~~  
14 ~~need for and costs of recycling, by devising a system tailored to match the production of Commercial~~  
15 ~~Phone Directories with the demand for such directories. Not printing a Commercial Phone Directory~~  
16 ~~reduces greenhouse gases to a far greater extent than printing the directory and eventually recycling it.~~

17                  (d) ~~Delivery of unsolicited Commercial Phone Directories to private residences and businesses~~  
18 ~~also creates neighborhood blight. Unsolicited deliveries often sit on the porch, the steps, in front of the~~  
19 ~~door to a home, or on the sidewalk, for days or even weeks. Piles of Commercial Phone Directories are~~  
20 ~~often left in front of multi-unit residential buildings, to be battered and degraded by the elements rather~~  
21 ~~than picked up by the intended recipients. The size, weight, and bulk of the product operates as a~~  
22 ~~particular disincentive for people to pick it up. And the size and bulk of the product creates a~~  
23 ~~particularly unsightly blight on City streets, especially in more densely populated areas, impeding the~~  
24 ~~aesthetic enjoyment of the neighborhood.~~

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

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

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

17                         (h) ~~The Pilot Program established by this Chapter directly advances the City's interest in~~  
18 ~~significantly reducing the environmental and other harms and related costs caused by delivery of~~  
19 ~~unsolicited Commercial Phone Directories to private residences and businesses in San Francisco. The~~  
20 ~~Pilot Program is narrowly tailored to meet this objective. It does not prohibit the publication or~~  
21 ~~distribution of Commercial Phone Directories but rather focuses on channeling their distribution to~~  
22 ~~Persons and others who find a need to use such directories. And a central feature of the program is its~~  
23 ~~public outreach component, which is designed in part to ensure that Persons and others who seek to~~  
24 ~~obtain a Commercial Phone Directory are able easily to do so. Further, the Pilot Program will be far~~  
25 ~~more effective in meeting the goals of this Chapter than any "opt out" program permitting unsolicited~~

1 ~~distribution of Commercial Phone Directories to private residences and businesses unless the resident~~  
2 ~~or business expresses a preference not to receive the directory.~~

3  
4 **SEC. 2102. DEFINITIONS.**

5 ~~For purposes of this Chapter, the following definitions apply:~~

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

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

12 (c) ~~"Commission"~~ means the Commission on the Environment.

13 (d) ~~"Department"~~ means the Department of the Environment.

14 (e) ~~"Director"~~ means the Director of the Department of the Environment.

15 (f) ~~"Distribute"~~ means to physically deliver Commercial Phone Directories to private residences  
16 and/or businesses in San Francisco. ~~"Distribute"~~ does not include storage of Commercial Phone  
17 Directories by a Distributor or Phone Company at a site under the control of the Distributor or Phone  
18 Company, at which site Persons and others may come to receive Commercial Phone Directories. The  
19 act of distribution of a Commercial Phone Directory shall be imputed to all Distributors, as defined in  
20 subsection (g), of that directory.

21 (g) ~~"Distributor"~~ means

22 (1) ~~a company, entity, business, or Person contractually obligated to distribute or cause~~  
23 ~~the distribution of Commercial Phone Directories to private residences and/or businesses in San~~  
24 ~~Francisco;~~

1               (2) a company, entity, business, or Person that enters into a contract with a Distributor  
2               as defined in subdivision (g)(1) for the purpose of that Distributor's distributing or causing the  
3               distribution of Commercial Phone Directories to private residences and/or businesses in San  
4               Francisco;

5               (3) a company, entity, business, or Person that does not contract for the distribution of  
6               Commercial Phone Directories to private residences and/or businesses in San Francisco but instead  
7               itself distributes the Commercial Phone Directories.

8               Notwithstanding the above definition, "Distributor" does not include a Person or Persons  
9               whose sole role in the distribution of Commercial Phone Directories is limited to driving the streets  
10               and physically delivering Commercial Phone Directories. In addition, "Distributor" does not include  
11               the United States Postal Service, a commercial courier, or a commercial package delivery service that  
12               allows a customer to track the status of a shipment by destination, date, and time of delivery.

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

14               (i) "Phone Company" means a company or other entity that provides telephone service to  
15               private residences and/or businesses in San Francisco. "Phone Company" includes a wholly owned  
16               subsidiary of a Phone Company, or any other company or entity the ownership or management of  
17               which is controlled by a Phone Company.

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

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

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

1           **SEC. 2103. DISTRIBUTION OF COMMERCIAL PHONE DIRECTORIES.**

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

- 4                 (1) ~~The Distributor delivers the Commercial Phone Directory to a Person at the private~~  
5           ~~residence or business who is an occupant or authorized representative of the private residence or~~  
6           ~~business and who personally accepts the Commercial Phone Directory; or~~
- 7                 (2) ~~The Distributor delivers the Commercial Phone Directory to a private residence or~~  
8           ~~business after having received a request from an occupant or authorized representative of the private~~  
9           ~~residence or business for the Commercial Phone Directory to be delivered there.~~

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

13           (c) ~~For purposes of the exception in subdivision (a)(2), there is no restriction on the manner of~~  
14           ~~making a request for delivery of a Commercial Phone Directory to a private residence or business. But~~  
15           ~~the Distributor has a duty to maintain documentation of requests for a Commercial Phone Directory to~~  
16           ~~be delivered to a private residence or business. The Distributor is permitted but not required to~~  
17           ~~maintain a registry of such requests. In any proceeding to determine whether a Distributor has violated~~  
18           ~~subsection (a) because of not qualifying for the exception in subdivision (a)(2), the absence of~~  
19           ~~documentation of a request shall raise an inference that the request was not made.~~

20           (d) ~~For purposes of the exception in subdivision (a)(2), a request for delivery of a Commercial~~  
21           ~~Phone Directory shall be construed to continue in effect for the duration of the Pilot Program.~~

22           (e) ~~A Distributor may not evade the prohibition contained in subsection (a) by:~~

23                 (1) ~~Dividing a Commercial Phone Directory into two or more volumes, when at least~~  
24           ~~one of the volumes does not meet the pages requirement in the definition of Commercial Phone~~  
25           ~~Directory but the volumes combined would meet the pages requirement; or~~

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

3               (f) ~~A Distributor who violates subsection (a) may be subject to administrative penalties, as~~  
4 ~~follows.~~

5               (1) ~~The Director, a designee of the Director, the Director of Public Works, or a designee~~  
6 ~~of the Director of Public Works, may issue administrative citations for violations of subsection (a). San~~  
7 ~~Francisco Administrative Code Chapter 100, "Procedures Governing the Imposition of Administrative~~  
8 ~~Fines," is hereby incorporated in its entirety and shall govern the amount of fees and the procedure for~~  
9 ~~imposition, enforcement, collection, and administrative review of administrative citations issued under~~  
10 ~~this subsection (f). The Director, a designee of the Director, the Director of Public Works, or a~~  
11 ~~designee of the Director of Public Works, shall impose fines as set forth in Section 100.5(a) of the San~~  
12 ~~Francisco Administrative Code.~~

13               (2) ~~For the purpose of determining administrative penalties, violations of subsection (a) shall be~~  
14 ~~computed over any period of time not to exceed 12 months and shall be consolidated in increments of~~  
15 ~~fifty Commercial Phone Directories unlawfully distributed. For example, a Distributor's unlawful~~  
16 ~~distribution of 1-50 Commercial Phone Directories shall count as one violation for the purpose of~~  
17 ~~determining an administrative penalty; a Distributor's unlawful distribution of 51-100 Commercial~~  
18 ~~Phone Directories shall count as two violations for the purpose of determining an administrative~~  
19 ~~penalty; and so on. More than one Distributor may be assessed an administrative penalty for the same~~  
20 ~~violation. No Distributor may be assessed twice for the same violation.~~

21               (g) ~~Distributors have a duty to provide reasonable access to relevant information sought by the~~  
22 ~~Director, a designee of the Director, the Director of Public Works, or a designee of the Director of~~  
23 ~~Public Works, for purposes of enforcing the provisions of this Chapter. A Distributor who violates this~~  
24 ~~subsection (g) may be subject to administrative penalties through the process described in subdivision~~  
25 ~~(f)(1). For purposes of this subsection (g), violations shall be computed on a daily basis. For example,~~

1       the first day a Distributor fails to provide reasonable access to relevant information sought shall count  
2       as one violation for the purpose of determining an administrative penalty; the second day a Distributor  
3       fails to provide reasonable access to relevant information sought shall count as a second violation for  
4       the purpose of determining an administrative penalty; and so on.

5             (h) The Director is authorized to adopt regulations to implement this Section and other  
6       provisions of this Chapter following a public hearing. At the Director's discretion, the Director may  
7       delegate this hearing function, but not the authority to adopt regulations, to a designee.

9             (i) This Section shall not preclude a Distributor, Phone Company, or anyone else from using  
10      any lawful means to inform Persons or others that they may request delivery of a Commercial Phone  
11      Directory to a private residence or business, to publicize the process for making such a request, or to  
12      inform Persons or others of the availability of Commercial Phone Directories at a distribution center  
13      or business where Commercial Phone Directories are available to members of the public. To the extent  
14      permitted by State law, these means of providing information may include but are not limited to:  
15      Notices inserted in phone bills sent to phone customers; notices in other communications from Phone  
16      Companies to their customers; notices in Phone Directories that are not Commercial Phone  
17      Directories and that are distributed to residences and businesses; notices on handbills distributed to  
18      residences and businesses in conformity with provisions of local law regarding distribution of  
19      handbills; notices posted on doors, similar to notices posted by commercial mail services when no one  
20      answers the door; notices sent by U.S. mail or email; phone calls; advertisements on television, radio,  
21      or the Internet; and press releases.

22

23             **SEC. 2104. PUBLIC OUTREACH PROGRAM.**

24             (a) The City shall develop and implement a public outreach program to educate San Francisco  
25      residents and businesses about the environmental harms associated with excessive distribution of

1      ~~Commercial Phone Directories; develop alternatives to private possession of Commercial Phone~~  
2      ~~Directories to obtain the information contained in those directories, and inform the public of those and~~  
3      ~~other alternatives; and inform the public about the option and means of obtaining a Commercial Phone~~  
4      ~~Directory from a Distributor or other source. The public outreach program shall include a special~~  
5      ~~emphasis on outreach to seniors, the disabled, low-income persons, and persons whose primary~~  
6      ~~language is not English.~~

7      (b) ~~The Department shall coordinate with other City offices, departments, boards, and~~  
8      ~~commissions the development and implementation of the public outreach program mandated by~~  
9      ~~subsection (a). These other City entities may include but are not limited to the Office of the Mayor,~~  
10     ~~including the Mayor's Office on Immigrant and Civic Engagement, the Office of the City Administrator,~~  
11     ~~the Department of Public Works, and the Department of Technology. All City offices, departments,~~  
12     ~~boards, and commissions shall cooperate with and reasonably assist the Department in its efforts to~~  
13     ~~coordinate the development and implementation of the program.~~

14     (c) ~~In developing and implementing the public outreach program mandated by subsection (a),~~  
15     ~~the City shall consider the following methods of providing information to the public: Phone calls from~~  
16     ~~the City to private residences and businesses; a notice on the City's website and the Department's~~  
17     ~~website; notices on regular meeting agendas of the Commission and possibly of other City boards and~~  
18     ~~commissions; public service announcements on local television stations including foreign language~~  
19     ~~stations and the City's television station; press releases; and mailings or other communications to~~  
20     ~~private residences and businesses and to centers in the City that house senior citizens or disabled~~  
21     ~~persons, as well as to centers in the City that serve Persons whose primary language is not English. In~~  
22     ~~addition, the City may consider any other methods it concludes may be useful in providing information~~  
23     ~~to the public that will further the goals of the public outreach program as stated in subsection (a).~~

24     (d) ~~In developing and implementing the public outreach program mandated by subsection (a),~~  
25     ~~the City shall consider the feasibility of making Commercial Phone Directories available for~~

1 ~~distribution to the public in City buildings such as branches of the San Francisco Public Library,~~  
2 ~~Recreation Centers, and City Hall; the feasibility of making electronic copies of Commercial Phone~~  
3 ~~Directories more accessible to members of the public; and the feasibility of providing a service by~~  
4 ~~which members of the public can call a City phone number and request information in a Commercial~~  
5 ~~Phone Directory.~~

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

9 ~~(f) The content of the public outreach program is within the City's discretion and any alleged~~  
10 ~~insufficiency of the program in meeting its objectives shall not invalidate this Chapter. The content of~~  
11 ~~the public outreach program may evolve during the three year duration of the Pilot Program.~~

#### **SEC. 2105. PROMOTION OF GENERAL WELFARE.**

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

#### **SEC. 2106. CONFLICT WITH STATE OR FEDERAL LAW.**

20 ~~Nothing in this Chapter shall authorize the City to impose any duties or obligations in conflict~~  
21 ~~with limitations on municipal authority imposed by federal or State law. This Chapter shall be~~  
22 ~~construed so as not to conflict with applicable federal or State law. In adopting regulations pursuant to~~  
23 ~~Section 2103(h) or engaging in enforcement actions pursuant to Sections 2103(f), 2103(g), and~~  
24 ~~2108(c), the City is authorized to implement this Chapter so as to avoid a conflict, if any, with~~  
25 ~~applicable federal or State law.~~

1

2 **SEC. 2107. SEVERABILITY.**

3

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

8 **SEC. 2108. OPERATIVE DATE; SUNSET PROVISION; REPORTS.**

9

10 *(a) This Chapter shall become operative on May 1, 2012.*

11 *(b) This Chapter shall remain operative through April 30, 2015. This Chapter shall "sunset" on*  
*May 1, 2015 and no longer have the force of law as of that date.\**

12 *(c) Distributors shall submit a written report to the Director or the Director's designee one year*  
13 *after the operative date of this Chapter, two years after the operative date, and six months prior to the*  
14 *sunset date. These reports shall contain information on the total number of Commercial Phone*  
15 *Directories distributed, and the number of them distributed according to different means of*  
16 *distribution. The Director may require Distributors to submit other information pertaining to*  
17 *distribution of Commercial Phone Directories.*

18 *Failure of a Distributor to comply with the reporting requirement mandated by this subsection*  
19 *(c) may subject the Distributor to administrative penalties through the process described in Section*  
20 *2103(f)(1). For purposes of this subsection (c), violations shall be computed on a daily basis, in the*  
21 *manner described in Section 2103(g).*

22 *To the extent submission of information from one Distributor would be duplicative of*  
23 *information submitted or to be submitted by another Distributor, the Director may, upon request of a*  
24 *Distributor, waive the reporting requirement mandated by this subsection (c) for that Distributor.*

1                   (d) ~~The Department shall report to the Board of Supervisors, no later than three months prior to~~  
2 ~~the sunset date of this Chapter, on the efficacy of this Chapter as a means of reducing wastage in the~~  
3 ~~distribution of Commercial Phone Directories in San Francisco, the scope and effectiveness of the~~  
4 ~~public outreach program mandated by Section 2104(a), and any other matters pertaining to this~~  
5 ~~Chapter. All City offices, departments, boards, and commissions shall cooperate with and reasonably~~  
6 ~~assist the Department in its efforts to prepare the report. This subsection (d) shall not preclude the~~  
7 ~~Board of Supervisors or a committee thereof, or the Commission, or any other City entity or official,~~  
8 ~~from holding hearings at any time on the same subject.~~

9

10                  **SEC. 2109. SUSPENSION OF YELLOW PAGES DISTRIBUTION PILOT PROGRAM.**

11                  (a) ~~Chapter 21 of the San Francisco Environment Code, Sections 2101 through 2108, is~~  
12 ~~suspended. During the period of suspension, Chapter 21 shall have no force or effect and shall not be~~  
13 ~~enforced.~~

14                  (b) ~~In the event that, upon further proceedings in Dex Media West, Inc. v. City of Seattle, the~~  
15 ~~United States Court of Appeals for the Ninth Circuit or the Supreme Court of the United States finally~~  
16 ~~holds that the City of Seattle's restrictions on the distribution of Commercial Phone Directories are~~  
17 ~~consistent with the First Amendment to the United States Constitution, then the suspension of Chapter~~  
18 ~~21 shall be lifted one year from the date the mandate issues in that case.~~

19                  (c) ~~In the event that the suspension of Chapter 21 is lifted as described in the foregoing~~  
20 ~~subsection (b), then Chapter 21 shall be in force and effect for three years following the date the~~  
21 ~~suspension is lifted, notwithstanding any conflicting sunset date set forth in Section 2108.~~

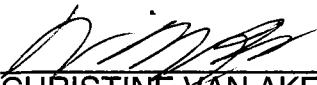
22

23                  Section 2. Effective Date. This ordinance shall become effective 30 days from the  
24 date of passage.

25

1           Section 3. This section is uncodified. In enacting this Ordinance, the Board intends to  
2 amend only those words, phrases, paragraphs, subsections, sections, articles, numbers,  
3 punctuation, charts, diagrams, or any other constituent part of the Environment Code that are  
4 explicitly shown in this legislation as additions, deletions, Board amendment additions, and  
5 Board amendment deletions in accordance with the "Note" that appears under the official title  
6 of the legislation.

7           APPROVED AS TO FORM:  
8 DENNIS J. HERRERA, City Attorney

9  
10 By:   
11 CHRISTINE VAN AKEN  
12 Deputy City Attorney

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**City and County of San Francisco  
Tails  
Ordinance**

City Hall  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4689

**File Number:** 130186

**Date Passed:** July 30, 2013

Ordinance amending the Environment Code by repealing Yellow Pages Distribution Pilot Program.

July 22, 2013 Land Use and Economic Development Committee - RECOMMENDED AS  
COMMITTEE REPORT

July 23, 2013 Board of Supervisors - PASSED, ON FIRST READING

Ayes: 11 - Avalos, Breed, Campos, Chiu, Cohen, Farrell, Kim, Mar, Tang, Wiener  
and Yee

July 30, 2013 Board of Supervisors - FINALLY PASSED

Ayes: 11 - Avalos, Breed, Campos, Chiu, Cohen, Farrell, Kim, Mar, Tang, Wiener  
and Yee

File No. 130186

I hereby certify that the foregoing  
Ordinance was FINALLY PASSED on  
7/30/2013 by the Board of Supervisors of the  
City and County of San Francisco.

Angela Calvillo  
Clerk of the Board

Mayor

Date Approved