

FILE NO. 011167

ORDINANCE NO. 214-01

As amended in Board  
10/01/01

As amended in committee  
10/15/01

1 [MTBE Purchase Ban.]

2  
3 **Ordinance amending San Francisco Administrative Code by adding Chapter 12S**  
4 **prohibiting the bulk purchase of gasoline and/or other motor vehicle fuel containing**  
5 **MTBE by City departments, January effective ~~February~~ 1, 2002.**

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7 Note: This Section is entirely new.  
8 Board amendment additions are double underlined.  
9 Board amendment deletions are ~~strikethrough~~ normal.

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

11 Section 1. The San Francisco Administrative Code is hereby amended by adding  
12 Chapter 12S, to read as follows:

13 **CHAPTER 12S**

14 **BAN ON PURCHASE OF MOTOR VEHICLE FUEL CONTAINING MTBE**

15 Sec. 12S.1. FINDINGS. The Board of Supervisors makes the following findings:

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

22 ~~(b) There are available alternative oxygenates, such as ethanol, which may be used in place~~  
~~of MTBE in compliance with the federal Clean Air Act, and provide equivalent air quality benefits.~~

23 (b) Under this Chapter, the City and County of San Francisco wishes to exercise its power  
24 to make economic decisions involving its own funds as a participant in the marketplace and to conduct

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1 its own business as a municipal corporation to ensure that purchases and expenditures of public  
lw marketing of non MTBE gasoline  
10/152 monies are made so as to encourage the ~~development and marketing of alternative oxygenates.~~

3 Sec. 12S.2. DEFINITIONS. Except as otherwise stated, the terms used in this Chapter shall  
4 have the following meaning:

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

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

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

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

16 (e) "Motor Vehicle" shall mean a vehicle that is self-propelled.

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

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

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

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1           Sec. 12S.3. PROHIBITING PURCHASE OF MTBE-CONTAINING MOTOR VEHICLE

2           FUEL.

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

5           (b) From the effective date of this Chapter, the City shall not modify any existing  
6           Commodities Contract for the purchase of motor vehicle fuel containing MTBE to extend its term.

7           (c) From the effective date of this Chapter, all Commodities Contracts entered into by the  
8           City for the purchase of Motor Vehicle Fuel shall require the purchased Motor Vehicle Fuel to be free  
9           of MTBE.

10           Sec. 12S.4. CONTRACT REQUIREMENTS. Every Commodities Contract for Motor Vehicle  
11           Fuel entered into by City shall provide the following:

12           (a) Contractor agrees that it is not and will not be supplying any Motor Vehicle Fuel to City  
13           that contains MTBE.

14           (b) Failure to comply with the foregoing requirement shall constitute a material breach by  
15           Contractor of the terms of the Commodities Contract. Such failure shall be determined by  
16           the City in its sole discretion.

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

22           (d) Nothing in this section shall be construed to limit any other remedies available at law to  
23           City.

24           Sec. 12.S.5 ADMINISTRATION AND ENFORCEMENT. Whenever the City and County  
25           discovers, after an investigation by the Contracting Officer and the City Attorney, that a person or

1 entity being considered for a Commodities Contract or under a Commodities Contract with the City  
2 and County has, in connection with the bidding, execution or performance of any Commodities  
3 Contract (1) falsely represented to the City and County the nature or character of the Motor Vehicle  
4 Fuel offered to or supplied under the Commodities Contract to the City, or (2) provided the City with  
5 Motor Vehicle Fuel containing MTBE in violation of this ordinance, the rules and regulations adopted  
6 pursuant to this ordinance, or contract provisions pertaining to the prohibition against providing  
7 MTBE-containing Motor Vehicle Fuel to the City, the Contracting Officer shall have the authority to  
8 impose such sanctions or take such other actions as are designed to ensure compliance with the  
9 provisions of this ordinance which shall include, but are not limited to:

10 (a) Refusal to certify the award of a Commodities Contract;

11 (b) Termination or Suspension of the Commodities Contract;

12 (c) Ordering the withholding of funds due the Contractor under any Commodities  
13 Contract with the City and County;

14 (d) Ordering the revision of a Commodities Contract based upon a material breach of  
15 contract provisions or pertaining to representations made in bidding, execution or  
16 performance of the Commodities Contract;

17 (e) Disqualification of the Contractor from eligibility for providing commodities or  
18 other services to the City and County for a period not to exceed five years, with a  
19 ~~right to review and reconsideration by the Purchaser after two years upon a showing~~  
20 ~~of corrective action indicating violations are not likely to reoccur.~~

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1           SEC. 12.S.6. SEVERABILITY. If any section, subsection, clause, phrase or portion of this  
2 Chapter is for any reason held invalid or unconstitutional by any court or federal or State agency of  
3 competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision  
4 and such holding shall not affect the validity of the remaining portions thereof.

5           SEC. 12.S.7. EFFECTIVE DATE. This legislation shall become effective on  
6 January  
7 February 1, 2002. The Board of Supervisors encourages all city contracting  
8 officers to comply with, and implement this legislation as far in advance of the  
9 effective date as is possible.

10 APPROVED AS TO FORM:  
11 LOUISE H. RENNE, City Attorney

12 By:   
13 WILLIAM CHAN  
14 Deputy City Attorney



# City and County of San Francisco

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

## Tails Ordinance

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**File Number:** 011167

**Date Passed:**

Ordinance amending San Francisco Administrative Code by adding Chapter 12S prohibiting the bulk purchase of gasoline and/or other motor vehicle fuel containing MTBE by City Departments, effective January 1, 2002.

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October 1, 2001 Board of Supervisors — AMENDED

October 1, 2001 Board of Supervisors — PASSED ON FIRST READING AS AMENDED

Ayes: 9 - Ammiano, Gonzalez, Hall, Leno, McGoldrick, Newsom, Peskin,  
Sandoval, Yee

Absent: 2 - Daly, Maxwell

October 9, 2001 Board of Supervisors — CONTINUED

Ayes: 6 - Ammiano, Gonzalez, Maxwell, McGoldrick, Peskin, Sandoval

Noes: 5 - Daly, Hall, Leno, Newsom, Yee

October 15, 2001 Board of Supervisors — AMENDED

October 15, 2001 Board of Supervisors — PASSED ON FIRST READING AS AMENDED

Ayes: 10 - Ammiano, Daly, Gonzalez, Hall, Leno, Maxwell, McGoldrick,  
Newsom, Peskin, Yee

Absent: 1 - Sandoval

October 22, 2001 Board of Supervisors — FINALLY PASSED


Ayes: 11 - Ammiano, Daly, Gonzalez, Hall, Leno, Maxwell, McGoldrick,  
Newsom, Peskin, Sandoval, Yee

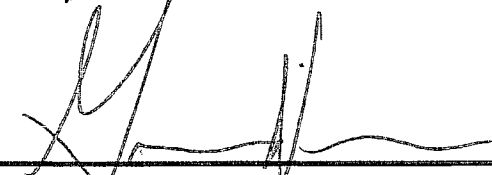
File No. 011167

I hereby certify that the foregoing Ordinance was FINALLY PASSED on October 22, 2001 by the Board of Supervisors of the City and County of San Francisco.

NOV 02 2001

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Date Approved

  
\_\_\_\_\_  
for Gloria L. Young  
Clerk of the Board

  
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Mayor Willie L. Brown Jr.