[MTBE Purchase Ban.]

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 February 1, 2002.

Note: This Section is entirely new.
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 Administrative Code is hereby amended by adding
Chapter 12S, to read as follows:

CHAPTER 12S

BAN ON PURCHASE OF MOTOR VEHICLE FUEL CONTAINING MTBE

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

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

(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.

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

**Supervisor Newsom**, Daly, McGoldrick, Sandoval, Leno, Peskin, Maxwell
BOARD OF SUPERVISORS
its own business as a municipal corporation to ensure that purchases and expenditures of public
marketing of non MTBE gasoline
monies are made so as to encourage the development and marketing of alternative oxygenates.

Sec. 1252. DEFINITIONS. Except as otherwise stated, the terms used in this Chapter shall
have the following meaning:

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

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

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

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

(e) “Motor Vehicle” shall mean a vehicle that is self-propelled.

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

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

(h) “Person” shall mean a natural person, a firm, joint stock company, business concern,
association, partnership or corporation, its or their successors or assigns, or agents.
Sec. 12S.3. PROHIBITING PURCHASE OF MTBE-CONTAINING MOTOR VEHICLE FUEL.

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

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

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

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

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

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

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

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

Sec. 12S.5 ADMINISTRATION AND ENFORCEMENT. Whenever the City and County discovers, after an investigation by the Contracting Officer and the City Attorney, that a person or
entity being considered for a Commodities Contract or under a Commodities Contract with the City and County has, in connection with the bidding, execution or performance of any Commodities Contract (1) falsely represented to the City and County the nature or character of the Motor Vehicle Fuel offered to or supplied under the Commodities Contract to the City, or (2) provided the City with Motor Vehicle Fuel containing MTBE in violation of this ordinance, the rules and regulations adopted pursuant to this ordinance, or contract provisions pertaining to the prohibition against providing MTBE-containing Motor Vehicle Fuel to the City, the Contracting Officer shall have the authority to impose such sanctions or take such other actions as are designed to ensure compliance with the provisions of this ordinance which shall include, but are not limited to:

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

(b) Termination or Suspension of the Commodities Contract;

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

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

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

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SEC. 12.8.6. SEVERABILITY. If any section, subsection, clause, phrase or portion of this Chapter is for any reason held invalid or unconstitutional by any court or federal or State agency of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

SEC. 12.8.7. EFFECTIVE DATE. This legislation shall become effective on January 1, 2002. The Board of Supervisors encourages all city contracting officers to comply with, and implement this legislation as far in advance of the effective date as is possible.

APPROVED AS TO FORM:

LOUISE H. RENNE, City Attorney

By: WILLIAM CHAN

Deputy City Attorney
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.

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.

Date Approved

May 3 2 2001

Mayor Willie L. Brown Jr.

Gloria L. Young
Clerk of the Board