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NORTHERN DISTRICT OF CALIFORNIA

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11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 SAN FRANCISCO DIVISION

14 CTIA - THE WIRELESS ASSOCIATION®,
15 Plaintiff,
16 v.
17 THE CITY AND COUNTY OF SAN
18 FRANCISCO, CALIFORNIA,
19 Defendant.

Case No. 10 3224

LB

COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF

20 PRELIMINARY STATEMENT

21 1. Plaintiff brings this lawsuit to enjoin the City and County of San Francisco (the
22 City) from unlawfully interfering with the Federal Communications Commission (the FCC)'s
23 exclusive, Congressionally-derived authority over radio frequency (RF) emissions from wireless
24 portable devices, including cell phones. In exercising that authority, the FCC adopted a safety
25 standard for those emissions, known as the Specific Absorption Rate (SAR) limit. The SAR limit
26 was established based on extensive scientific evidence and in collaboration with the Food and
27 Drug Administration, the Environmental Protection Agency, and the Occupational Health and
28 Safety Administration. The FCC has stated that *any* cell phone that complies with the standard is
safe, regardless of whether its SAR value is at or somewhere below the SAR limit. Although the

1 FCC has required RF-related warnings on numerous other types of devices, it determined that no
2 such warnings were needed or required for cell phones. Congress and the FCC have repeatedly
3 made clear the need for uniform national regulation of RF safety issues.

4 2. In the face of these FCC decisions and pronouncements, the City recently enacted
5 its own, conflicting rules concerning RF emissions, styled as the “Cell Phone Right-to-Know
6 Ordinance,” File No. 100104, Ordinance No. 155-10 (the Ordinance) (attached hereto as Exhibit
7 A). The Ordinance is premised on the City’s belief that the FCC standards are not “safe enough”
8 and represents an attempt by the City to second-guess the FCC and to supplant the exclusive
9 federal regulation of RF emissions safety. Thus, while the FCC decided to regulate by setting a
10 SAR limit sufficient to protect the public from any known potential health effects, the City has
11 determined that cell phone providers must prominently display each cell phone’s SAR value as if
12 the safety of that phone depended on its relative SAR value and somehow varied from the safety
13 of other FCC-compliant phones with different SAR values. By enacting the Ordinance, the City
14 is, in its own words, seeking to “take a lead role” in “the next frontier of consumer safety” and
15 expects that the Ordinance will “encourage telephone manufacturers to redesign their devices to
16 function at lower radiation levels,” despite the fact that devices functioning at existing RF levels
17 already fully comply with the FCC established safety standard for RF emissions.

18 3. Under well-established federal preemption doctrines based on the Supremacy
19 Clause of the Constitution, no state or local government is permitted to regulate the subject matter
20 of RF emissions from FCC-approved cell phones. The Ordinance runs afoul of these doctrines
21 and is preempted on several different grounds. *First*, it is preempted because it trenches
22 unlawfully on a regulatory field reserved exclusively to and occupied exclusively by the federal
23 government. *See* Count 1. The relevant field includes the regulation of RF emissions and RF
24 safety, the approval of wireless devices for marketing, sale and use, and the other technical and
25 operational aspects of wireless communications. Federal regulation is so pervasive in this field
26 that no room is left for any state action. The FCC and the federal courts have repeatedly
27 recognized field preemption in this area.

1 4. *Second*, the Ordinance is preempted because it conflicts with federal law by:
2 (a) challenging, directly or indirectly, the FCC’s determination that all FCC-compliant wireless
3 handsets are safe; (b) disrupting Congress’ goal of creating and maintaining a uniform national
4 regulatory regime for wireless communications; and (c) upsetting the balance between public
5 safety and an efficient nationwide wireless network struck by the FCC when it adopted the
6 current RF emission standard. *See* Count 2.

7 5. *Third*, the Ordinance is expressly preempted by Section 332(c)(3)(A) of the
8 Communications Act, which prohibits state-imposed conditions on “entry” to the wireless market,
9 including point of sale “warning requirements” and labeling requirements. *See* Count 3.

10 6. For these reasons, as more fully described below, plaintiff seeks a declaration that
11 the Ordinance is invalid and an injunction against enforcing or any threat to enforce the
12 Ordinance or any regulations against plaintiff and its members.

13 7. If not enjoined, the Ordinance will not only interfere with the uniform federal
14 regulation of RF safety issues, but also confuse and mislead the public, and cause irreparable
15 injury to plaintiff, its members, and the public. The message conveyed by the Ordinance is that
16 safety of FCC-complaint devices depends on their SAR level. But variations in SAR within the
17 FCC limit do not equate to variations in safety. Below a certain threshold – one that is well above
18 the FCC SAR limit – there are no known adverse health effects from RF emissions. It is
19 misleading, therefore, for the Ordinance to suggest that relative SAR values within the FCC’s
20 limit reflect greater or lesser “safety.” The message sent to consumers — that safety of FCC-
21 compliant phones varies with SAR values — is inaccurate.

22 8. The Ordinance also disregards the fact that each device’s SAR value is determined
23 during laboratory testing while the device is operating at its maximum certified power level. The
24 FCC has concluded that testing phones at these maximum power levels is an appropriate means of
25 ensuring that the devices comply with the FCC’s SAR limit. In every day use, however, cell
26 phones often operate below their maximum certified power levels such that the actual SAR levels
27 reached during operation are often well below the SAR value determined in testing. Because the
28 disclosure required by the Ordinance implies that the phone always operates at the displayed SAR

1 limit, it is likely to mislead and confuse consumers as to their likely actual exposures to RF
2 emissions.

3 **PARTIES**

4 9. Plaintiff CTIA - The Wireless Association® (CTIA) is a District of Columbia not
5 for profit corporation with its principal place of business in Washington, D.C. CTIA represents
6 all sectors of the wireless industry, including but not limited to manufacturers of wireless
7 handsets and accessories, providers of wireless services, and sellers of wireless services, handsets
8 and accessories, which are affected by and subject to the Ordinance.

9 10. The City is a municipal corporation located in the State of California. It exercises
10 local government powers under state law.

11 **JURISDICTION**

12 11. This Court has subject matter jurisdiction over Plaintiff's claims for relief pursuant
13 to 28 U.S.C. § 1331 because they arise under the Constitution and laws of the United States.
14 Plaintiff seeks a declaration of its rights in this case of actual controversy pursuant to 28 U.S.C.
15 § 2201 *et seq.*

16 12. This Court has subject matter jurisdiction over Plaintiff's claims for relief pursuant
17 to 28 U.S.C. § 1337 because they arise under an Act of Congress regulating commerce.

18 13. Plaintiff submits and is therefore subject to the personal jurisdiction of this Court
19 by virtue of commencing this civil action and filing this Complaint.

20 14. Plaintiff has associational standing to bring and maintain this action. One or more
21 of CTIA's members would have standing to sue in their own right, the interests that CTIA seeks
22 to protect are germane to CTIA's purpose, and neither the claims asserted nor the relief requested
23 require the participation of individual members in this lawsuit. *See, e.g., Hunt v. Washington*
24 *State Apple Advertising Comm'n*, 432 U. S. 333, 343 (1977); *Associated General Contractors of*
25 *Cal., Inc. v. Coalition for Economic Equity*, 950 F.2d 1401 (9th Cir. 1991).

26 15. The City is subject to the personal jurisdiction of this Court pursuant to Federal
27 Rule of Civil Procedure 4(k)(1)(A) and California Code of Civil Procedure § 410.10 because the
28

1 City is located in the State of California and/or caused harm by acts or omissions that occurred in
2 the State of California.

3 **VENUE**

4 16. Venue is proper in the United States District Court for the Northern District of
5 California pursuant to 28 U.S.C. § 1391(b)(1), (b)(2) and (b)(3) because the City is located in and
6 can be found in this District and because a substantial part of the events or omissions giving rise
7 to Plaintiff's claims for relief occurred in this District.

8 **INTRADISTRICT ASSIGNMENT**

9 17. Pursuant to Civil Local Rule 3-2(c), this action should be assigned to the San
10 Francisco Division of this Court because a substantial part of the events or omissions which give
11 rise to Plaintiff's claims for relief occurred in San Francisco and a substantial part of the property
12 that is the subject of this action is situated in San Francisco.

13 **BACKGROUND COMMON TO ALL COUNTS**

14 **Federal Regulation of RF Emissions From Wireless Handsets**

15 18. The federal government has exclusive jurisdiction to regulate the safety of wireless
16 handsets.

17 19. For nearly 100 years, beginning with the Radio Acts of 1912 and 1927, wireless
18 communications and the RF used for such communications have been subject to continuous,
19 pervasive, and uniform regulation by the federal government.

20 20. The comprehensive federal regulation of nearly all aspects of wireless
21 communications and associated devices has long been to the exclusion of state and local
22 regulation.

23 21. In 1934, Congress passed the Communications Act of 1934, *see* 47 U.S.C. § 151 *et*
24 *seq.*, which created the FCC and put it at the helm of "a unified and comprehensive regulatory
25 system for the industry," *NBC v. United States*, 319 U.S. 190, 214 (1943) (internal quotation
26 marks omitted), and gave it exclusive regulatory authority over the "apparatus to be used" for
27 transmission and the "external effects" of the transmission of radio waves, 47 U.S.C. § 303(e).

1 22. Both Congress and the FCC have extended their long-standing control over
2 traditional radio transmissions and devices to modern wireless telecommunications service and
3 wireless handsets.

4 23. In its first order relating to commercial cellular service, the FCC expressly
5 “assert[ed] Federal primacy in this area,” because it was concerned that state or local regulation
6 of this new technology “would . . . direct[ly] conflict with [the FCC’s] attempt . . . to establish a
7 nation-wide system of radio communications.” *Future Use of Frequency Band 806-960 MHz*, 46
8 F.C.C.2d 752, 766-67 (¶¶ 43-44) (1974).

9 24. The FCC made clear that its regulation of wireless telecommunications service is
10 to be exclusive of state or local regulation, stating that “the scheme of regulation we have devised
11 to implement . . . [is] to be carried out on a national basis . . . without regard to state boundaries or
12 varying local jurisdictions.” *Id.* at 766 (¶ 43).

13 25. In 1993, Congress ratified and reinforced the FCC’s assertion of federal primacy
14 over personal wireless communications.

15 26. At that time, Congress amended the Communications Act to further consolidate
16 wireless regulation at the federal level and thus “foster the growth and development of mobile
17 services that, by their nature, operate without regard to state lines as an integral part of the
18 national telecommunications infrastructure.” H.R. Rep. No. 103-111, at 260 (1993). The 1993
19 amendments added § 332(c)(3)(A), entitled “State Preemption,” to the Communications Act. *See*
20 Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI, § 6002(b), 107 Stat.
21 312 (1993).

22 27. Section 332(c)(3)(A) provides that “no State or local government shall have *any*
23 *authority* to regulate [1] the entry of or [2] rates charged by any commercial mobile service.”
24 47 U.S.C. § 332(c)(3)(A) (emphasis added).

25 28. In the FCC’s own words, Congress’s purpose in amending the Act in 1993 was to
26 ensure a “national regulatory policy for [wireless telephony], *not a policy that is balkanized state-*
27 *by-state.*” *Petition on Behalf of the State of Conn.*, 10 F.C.C.R. 7025, 7034 (¶ 14) (1995)
28 (emphasis added); *see also Conn. Dep’t of Pub. Util. Control v. FCC*, 78 F.3d 842, 845 (2d Cir.

1 1996) (explaining that the 1993 amendments were enacted “to dramatically revise the regulation
2 of the wireless telecommunications industry, of which cellular telephone service is a part”).

3 29. In 1996, Congress acted to further ensure the federal government’s primacy over
4 wireless telecommunications, facilities, and devices – including their RF emissions.

5 30. In the Telecommunications Act of 1996, Congress charged the FCC with adopting
6 rules establishing a federal safety standard governing RF emissions from wireless handsets. *See*
7 Pub. L. No. 104-204, § 704(b), 110 Stat. 56 (1996) (“Within 180 days after the enactment of this
8 Act, the Commission shall complete action in ET Docket 93-62 to prescribe and make effective
9 rules regarding the environmental effects of radio frequency emissions.”).

10 31. In August 1996, pursuant to this Congressional direction, its authority under the
11 Communications Act, and in collaboration with the Food and Drug Administration (FDA), the
12 Environmental Protection Agency (EPA), and the Occupational Health and Safety
13 Administration, the FCC adopted the current RF exposure standards applicable to all wireless
14 phones marketed, sold, or distributed in the United States. *In re Guidelines for Evaluating the*
15 *Environmental Effects of Radiofrequency Radiation*, Release No. 96-326, 11 F.C.C.R. 15123,
16 15184 (¶ 169) (1996) (*RF Order I*).

17 32. The FCC’s regulations applicable to portable devices such as wireless handsets
18 establish a maximum SAR of 1.6 watts per kilogram (1.6 W/kg) for spatial peak SAR as averaged
19 over any one gram of tissue. *See* 47 C.F.R. § 2.1093(d)(2).

20 33. To ensure compliance with the federal RF safety standards, the FCC has adopted
21 detailed testing, certification, and equipment authorization procedures that must be met before a
22 wireless handset can be marketed, sold, or used in the United States.

23 34. All wireless handsets marketed, distributed, or sold in the United States must
24 comply with the FCC’s SAR limits. *See* 47 C.F.R. § 2.803(a)(1); *see also id.* § 24.51(a).

25 35. Manufacturers and/or service providers applying for “equipment authorization”
26 from the FCC are required to submit “a statement affirming that the equipment complies” with
27 the applicable SAR standards, “as measured by an approved method,” and “to maintain a record
28 showing the basis of the statement of compliance.” 47 C.F.R. § 24.51(c); *see also id.*, § 24.52.

1 36. Technical information showing the basis for the statement of compliance “must be
2 submitted to the Commission upon request.” 47 C.F.R. § 24.52.

3 37. In connection with the “equipment authorization” process, the FCC approves the
4 “operating instructions” provided to users. 47 C.F.R. § 2.1033(c)(3) (requiring applicants for
5 equipment authorization to submit “[a] copy of the installation and operating instructions to be
6 furnished to the user”); *see also* 47 C.F.R. § 2.915(a) (stating that the FCC will grant an
7 application if it makes certain findings based on “an examination of the application and
8 supporting data”); *see also* 47 C.F.R. § 2.919 (stating that the FCC will deny an application if it
9 cannot make the findings specified in 47 C.F.R. § 2.915(a)).

10 38. Under the FCC’s rules, an equipment authorization may not be granted without an
11 affirmative finding based on an examination of all data and information submitted with the
12 application – including the operating instructions for consumers – that the public interest would
13 be served by granting the application. *See* 47 C.F.R. §§ 2.915(a), 2.919; *see also* 47 C.F.R.
14 § 2.1033(c)(3).

15 39. In adopting the current RF standards, the FCC explained that it was relying
16 “substantially on the recommendations” of federal health agencies, including the FDA and the
17 EPA. *RF Order I*, 11 F.C.C.R. at 15124 (¶ 2).

18 40. The FCC concluded that its standards “represent the best scientific thought” on the
19 RF emissions limits necessary “to protect the public health,” *id.* at 15184 ¶ 168, and “provide a
20 proper balance between the need to protect the public and workers from exposure to potentially
21 harmful RF electromagnetic fields and the requirement that industry be allowed to provide tele-
22 communications services to the public in the most efficient and practical manner possible.” *In re*
23 *Guidelines for Evaluating the Env'tl. Effects of Radiofrequency Radiation*, 12 F.C.C.R. 13494,
24 13505 ¶ 2 (1997) (*RF Order II*).

25 41. The FCC has stated that “any cell phone at or below [FCC] SAR levels (that is,
26 any phone legally sold in the U.S.) is a ‘safe’ phone, as measured by these standards.” *See* FCC,
27 Cellular Telephone Specific Absorption Rate, available at <http://www.fcc.gov/cgb/sar>.

1 42. The FCC's SAR standard that applies to cell phones is designed to be sufficiently
2 protective of human health and safety such that there is no need for RF-related warnings or
3 disclosures that the FCC requires for certain other types of devices. The FCC has adopted a two-
4 tier standard for exposure to RF energy. The "occupational/controlled" standard assumes that
5 users have a level of knowledge and control over exposure to RF emissions, and applies only to
6 situations where persons are exposed as a consequence of their employment, have been made
7 fully aware of the potential for exposure, and can exercise control over that exposure. *In re*
8 *Guidelines for Evaluating the Env'tl. Effects of Radiofrequency Radiation*, 11 F.C.C.R. 15123,
9 15139-140 (1996). In contrast, cell phones are governed by the "general population/
10 uncontrolled" tier, a standard that assumes that the users lack knowledge or control over potential
11 exposure. Because of that assumption, the safety standard is set at a level that eliminates the need
12 for warnings. Thus, the FCC did not mandate RF-related disclosures for cell phones, in contrast
13 to its imposition of such requirements for numerous other emissions sources. *See, e.g.*, 47 C.F.R.
14 § 1.1307(b)(1) (table) (requiring subscriber equipment, such as devices used in Part 25 satellite
15 communication services, to include RF-related warnings or disclosures but not imposing such a
16 requirement on cell phones).

17 43. In addition, the FCC specifically rejected the argument that particular classes of
18 persons, including children, are more sensitive to RF such that a more restrictive SAR standard is
19 necessary. *See RF Order II*, 12 F.C.C.R. at 13504-05 (¶¶ 26, 29).

20 44. Two federal Courts of Appeal have upheld the FCC's RF standards on petition for
21 review, in both cases rejecting arguments that the standards were insufficiently protective of
22 public health. *See Cellular Phone Taskforce v. FCC*, 205 F.3d 82 (2d Cir. 2000); *EMR Network*
23 *v. FCC*, 391 F.3d 269 (D.C. Cir. 2004).

24 45. The FCC has also demonstrated that it views its RF standard setting as an ongoing
25 process in which the RF emissions exposure standards for cell phones would be subject to future
26 revision if scientific research were to demonstrate that its standards were inadequate to protect the
27 public. *See RF Order II*, 12 F.C.C.R. at 13506 (¶ 32).

1 52. The Resolution contained the same findings and recommendations as the Draft
2 Resolution. *See* Exhibit B.

3 53. Based on its findings, the COE made a number of recommendations in the
4 Resolution that are predicated on concerns about the safety of RF emissions from FCC-compliant
5 cell phones and explicitly question the adequacy of the FCC's RF standards, including that the
6 "City/County adopt[] legislation requiring that retailers of cell phones provide point-of-sale
7 information on SAR values and information on safer use," including a requirement that "[t]he
8 SAR value should be as visible to the consumer as the price." *See* Exhibit B at 3:6-8.

9 54. On the same day that the COE adopted the Resolution, the mayor introduced the
10 Ordinance at a meeting of the San Francisco Board of Supervisors (the Board).

11 55. In a press release issued that day, the mayor explained the Ordinance as follows:
12 "In addition to protecting the consumers' right to know, this legislation will encourage telephone
13 manufacturers to redesign their devices to function at lower radiation levels." The mayor also
14 stated that the Ordinance would likely cause manufacturers to change the way they made their
15 cell phones by reducing SAR, misleadingly drawing a comparison between the Ordinance and
16 Proposition 65, which he said "dramatically reduced public exposure to toxic materials because
17 chemical companies removed toxic ingredients from their products in order to avoid product
18 warnings." The mayor also asserted that "[c]ell phone radiation varies widely depending on the
19 model, with SAR's [sic] between 0.19 and 1.6," and that "[t]here is no technological reason why
20 a cell phone needs to emit the maximum allowed levels of radiation. Phones that emit lower
21 amounts of radiation work just as well, and sport just as many features." Press Release, *Mayor*
22 *Newsom Introduces Cell-Phone Radiation Labeling Legislation* (Jan. 26, 2010), available at
23 <http://www.sfmayor.org/press-room/press-releases/press-release-cell-phone-radiation-labeling>.

24 56. The press release also asserts that "[w]ith the growing number of people using cell
25 phones on a daily basis and the increasing use by young children, the questions around the
26 potential health effects are significant enough to warrant precautionary action." *Id.*

27 57. On June 22, 2010, the Board voted to approve the Ordinance.
28

1 58. On July 1, 2010, San Francisco Mayor Gavin Newsom signed the Ordinance into
2 law.

3 59. The Ordinance amends the San Francisco Environment Code to require “cell
4 phone retailers” to disclose SAR values for all “cell phones” and to display and/or provide
5 “educational materials” materials — including a “supplemental factsheet,” “display materials,”
6 and/or a “store poster” — the content of which will be specified by the City.

7 60. The Ordinance’s “Findings” state that “Government agencies and scientific bodies
8 in the European Union (EU) and Israel have recognized the potential harm of long-term exposure
9 to radiation emitted from cell phones and, as a result, have issued warnings about their use,
10 especially by children,” Ordinance, Findings, § 1(a), thereby challenging the sufficiency of the
11 FCC’s regulations, including its decision not to mandate cell phone RF emission warnings.

12 61. The Ordinance defines the term “cell phone” as “a portable wireless telephone
13 device that is designed to send or receive transmissions through a cellular radiotelephone service,
14 as defined in Section 22.99 of Title 47 of the Code of Federal Regulations.” Ordinance,
15 § 1101(a).

16 62. The Ordinance defines the term “cell phone service provider” as “a telecom-
17 munications common carrier authorized to offer and provide cellular service for hire to the
18 general public.” Ordinance, § 1101(c)

19 63. The Ordinance defines the term “cell phone retailer” as “any person or entity
20 within the City which sells or leases cell phones to the public or which offers cell phones for sale
21 or lease.” *Id.* § 1101(b).

22 64. The Ordinance specifically states that the term “cell phone retailer” “shall include
23 a ‘formula cell phone retailer,’” *id.*, § 1101(b) which the Ordinance defines “a cell phone retailer
24 which sells or leases cell phones to the public, or which offers cell phones for sale or lease,
25 through a retail sales establishment located in the City which, along with eleven or more other
26 retail sales establishments located in the United States, maintains two or more of the following
27 features: a standardized array of merchandise; a standardized facade; a standardized decor and
28

1 color scheme; a uniform apparel; standardized signage; or, a trademark or service mark,” *id.*,
2 § 1101(f).

3 65. The Ordinance applies to, and imposes obligations on, cell phone service
4 providers.

5 66. Beginning September 1, 2010, the Ordinance requires cell phone service providers
6 to provide a list of its retail locations to the Department of the Environment in a form determined
7 by the Department. Ordinance, § 1102(a).

8 67. Beginning November 1, 2010, Section 1102(b) of the Ordinance requires cell
9 phone service providers to provide retailers with the SAR value for each make and model of cell
10 phone sold or leased at that location. Ordinance, § 1102(b).

11 68. The Ordinance also applies to, and imposes obligations on “cell phone retailers.”

12 69. Beginning February 1, 2011, Section 1103(a) of the Ordinance requires formula
13 cell phone retailers that “post[] display materials in connection with sample phones or phones on
14 display” to include three elements in the “display materials”: “(1) The SAR value of that phone
15 and the maximum allowable SAR value for cell phones set by the FCC; (2) A statement
16 explaining what a SAR value is; and, (3) A statement that additional educational materials
17 regarding SAR values and cell phone use are available from the cell phone retailer.” Ordinance,
18 § 1103(a).

19 70. With respect to the three elements required by Section 1103(a), the Ordinance
20 provides that the “Department of the Environment shall adopt regulations specifying the content
21 and format for the elements . . . and shall develop a template for those elements.” Ordinance,
22 § 1103(a). The Ordinance further provides specific requirements for the size and readability of
23 these elements. Ordinance, § 1103(a).

24 71. The Ordinance requires “cell phone retailers” that are not “formula cell phone
25 retailers” to comply with Section 1103(a) of the Ordinance by February 1, 2012. Ordinance,
26 § 1103(a).

27 72. Beginning February 1, 2011, Section 1103(b) of the Ordinance requires “formula
28 cell phone retailers” that “do[] not post display materials in connection with sample phones or

1 phones on display,” to “display, in a prominent location within the retail location visible to the
2 public, a poster that includes these three elements:” (1) “The SAR value of each make and model
3 of cell phone offered for sale or lease at that retail location and the maximum allowable SAR
4 value for cell phones set by the FCC; (2) A statement explaining what a SAR value is; and, (3) A
5 statement that additional educational materials regarding SAR values and cell phone use are
6 available from the cell phone retailer.” Ordinance, § 1103(b).

7 73. With respect to the three elements required by Section 1103(b), the Ordinance
8 provides that the “Department of the Environment shall adopt regulations specifying the content
9 and format for the elements . . . and shall develop a template for those elements.” Ordinance,
10 § 1103(b). The Ordinance further provides that the “store poster shall be no smaller than 8.5
11 inches by 11 inches.” Ordinance, § 1103(b).

12 74. The Ordinance requires “cell phone retailers” that are not “formula cell phone
13 retailers” to comply with Section 1103(b) of the Ordinance by February 1, 2012. A Ordinance, §
14 1103(b).

15 75. Section 1103(c) of the Ordinance provides that the “Director [of the Department of
16 the Environment] may, in his or her discretion, authorize a retailer to use alternate means to
17 comply with the requirements of subsections (a) and (b)” of Section 1103. Ordinance, § 1103(c).

18 76. While the Ordinance requires “formula cell phone retailers” to comply with the
19 requirements of Section 1103(a) and (b) beginning February 1, 2011, the Ordinance states that the
20 City shall not enforce those provisions until May 1, 2011 (*i.e.*, until three months later).
21 Ordinance, § 1105(a).

22 77. While the Ordinance requires all “cell phone retailers” other than “formula cell
23 phone retailers” to comply with the requirements of Section 1103(a) and (b) by February 1, 2012,
24 the Ordinance states that the City shall not enforce those provisions until August 1, 2012 (*i.e.*,
25 until six months later). Ordinance, § 1105(b).

26 78. The Ordinance requires “the Department of the Environment, in consultation with
27 the Department of Public Health,” to “develop a supplemental factsheet regarding SAR values
28 and the use of cell phones, as well as templates for display materials and store posters” following

1 a public hearing. Ordinance, § 1104(a). The Ordinance also provides that “[t]he Department of
2 the Environment shall hold the initial public hearing by September 1, 2010, and complete the
3 supplemental factsheet by November 1, 2010.” Ordinance, § 1104(a).

4 79. By November 1, 2010, the Ordinance also requires the Department of the
5 Environment to “issue regulations specifying the contents and format for the elements required by
6 Section 1103, subsections (a) and (b), for display materials and store posters, respectively . . .
7 [and to] adopt templates for display materials and store posters.” Ordinance, § 1104(b).

8 80. The Ordinance states that the “Department shall develop content for all of these
9 materials that is based on and consistent with the relevant information provided by the FCC or
10 other federal agencies having jurisdiction over cell phones, explaining the significance of the
11 SAR value and potential effects of exposure to cell phone radiation. The materials shall also
12 inform customers of actions that can be taken by cell phone users to minimize exposure to
13 radiation, such as turning off cell phones when not in use, using a headset and speaker phone, or
14 texting.” Ordinance, § 1104(c).

15 81. Violations of the Ordinance or the regulations promulgated thereunder are
16 punishable by administrative fines ranging up to \$500.00 per violation. Ordinance, § 1105(d) &
17 (f).

18 82. Enforcement of the Ordinance will cause direct and irreparable harm to Plaintiff
19 and its members.

20 **COUNT ONE**

21 **VIOLATION OF THE SUPREMACY CLAUSE [Field Preemption]**

22 83. Plaintiff incorporates the preceding paragraphs by reference as though set forth
23 fully herein.

24 84. The Supremacy Clause of the U.S. Constitution states that the “Laws of the United
25 States which shall be made in Pursuance [of the Constitution] . . . shall be the supreme Law of the
26 Land” U.S. Const., art. VI, cl. 2.

1 85. Regardless of whether there is an actual conflict between a local law and federal
2 law, the local law is preempted if it regulates in a field reserved exclusively for the federal
3 government.

4 86. The Ordinance is impliedly preempted because it trenches unlawfully on a
5 regulatory field reserved exclusively to the federal government.

6 87. The relevant field is the regulation of the technical and operational requirements
7 for wireless communications, including the environmental, human health and other external
8 effects of the radio frequency emissions used in wireless communications and the approval and
9 licensure of wireless devices and consumer disclosure materials related to the foregoing.

10 88. The FCC has publicly filed briefs asserting that there is field preemption with
11 respect to the technical standards involving RF emissions. *See, e.g.,* Brief of the United States
12 and the FCC as Amicus Curiae in Support of Appellees at 12-14, *Murray v. Motorola*, 982 A.2d
13 764 (D.C. 2009) (No. 07-cv-1074) (“The Federal Government Occupies The Field of Regulating
14 Technical Standards for RF Transmissions.”).

15 89. Federal courts have recognized this field preemption. *See, e.g., N.Y. SMSA Ltd.*
16 *P’ship v. Town of Clarkstown*, No. 09-1546-cv, slip op. at 15 (2d Cir. June 30, 2010) (holding
17 that the “regulation of technical and operational aspects of wireless telecommunications
18 technology” is “a field that is occupied by federal law”).

19 90. Plaintiff is therefore entitled to a declaration, pursuant to 28 U.S.C. § 2201, that
20 the Ordinance violates the Supremacy Clause of the U.S. Constitution because it is preempted by
21 federal law.

22 91. Plaintiff is further entitled to an injunction, pursuant to 28 U.S.C. § 2202,
23 restraining the City from enforcing or threatening to enforce the Ordinance or any regulations
24 promulgated thereunder against Plaintiff’s members.

25 **COUNT TWO**

26 **VIOLATION OF THE SUPREMACY CLAUSE [Conflict Preemption]**

27 92. Plaintiff incorporates the preceding paragraphs by reference as though set forth
28 fully herein.

1 93. When there is a conflict between a state or local law and federal law, the federal
2 law preempts the state or local law.

3 94. The Ordinance is impliedly preempted because it conflicts with federal law in a
4 number of significant ways.

5 95. The Ordinance conflicts with federal law by challenging either directly or
6 indirectly the FCC's determination that FCC-compliant wireless handsets are safe and do not
7 require RF emission warnings.

8 96. The Ordinance conflicts with federal law by disrupting Congress' goal of creating
9 and maintaining a uniform and national regulatory regime for wireless communications.

10 97. The Ordinance conflicts with federal law by upsetting the balance the FCC struck
11 when it adopted the current RF standard. Encouragement of the broad use of radio
12 communications in the public interest is at the core of the FCC's statutory mandate. In adopting
13 the current standard, the FCC carefully balanced two congressionally mandated goals – the goal
14 of encouraging rapid deployment and increased usage of wireless communications as part of our
15 nation's telecommunications infrastructure, on the one hand, and the protection of public health
16 and safety on the other. The Ordinance threatens to upset this balance by misleading the public as
17 to the safety of FCC-approved devices, which would both discourage the use of wireless devices
18 altogether and encourage the marketing and purchase of lower SAR devices. Indeed, the City has
19 openly and frankly acknowledged that the Ordinance is motivated by a perceived problem with
20 the sufficiency of the FCC's regulations, and that it expects that the effect of the Ordinance will
21 be to encourage cell phone makers to redesign their products in order to have lower SAR values.

22 98. In addition, the FCCs' decision to adopt a safety standard that assumes consumers
23 have no knowledge or control over exposure to RF from wireless phones, and its related
24 affirmative decision not to require disclosures necessary for other types of devices, carries
25 preemptive force. *See, e.g., Arkansas Elec. Co-op. Corp. v. Arkansas Public Service Comm'n,*
26 *461 U.S. 375, 384 (1983)* (“[A] federal decision to forgo regulation in a given area may imply an
27 authoritative federal determination that the area is best left *unregulated*, and in that event would
28 have as much pre-emptive force as a decision to regulate.”).

1 99. By requiring the disclosure of SAR values, the Ordinance unlawfully conflicts
2 with the FCC's determination not to require such disclosures.

3 100. Plaintiff is therefore entitled to a declaration, pursuant to 28 U.S.C. § 2201, that
4 the Ordinance violates the Supremacy Clause of the U.S. Constitution because it is preempted by
5 federal law.

6 101. Plaintiff is further entitled to an injunction, pursuant to 28 U.S.C. § 2202,
7 restraining the City from enforcing or threatening to enforce the Ordinance or any regulations
8 promulgated thereunder against Plaintiff's members and their officers, employees and agents.

9 **COUNT THREE**

10 **VIOLATION OF THE SUPREMACY CLAUSE [47 U.S.C. 332(c)(3)(A)]**

11 102. Plaintiff incorporates the preceding paragraphs by reference as though set forth
12 fully herein.

13 103. Section 332(c)(3)(A) of the Communications Act explicitly prohibits the States
14 from regulating the "entry of . . . any commercial mobile service." 47 U.S.C. § 332(c)(3)(A).

15 104. The Ordinance purports to set conditions that Plaintiff's members must meet in
16 order to initiate or continue service in the City.

17 105. By promulgating, threatening to enforce, and enforcing the Ordinance and any
18 regulations promulgated thereunder, the City is engaging in entry regulation in violation of
19 47 U.S.C. § 332(c)(3)(A) and the Supremacy Clause of the U.S. Constitution.

20 106. Plaintiff is therefore entitled to a declaration, pursuant to 28 U.S.C. § 2201, that
21 the Ordinance violates the Supremacy Clause of the U.S. Constitution because it is expressly
22 preempted by and Communications Act of 1934, as amended.

23 107. Plaintiff is further entitled to an injunction, pursuant to 28 U.S.C. § 2202,
24 restraining the City from enforcing or threatening to enforce the Ordinance or any regulations
25 promulgated thereunder against Plaintiff and their officers, employees and agents.

26 **PRAYER FOR RELIEF**

27 **WHEREFORE**, Plaintiff respectfully request that this Court enter judgment in favor of
28 Plaintiff and against the City and award Plaintiff the following relief:

1 (a) A declaration, pursuant to 28 U.S.C. § 2201, that the Ordinance violates the
2 Supremacy Clause of the U.S. Constitution because it is preempted by federal law;

3 (b) An injunction prohibiting the City and its officers, agents, employees and
4 subordinates from implementing, enforcing or threatening to enforce the Ordinance and any
5 regulations promulgated thereunder against Plaintiff's members and their officers, employees and
6 agents;

7 (c) All costs, attorneys' fees, and other expenses that Plaintiff incurs; and

8 (d) Such further relief that the Court may deem just and proper.

9 Dated: July 23, 2010

JONES DAY

10
11
12 By: 
Robert A. Mittelstaedt

13 Attorneys for Plaintiff
14 CTIA – The Wireless Association®

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28 SFI-646428v1

Exhibit A

FILE NO. 100104

ORDINANCE NO. 155-10

1 [Cell Phones; Retailers' Duty to Disclose Specific Absorption Rate Values.]

2
3 Ordinance amending the San Francisco Environment Code by adding Chapter 11,
4 Sections 1100 through 1106 ~~4405~~, to require retailers to disclose Specific Absorption
5 Rate values for cell phones, and making environmental findings.

6 Note: Additions are single-underline italics Times New Roman;
7 deletions are ~~striketrough italics Times New Roman~~.
8 Board amendment additions are double underlined.
9 Board amendment deletions are ~~striketrough normal~~.

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

10
11 Section 1. Findings.

12 (a) Government agencies and scientific bodies in the European Union (EU) and Israel
13 have recognized the potential harm of long-term exposure to radiation emitted from cell
14 phones and, as a result, have issued warnings about their use, especially their use by
15 children.

16 (b) The United States Federal Communications Commission ("the FCC") has
17 established a maximum allowable Specific Absorption Rate ("SAR") rating that manufacturers
18 must disclose to the government when offering a portable wireless device (cell phone) for
19 sale. The SAR is a value that corresponds to the relative amount of radiofrequency energy
20 absorbed in the head or body of a user of a wireless handset. At the time of adoption of this
21 ordinance, the FCC limit for public exposure from cellular telephones is an SAR level of
22 1.6 watts per kilogram (1.6 W/kg) for spatial peak (local) SAR, such as SAR in the user's
23 head, as averaged over any 1 gram of tissue.

24 (c) The SAR values for different makes and models of cell phones differ widely, but
25 consumers are not able to make informed purchasing decisions because there is no

Mayor Newsom, Supervisor Maxwell
BOARD OF SUPERVISORS

1 requirement that the retailer provide the applicable SAR values to the consumer at the point
2 when the consumer is deciding between various makes and models.

3 (d) Cell phones are an important communication tool, especially during emergencies,
4 and radiation exposure from cell phones can be reduced by using a speakerphone or a
5 headset, or by sending text messages.

6
7 Section 2. The San Francisco Environment Code is hereby amended by adding
8 Chapter 11, Sections 1100 through 1106 4495, to read as follows:

9
10 **CHAPTER 11: CELL PHONE DISCLOSURE REQUIREMENTS**

11
12 **SEC. 1100. TITLE.**

13 *This Chapter may be known as the "Cell Phone Right-to-Know Ordinance."*

14
15 **SEC. 1101. DEFINITIONS.**

16 *For the purposes of this Chapter, the following terms shall have the following meanings, unless*
17 *the context requires otherwise:*

18 *(a) "Cell phone" means a portable wireless telephone device that is designed to send or receive*
19 *transmissions through a cellular radiotelephone service, as defined in Section 22.99 of Title 47 of the*
20 *Code of Federal Regulations. A cell phone does not include a wireless telephone device that is*
21 *integrated into the electrical architecture of a motor vehicle.*

22 *(b) "Cell phone retailer" means any person or entity within the City which sells or leases cell*
23 *phones to the public or which offers cell phones for sale or lease. "Cell phone retailer" shall include a*
24 *"formula cell phone retailer." "Cell phone retailer" shall not include anyone selling or leasing cell*
25 *phones over the phone, by mail, or over the internet. "Cell phone retailer" shall also not include*

1 **SEC. 1102. REQUIREMENTS FOR CELL PHONE SERVICE PROVIDERS.**

2 (a) Beginning September 1, 2010, any cell phone service provider that sells its service through
3 a retailer in the City must provide a list of those retail locations to the Department of the Environment
4 in a form determined by the Department. The service provider must update the list annually. The
5 Department shall adopt regulations governing the form and submission of the lists.

6 (b) Beginning November 1, 2010, any cell phone service provider that sells its service through
7 a retailer in the City must provide those retailers with the SAR value for each make and model of cell
8 phone sold or leased at that location in connection with cell phone service from the provider. The
9 service provider must update the information it provides to retailers whenever new makes and models
10 of cell phones covered by the service provider are added or old makes and models dropped, or
11 whenever the service provider receives new information on the SAR values of any of the phones.

12 (c) If a cell phone service provider is unable to provide this information (in subsection b) to
13 retailers in the City, then the Department of Environment upon the request of the service provider shall
14 provide assistance in procuring that information.

15
16 **SEC. 1103. REQUIREMENTS FOR CELL PHONE RETAILERS.**

17 (a) If a cell phone retailer posts display materials in connection with sample phones or phones
18 on display, the display materials must include these three elements:

19 (1) The SAR value of that phone and the maximum allowable SAR value for cell phones
20 set by the FCC;

21 (2) A statement explaining what a SAR value is; and

22 (3) A statement that additional educational materials regarding SAR values and cell
23 phone use are available from the cell phone retailer.

24 The Department of the Environment shall adopt regulations specifying the content and format
25 for the elements required by this subsection (a), and shall develop a template for those elements. The

1 elements shall be printed in a space no smaller than 1 inch by 2.625 inches. The SAR values and
2 header text shall be printed in type no smaller than the size and readability equivalent of "Arial" 11
3 point, and the copy text shall be printed in type no smaller than the size and readability equivalent of
4 "Arial" 8 point.

5 Formula cell phone retailers must comply with the requirements of this subsection (a) beginning
6 February 1, 2011. All other cell phone retailers must comply by February 1, 2012.

7 (b) If a cell phone retailer does not post display materials in connection with sample phones or
8 phones on display, the retailer must display, in a prominent location within the retail location visible to
9 the public, a poster that includes these three elements:

10 (1) The SAR value of each make and model of cell phone offered for sale or lease at that
11 retail location and the maximum allowable SAR value for cell phones set by the FCC;

12 (2) A statement explaining what a SAR value is; and

13 (3) A statement that additional educational materials regarding SAR values and cell
14 phone use are available from the cell phone retailer.

15 The Department of the Environment shall adopt regulations specifying the content and format
16 for the elements required by this subsection (b), and shall develop a template for those elements. The
17 store poster shall be no smaller than 8.5 inches by 11 inches.

18 Formula cell phone retailers must comply with the requirements of this subsection (b) beginning
19 February 1, 2011. All other cell phone retailers must comply by February 1, 2012.

20 (c) The Director may, in his or her discretion, authorize a retailer to use alternate means to
21 comply with the requirements of subsections (a) and (b). The Director shall authorize such alternate
22 means through the adoption of a regulation after a noticed hearing, and no retailer may sell or lease
23 cell phones to the public or offer to sell or lease cell phones to the public using any alternate means of
24 compliance with this Chapter unless specifically authorized to do so in advance in writing by the
25 Director.

1 **SEC. 1104. DEPARTMENTAL FACTSHEETS: ASSISTANCE WITH COMPLIANCE.**

2 (a) Following a public hearing, the Department of the Environment, in consultation with the
3 Department of Public Health, shall develop a supplemental factsheet regarding SAR values and the use
4 of cell phones, as well as templates for display materials and store posters required by this Chapter.
5 The Department of the Environment shall hold the initial public hearing by September 1, 2010, and
6 complete the supplemental factsheet by November 1, 2010. The supplemental factsheet shall be no
7 larger than 8.5 inches by 11 inches.

8 (b) By November 1, 2010, the Department of the Environment shall issue regulations specifying
9 the contents and format for the elements required by Section 1103, subsections (a) and (b), for display
10 materials and store posters, respectively. By that date, the Department of the Environment shall also
11 adopt templates for display materials and store posters.

12 (c) The Department shall develop content for all of these materials that is based on and
13 consistent with the relevant information provided by the FCC or other federal agencies having
14 jurisdiction over cell phones, explaining the significance of the SAR value and potential effects of
15 exposure to cell phone radiation. The materials shall also inform customers of actions that can be
16 taken by cell phone users to minimize exposure to radiation, such as turning off cell phones when not in
17 use, using a headset and speaker phone, or texting.

18
19 **SEC. 1105. IMPLEMENTATION AND ENFORCEMENT.**

20 (a) Notwithstanding those provisions of Section 1103(a) and (b) applicable to formula cell
21 phone retailers, requiring them to make certain disclosures and statements in connection with cell
22 phone sales and leases, the City shall not enforce those provisions until May 1, 2011. During the
23 period between the operative date for those requirements, February 1, 2011, and May 1, 2011, the
24 Department of the Environment shall conduct an education and assistance program for formula cell
25

1 phone retailers, and shall visit the retailers and assist them with meeting the requirements of the
2 subsections.

3 (b) Notwithstanding those provisions of Section 1103(a) and (b) applicable to all cell phone
4 retailers other than formula cell phone retailers, requiring them to make certain disclosures and
5 statements in connection with cell phone sales and leases, the City shall not enforce those provisions
6 until August 1, 2012. During the period between the operative date for those requirements,
7 February 1, 2012, and August 1, 2012, the Department of the Environment shall conduct an education
8 and assistance program for those cell phone retailers, and shall visit the retailers and assist them with
9 meeting the requirements of the subsections.

10 (c) The City Administrator shall issue a written warning to any person he or she determines is
11 violating provisions of this Chapter or any regulation issued under this Chapter. If 30 days after
12 issuance of the written warning the City Administrator finds that the person receiving the warning has
13 continued to violate the provisions of the Chapter or any regulation issued under this Chapter, the City
14 Administrator may impose administrative fines as provided below in subsections (d), (e), and (f).

15 (d) Violation of this Chapter or any regulation issued under this Chapter shall be punishable
16 by administrative fines in the amount of:

17 (1) Up to \$100.00 for the first violation;

18 (2) Up to \$250.00 for the second violation within a twelve-month period; and,

19 (3) Up to \$500 for the third and subsequent violations within a twelve-month period.

20 (e) Except as provided in subsection (d), setting forth the amount of administrative fines,
21 Administrative Code Chapter 100, "Procedures Governing the Imposition of Administrative Fines," as
22 may be amended from time to time, is hereby incorporated in its entirety and shall govern the
23 imposition, enforcement, collection, and review of administrative citations issued by the City
24 Administrator to enforce this Chapter or any regulation issued under this Chapter. Violation of this
25

1 Chapter is not a misdemeanor, and the Board of Supervisors intends that the requirements of
2 this Chapter be enforced only through administrative fines as provided in this Section.

3 (f) For purposes of this Chapter, each individual item that is sold or leased, or offered for sale
4 or lease, contrary to the provisions of this Chapter or any regulation issued under this Chapter shall
5 constitute a separate violation.

6
7 **SEC. 1106. DISCLAIMER:**

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

12
13 **Section 3. Additional Provisions.**

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

18 **(a) (b) Conflict with State or Federal Law.** This Chapter shall be construed so as not
19 to conflict with applicable federal or State laws, rules or regulations. Nothing in this Chapter
20 shall authorize any City agency or department to impose any duties or obligations in conflict
21 with limitations on municipal authority established by State or federal law at the time such
22 agency or department action is taken.

23 **(b) (c) Severability.** If any of the provisions of this Chapter or the application thereof
24 to any person or circumstance is held invalid, the remainder of those provisions, including the
25 application of such part or provisions to persons or circumstances other than those to which it

1 is held invalid, shall not be affected thereby and shall continue in full force and effect. To this
2 end, the provisions of this Chapter are severable.

3 ~~(c)~~ **(d) Environmental Findings.** The Planning Department has determined that the
4 actions contemplated in this ordinance are in compliance with the California Environmental
5 Quality Act (Cal. Pub. Res. Code §§ 21000 et seq.). Said determination is on file with the
6 Clerk of the Board of Supervisors in File No. 100104 and is incorporated herein by
7 reference.

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

By: See File for Signature
THOMAS J. OWEN
Deputy City Attorney



City and County of San Francisco
Tails
Ordinance

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

File Number: 100104

Date Passed: June 22, 2010

Ordinance amending the San Francisco Environment Code by adding Chapter 11, Sections 1100 through 1106, to require retailers to disclose specific absorption rate values for cell phones, and making environmental findings.

June 08, 2010 Board of Supervisors - CONTINUED ON FIRST READING

Ayes: 9 - Alloto-Pier, Campos, Chiu, Chu, Daly, Elsbernd, Mar, Maxwell and Mirkarimi
Noes: 2 - Avalos and Dufty

June 15, 2010 Board of Supervisors - AMENDED, AN AMENDMENT OF THE WHOLE BEARING NEW TITLE

Ayes: 11 - Alloto-Pier, Avalos, Campos, Chiu, Chu, Daly, Dufty, Elsbernd, Mar, Maxwell and Mirkarimi

June 15, 2010 Board of Supervisors - PASSED ON FIRST READING AS AMENDED

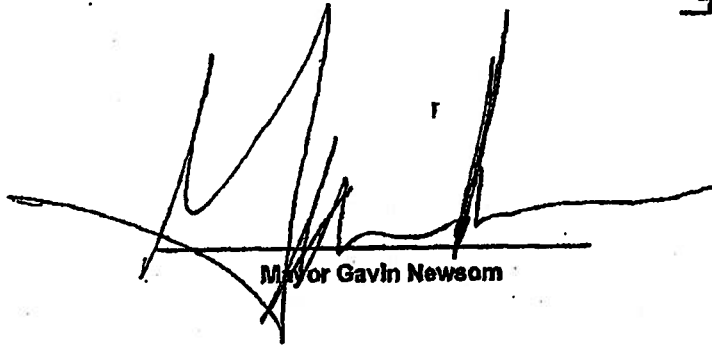
Ayes: 10 - Alloto-Pier, Avalos, Campos, Chiu, Chu, Daly, Dufty, Mar, Maxwell and Mirkarimi
Noes: 1 - Elsbernd

June 22, 2010 Board of Supervisors - FINALLY PASSED

Ayes: 9 - Avalos, Campos, Chiu, Chu, Daly, Dufty, Mar, Maxwell and Mirkarimi
Noes: 1 - Elsbernd
Excused: 1 - Alloto-Pier

File No. 100104

I hereby certify that the foregoing
Ordinance was FINALLY PASSED on
6/22/2010 by the Board of Supervisors of the
City and County of San Francisco.



Mayor Gavin Newsom



Angela Galvillo
Clerk of the Board

July 1, 2010
Date Approved

Exhibit B

1 [CELL PHONE RADIATION SAFETY AND DISCLOSURE]

2

3 **Resolution recommending measures for educating the public on and**
4 **reducing exposure to radiation from cell phones, including disclosure of**
5 **radiation information at point of sale.**

6 WHEREAS, The Policy Committee of the Commission on the Environment met
7 on December 14, 2009 and unanimously adopted the findings and recommendations
8 listed below; and

9 WHEREAS, More than 270 million people in the United States (US) use cell
10 phones with an increasing number of them children; and,

11 WHEREAS, Cell phones are an important tool of communication, especially
12 during times of emergency; and,

13 WHEREAS, A cell phone emits Radio Frequency (RF) radiation from the antenna
14 of the device, often in a 360-degree pattern, as the device seeks to make a connection
15 with the cell tower; and,

16 WHEREAS, Recently published long-term studies looking at cell phone use for
17 10 years have indicated evidence of increasing occurrence of brain and salivary cancers
18 especially on the side of the head where cell phones are held; and,

19 WHEREAS, Children are potentially more vulnerable to this radiation exposure
20 due to their smaller head size, thinner skulls, different composition of tissues, and still-
21 developing brains and bodies; and,

22 WHEREAS, Governments around the world including France, Israel, Germany,
23 Finland, and Switzerland, have issued warnings about prolonged cell phone use,
24 especially for children; and,

1 WHEREAS, The French Senate is considering legislation that would restrict the
2 promotion and sale of cell phones for use by children and would require companies to
3 offer headsets with each phone sold; and,

4 WHEREAS, The maximum level of radiation emitted from a cell phone and
5 absorbed by the human brain and body is called the Specific Absorption Rate (SAR) and
6 these values range in cell phones from 0.2 to 1.6 W/kg, the maximum legal value in the
7 US; and,

8 WHEREAS, The United States Food and Drug Administration (FDA) does not
9 review the safety of cell phones before they come to market but does have the authority
10 to take action against the unsafe exposure to radiation from these products; and,

11 WHEREAS, The United States Federal Communications Commission (FCC) has
12 accepted the safety standards for cell phone radiation set by the electronics professional
13 trade association, the Institute of Electrical and Electronic Engineers (IEEE); and,

14 WHEREAS, Cell phone radiation safety levels accepted by the FCC do not take
15 into account potential increased vulnerabilities of children nor the cumulative effects of
16 long-term use and do not provide sufficient protection in determining a maximum
17 allowable SAR value of 1.6 W/Kg for the human head and brain; and,

18 WHEREAS, San Francisco has adopted a Precautionary Principle Ordinance
19 that compels government agencies to heed early warning signs from the scientific
20 literature and to take protective action to prevent harm; and,

21 WHEREAS, Cell phone manufacturers are required to report the SAR values of
22 their phones to the FCC but are not obligated to make this information available to the
23 public; and,

24 WHEREAS, Consumers in San Francisco, and beyond, have the right to know
25 the level of radiation being emitted by cell phones as they make their purchasing
26 decisions; and,

1 WHEREAS, Consumers in San Francisco should be informed of any steps that
2 can be taken to minimize harm, such as the importance of using head-sets and texting
3 as an alternative to speaking directly into the phone; now, therefore, be it,

4 RESOLVED, That the San Francisco Commission on the Environment recommends,
5 as a matter of highest priority, that the:

6 a. City/County adopts legislation requiring that retailers of cell phones provide point-
7 of-sale information on SAR values and information on safer use. The SAR value
8 should be as visible to the consumer as the price.

9 FURTHER RESOLVED, that the San Francisco Commission on the Environment
10 recommends that the following options be considered for action in the future:

11 b. Federal Government conduct a public review of cell phone safety standards and
12 revise them based on peer-reviewed independent science, including the potential
13 effects on children and the effects of long-term use, and consider a ban on cell
14 phone advertising aimed at children.

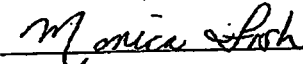
15 c. State of California and the Federal Government adopt legislation that requires
16 warning labels be placed on all cell phone packaging regarding exposure to
17 radiation, especially for children.

18 d. City/County work closely with the School District to educate students, parents,
19 caregivers and teachers about cell phone radiation and the importance of
20 appropriate use of cell phones including: limiting their use to emergencies, use of
21 a headset, and keeping the phone away from the child's body to the maximum
22 extent possible.

23 e. City/County work closely with the School District to prohibit the distribution of cell
24 phone promotional materials and the use of cell phones as part of the curriculum
25 especially for elementary schools.

- 1 f. City/County explore ways to encourage cell phone companies to develop
2 technologies, products, and educational programs that facilitate the safest
3 possible use of cell phones.
- 4 g. Director of the Department of the Environment and the Department of
5 Technology, under the Precautionary Purchasing Ordinance, require that cell
6 phones purchased by City Departments minimize SAR values and come with a
7 headset when necessary and educational materials on minimizing exposure to
8 radiation.
- 9 h. Department of the Environment staff initiate an educational campaign that
10 includes a web page to help consumers identify low SAR value phones and
11 protective measures to reduce exposure to cell phone radiation.

12 I hereby certify that this Resolution was approved at the Commission on
13 the Environment's Meeting on January 26, 2010.

14
15  _____

16 *Monica Fish, Commission Secretary*

17 **Vote:** Approved (5-1) (1 Absent)

18 **Ayes:** Commissioners Gravanis, Martin, Mok, Tuchow and Wald

19 **Noes:** Commissioner Pelosi Jr.

20 **Absent:** Commissioner King

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25