

BOARD of SUPERVISORS



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MEMORANDUM

TO: Dr. Grant Colfax, Director, Department of Public Health
William Scott, Chief, Police Department
Chesa Boudin, District Attorney
Manohar Raju, Public Defender
Jose Cisneros, Treasurer
Rich Hillis, Director, Planning Department
Julie Rosenberg, Executive Director, Board of Appeals
Tom Hui, Director, Department of Building Inspection
Maggie Weiland, Executive Director, Entertainment Commission
Marisa Rodriguez, Director, Office of Cannabis
Alaric Degrafinried, Interim Director, Public Works

FROM: John Carroll, Assistant Clerk,
Public Safety and Neighborhood Services Committee,
Board of Supervisors

DATE: March 11, 2020

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Public Safety and Neighborhood Services Committee has received the following proposed legislation, introduced by Mayor Breed on March 3, 2020:

File No. 200243

Ordinance amending the Health Code to authorize overdose prevention programs (OPPs) by, among other things: requiring OPPs to obtain a permit from the Department of Public Health, establishing operating standards for OPPs; authorizing the imposition of fines and penalties for violation of local and state laws governing OPPs and establishing a process by which OPPs may appeal a fine or permit penalty; making it a City policy to deprioritize enforcement of laws prohibiting the possession of illegal drugs against individuals who have accepted referral to an OPP; amending the Business and Tax Regulations Code regarding appeals of certain OPP permit decisions; and affirming the Planning Department's determination under the California Environmental Quality Act.

If you have any comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

- c: Dr. Naveena Bobba, Department of Public Health
- Greg Wagner, Department of Public Health
- Sneha Patil, Department of Public Health
- Rowena Carr, Police Department
- Asja Steeves, Police Department
- Molly Cohen, Office of the Treasurer & Tax Collector
- Scott Sanchez, Planning Department
- Corey Teague, Planning Department
- Lisa Gibson, Planning Department
- Adam Varat, Planning Department
- AnMarie Rodgers, Planning Department
- Dan Sider, Planning Department
- Aaron Starr, Planning Department
- Katy Sullivan, Board of Appeals
- Patty Lee, Department of Building Inspection
- Crystal Stewart, Entertainment Commission
- Ray Law, Office of Cannabis
- David Steinberg, Public Works
- Jeremy Spitz, Public Works
- Jennifer Blot, Public Works

1 [Health, Business and Tax Regulations Codes - Overdose Prevention Programs]

2
3 **Ordinance amending the Health Code to authorize overdose prevention programs**
4 **(OPPs) by, among other things: requiring OPPs to obtain a permit from the Department**
5 **of Public Health, establishing operating standards for OPPs; authorizing the imposition**
6 **of fines and penalties for violation of local and state laws governing OPPs and**
7 **establishing a process by which OPPs may appeal a fine or permit penalty; making it a**
8 **City policy to deprioritize enforcement of laws prohibiting the possession of illegal**
9 **drugs against individuals who have accepted referral to an OPP; amending the**
10 **Business and Tax Regulations Code regarding appeals of certain OPP permit**
11 **decisions; and affirming the Planning Department's determination under the California**
12 **Environmental Quality Act.**

13 **NOTE:** **Unchanged Code text and uncodified text** are in plain Arial font.
14 **Additions to Codes** are in *single-underline italics Times New Roman font*.
15 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
16 **Board amendment additions** are in double-underlined Arial font.
17 **Board amendment deletions** are in ~~strikethrough Arial font~~.
18 **Asterisks (* * * *)** indicate the omission of unchanged Code
19 subsections or parts of tables.

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

21 Section 1. The Planning Department has determined that the actions contemplated in
22 this ordinance comply with the California Environmental Quality Act (California Public
23 Resources Code Sections 21000 et seq.). Said determination is on file with the Clerk of the
24 Board of Supervisors in File No. ___ and is incorporated herein by reference. The Board
25 affirms this determination.

1 Section 2. The Health Code is hereby amended by adding new Article 46, consisting of
2 Sections 4601 to 4617, to read as follows:

3 **ARTICLE 46: OVERDOSE PREVENTION PROGRAMS**

4 **SEC. 4601. FINDINGS.**

5 (a) According to the San Francisco Department of Public Health ("DPH"), as of April 1,
6 2019, San Francisco was home to an estimated 24,500 people who inject illegal drugs. Injection of
7 illegal drugs in San Francisco is responsible for approximately 100 deaths per year due to overdoses.

8 (b) An overdose prevention program is an evidence-based harm reduction strategy that
9 allows individuals to inject or consume illicit drugs in a hygienic environment under the supervision of
10 trained staff, who are ready to intervene if the patient overdoses. Further, overdose prevention
11 programs offer participants a variety of services, including linkage to medication-assisted treatment,
12 medical care, and referrals to a variety of other social services. They also provide participants with
13 sterile consumption equipment, safe removal of used consumption equipment, and fentanyl test strips.

14 (c) As of 2020, there were approximately 165 overdose prevention programs operating in
15 ten countries around the world (Australia, Canada, Denmark, France, Germany, Luxembourg, the
16 Netherlands, Norway, Spain, and Switzerland), and numerous peer-reviewed studies have confirmed
17 that they are effective in reducing overdose deaths and drug-related risk behaviors, and in increasing
18 access to counseling, treatment, and other risk reduction services. Research has also demonstrated
19 that such programs decrease the prevalence of public injection and the amount of syringes in streets,
20 alleys, and parks, and do not increase crime or drug use.

21 (d) In April 2017, by Resolution No. 123-17, the Board of Supervisors urged DPH to
22 convene a task force to advise the Mayor, the Board of Supervisors, and relevant City departments
23 regarding the possibility of operating overdose prevention programs in San Francisco. Consistent with
24 that resolution, DPH convened a Task Force, and on October 25, 2017, presented a final report ("Task
25 Force Report") to the Board of Supervisors Public Safety and Neighborhood Services Committee. The

1 Task Force Report concluded that opening one overdose prevention program in San Francisco could
2 result in an annual net savings to the City of \$3.5 million in health care costs, and recommended that
3 the City support the operation of overdose prevention programs in San Francisco.

4 (e) The Task Force Report further recommended that the opening of overdose prevention
5 programs in the City be governed by the following principles:

6 (1) Overdose prevention programs offer an opportunity to affirm the humanity and
7 dignity of people who consume drugs, and should be operated in a way that is safe, clean, and
8 welcoming, so as to reduce stigma and build trust.

9 (2) When feasible, overdose prevention programs should reflect an integrated model
10 that includes on-site services and linkages to other services.

11 (3) Peer staff are uniquely positioned to engage people who use drugs to use
12 sanctioned services.

13 (f) In February 2019, the U.S. Attorney for the Eastern District of Pennsylvania filed a civil
14 lawsuit against Safehouse, a nonprofit organization that had declared its intent to open and operate an
15 overdose prevention program in Philadelphia. The lawsuit sought a declaratory judgment that
16 overdose prevention programs violate a provision of the federal Controlled Substances Act colloquially
17 known as the “Crack House” statute, which prohibits making a place available “for the purpose of
18 unlawfully manufacturing, storing, distributing, or using a controlled substance.” 21 U.S.C. §
19 856(a)(2). On October 2, 2019, U.S. District Judge Gerald A. McHugh issued an opinion concluding
20 that section 856(a)(2) of the Controlled Substances Act does not prohibit Safehouse’s proposed
21 operation of an overdose prevention program because Safehouse does not plan to operate the program
22 “for the purpose of unlawful drug use” within the meaning of section 856(a)(2). On the contrary, the
23 court found that the ultimate goal of Safehouse’s proposed operation is to reduce drug use, not
24 facilitate it. The government has indicated it will appeal the ruling once the district court enters
25 judgment.

1 (g) Also in February 2019, State Senator Scott Wiener and Assembly Member Susan
2 Eggman introduced a bill that would authorize the City to approve entities to operate overdose
3 prevention programs that satisfy specified requirements. (AB 362). AB 362 passed in the Assembly in
4 2019, and will move to the Senate for consideration in 2020.

5
6 **SEC. 4602. DEFINITIONS.**

7 For purposes of this Article 46, the following definitions shall apply:

8 “Applicant” means a Person seeking to obtain an Overdose Prevention Program permit.

9 “City” means the City and County of San Francisco.

10 “Department” (or “DPH”) means the Department of Public Health.

11 “Director” means the Director of Public Health, or the Director’s designee.

12 “Health Care Professional” includes, but is not limited to, a physician, physician assistant,
13 nurse practitioner, licensed vocational nurse, registered nurse, psychiatrist, psychologist, licensed
14 clinical social worker, licensed professional clinical counselor, mental health provider, social service
15 provider, or substance use disorder provider, trained in overdose recognition and reversal pursuant to
16 Section 1714.22 of the Civil Code.

17 “Overdose Prevention Program” is a program that provides a hygienic space supervised by
18 Health Care Professionals where persons 18 years of age or older who use controlled substances may
19 consume preobtained drugs, and that is operated for the purposes of reducing the harm of drug use,
20 administering medical care, encouraging drug treatment, and connecting participants to social or
21 medical services.

22 “Permittee” means any Person to whom an Overdose Prevention Program permit is issued
23 under this Article 46, and any authorized agent or designee of such Person.

24 “Person” means any natural person, corporation, sole proprietorship, partnership, association,
25 joint venture, limited liability company, or other legal entity, not including the City.

1 **SEC. 4603. ADMINISTRATION AND ENFORCEMENT.**

2 This Article 46 shall be administered and enforced by DPH. The Director may adopt rules,
3 regulations, and guidelines to carry out the provisions and purposes of this Article, including, but not
4 limited to: eligibility criteria, operating guidelines, or reporting required by state law; hearing
5 procedures; and standards for the imposition of administrative penalties, permit suspensions, and
6 permit revocations.

7
8 **SEC. 4604. PERMIT REQUIRED; NONTRANSFERABLE.**

9 (a) It shall be unlawful to operate an Overdose Prevention Program in the City without
10 obtaining and maintaining a permit therefor issued by DPH, and any such other licenses, permits,
11 certifications, or registrations that may be required by State or City law.

12 (b) It shall be unlawful for any Person to operate an Overdose Prevention Program for
13 which a permit has been granted under this Article 46 if such permit has been revoked, or during any
14 period in which such permit is suspended or is otherwise inoperative.

15 (c) If any license, permit, certification, or registration required for the operation of an
16 Overdose Prevention Program is denied, suspended, modified, revoked, or expired, the Overdose
17 Prevention Program shall notify the Director of such action in writing within two business days of
18 receiving actual or constructive notice of the denial, suspension, modification, revocation, or
19 expiration.

20 (d) No permit issued under this Article 46 may be transferred by any means to any Person
21 under any circumstance.

22 (e) No permit issued under this Article 46 may be operated at any location other than the
23 location authorized by the permit.

1 SEC. 4605. APPLICATION FOR OVERDOSE PREVENTION PROGRAM PERMIT.

2 Every Applicant for an Overdose Prevention Program permit shall:

3 (a) File an application with the Director upon a form provided by the Director;

4 (b) Provide such information and documentation as may be required by this Article 46, and
5 any regulations promulgated thereunder, including but not necessarily limited to:

6 (1) The proposed location of the Overdose Prevention Program;

7 (2) The name, contact information, and address of the Applicant;

8 (3) Written verification that the owner of the real property ("Real Property") where
9 the Overdose Prevention Program will be located has the authority to consent, and consents, to its use
10 as an Overdose Prevention Program. Such written verification must be signed by the property owner
11 or the owner's agent, and must include the owner's contact information and, if applicable, the agent's
12 contact information;

13 (4) Where the Applicant leases the Real Property, a copy of the lease;

14 (5) A determination from the Planning Department that the proposed use of the Real
15 Property as an Overdose Prevention Program is in compliance with the Planning Code; and

16 (6) An Operations Plan demonstrating that the Applicant, upon receipt of an
17 Overdose Prevention Program permit, will:

18 (A) Provide a hygienic space supervised by one or more Health Care
19 Professionals where people 18 years of age or older who use drugs can consume preobtained drugs;

20 (B) Provide sterile consumption supplies, collect used hypodermic needles
21 and syringes, and provide secure hypodermic needle and syringe disposal services;

22 (C) Administer first aid, if needed, monitor participants for potential
23 overdoses, and provide treatment as necessary to prevent fatal overdoses;

24 (D) Provide access or referrals to substance use disorder treatment services,
25 medical services, mental health services, and social services;

1 (E) Educate participants on the risks of contracting HIV and viral hepatitis
2 through use of drugs;

3 (F) Provide overdose prevention education and access to or referrals to
4 obtain naloxone hydrochloride or another overdose reversal medication approved by the United States
5 Food and Drug Administration;

6 (G) Educate participants regarding proper disposal of hypodermic needles
7 and syringes;

8 (H) Provide reasonable security at the program site;

9 (I) Establish operating procedures for the program, made available to the
10 public either through an internet website or upon request, that are publicly noticed, including, but not
11 limited to, standard hours of operation, a minimum number of personnel required to be onsite during
12 those hours of operation, the licensing and training standards for staff present, an established
13 maximum number of individuals who can be served at the Overdose Prevention Program at one time,
14 and an established relationship with the nearest emergency department of a general acute care
15 hospital, as well as eligibility criteria for program participants;

16 (J) Train staff members to deliver services offered by the program;

17 (K) Establish a good neighbor policy that facilitates communication from and
18 to local businesses and residences, to the extent they exist, to address any neighborhood concerns and
19 complaints; and

20 (L) Establish a policy for informing City officials and neighbors about
21 procedures to complain to the Permittee, and, as applicable, DPH, about the Overdose Prevention
22 Program, including contact information for the director, manager, or operator of the program.

1 **SEC. 4606. HEARING ON PERMIT APPLICATION; NOTICE OF HEARING.**

2 (a) After receiving a completed application, the Director shall schedule a hearing on the
3 application to provide law enforcement officials, local public health officials, and the public with an
4 opportunity to comment.

5 (b) No fewer than 10 days before the date of the hearing, the Applicant shall cause to be
6 posted a notice of such hearing in a conspicuous place on the property at which the proposed Overdose
7 Prevention Project is to be operated. The Applicant shall comply with any requirements regarding the
8 size and type of notice specified by the Director. The Applicant shall maintain the notice as posted the
9 required number of days.

10
11 **SEC. 4607. ISSUANCE AND DENIAL OF OVERDOSE PREVENTION PROGRAM**
12 **PERMIT.**

13 (a) Within 14 days following the hearing on an application for an Overdose Prevention
14 Program permit, the Director shall either issue the permit or mail a written statement of the Director's
15 reasons for denial thereof to the Applicant.

16 (b) In granting a permit, the Director may impose conditions as are, in the Director's
17 judgment, necessary and appropriate to protect the health and safety of the Permittee's employees or
18 contractors working in the Overdose Prevention Program, businesses and residents in the
19 neighborhood, and/or participants in the program, and to reduce any potential adverse impacts of the
20 program on the neighborhood. Such conditions may include, but are not limited to, conditions relating
21 to the hours of operation of the program.

22 (c) No Overdose Prevention Program permit may be issued if the Director finds that:

23 (1) The Applicant has provided materially false documents, testimony, or other
24 information, or has omitted material information;

25 (2) The Applicant has not complied fully with the provisions of this Article 46; or

1 (3) The operation as proposed by the Applicant, if permitted, would not comply with
2 all applicable City law, including the provisions of this Article 46 and regulations issued by the
3 Director pursuant to this Article, and/or with any state law governing the operation of an Overdose
4 Prevention Program.

5 (d) The final permit shall contain the following language: "Issuance of this permit by the
6 City and County of San Francisco is not intended to and does not authorize the violation of State or
7 Federal law."

8 (e) A permit issued under this Article 46 shall not be operative and shall not authorize the
9 operation of an Overdose Prevention Program unless and until state law authorizes the City to approve
10 Persons to operate Overdose Prevention Programs.

11
12 **SEC. 4608. ELIGIBILITY AND OPERATING STANDARDS.**

13 Every Overdose Prevention Program shall:

14 (a) Comply with the terms of its Operations Plan as described in subsection (b)(6) of
15 Section 4605;

16 (b) Prohibit entry onto the premises by persons under age 18;

17 (c) Strive to implement the operational recommendations in the Task Force Report
18 referenced in subsection (d) of Section 4601 by, among other things: designing a space that is safe,
19 clean, and welcoming, and that reduces the stigma and inherent dangers of public drug use; employing
20 an integrated model that includes on-site services and linkages to other services; and incorporating a
21 peer component in the staffing model.

22
23 **SEC. 4609. INSPECTIONS.**

24 Any employee of DPH may enter and inspect the premises of any Overdose Prevention Program
25 to determine whether the program is operating in compliance with this Article 46 and with conditions

1 of the Overdose Prevention Program permit. DPH shall provide 24 hours' advance notice of its intent
2 to enter and inspect the premises, except where the inspection is needed to address emergency
3 circumstances that present an imminent risk to health or safety.

4
5 **SEC. 4610. REPORTING.**

6 Within one year of being issued a permit under Section 4607, and every year thereafter, a
7 Permittee shall submit to DPH a report that shall include all of the following information:

8 (a) The number of participants in the Overdose Prevention Program;

9 (b) Aggregate information regarding the characteristics of program participants;

10 (c) The number of hypodermic needles and syringes distributed for use onsite;

11 (d) The number of overdoses experienced and the number of overdoses reversed onsite;

12 (e) The number of persons referred to drug treatment;

13 (f) The number of individuals directly and formally referred to other services, and the type
14 of those services; and

15 (g) Such other information as the Director, in the Director's discretion, shall require.

16
17 **SEC. 4611. NOTICE OF VIOLATION; HEARING AND APPEAL.**

18 (a) If the Director determines that an Overdose Prevention Program is operating in
19 violation of this Article 46 (which term is deemed in the entirety of this Section 4611 to include a
20 violation of a permit condition and/or a violation of the rules and regulations adopted pursuant to this
21 Article), or state law regulating the operation of Overdose Prevention Programs, the Director may
22 issue a Notice of Violation to the Permittee, the owner of the real property where the violation occurred
23 ("Owner"), and/or any other Persons the Director deems responsible for causing the violation ("Other
24 Persons," which term is deemed in the entirety of this Section 4611 to include Persons responsible for
25 operating an Overdose Prevention Program in violation of Section 4604).

1 **(b) The Notice of Violation shall include the following information:**

2 **(1) That the Director has made a determination that the Overdose Prevention**
3 **Program is operating in violation of this Article 46;**

4 **(2) The alleged acts or failures to act that constitute the basis for the Director's**
5 **determination;**

6 **(3) That the Director intends to take enforcement action against the Permittee,**
7 **Owner, or Other Person, and the nature of that action, including the administrative penalty and**
8 **enforcement costs to be imposed, additional permit conditions that may be imposed, and/or the**
9 **suspension or revocation of the Overdose Prevention Program permit;**

10 **(4) That the Permittee, Owner, or Other Persons has the right to request a hearing**
11 **before the Director within 30 days after the Notice of Violation is mailed via U.S. mail or electronic**
12 **mail, and that the written request for hearing must state facts demonstrating that:**

13 **(A) If the violation is disputed, the Overdose Prevention Program was**
14 **operating in compliance with this Article 46 and/or the rules and regulations adopted pursuant to this**
15 **Article; and**

16 **(B) Whether or not the alleged violation is disputed, the Overdose Prevention**
17 **Program is currently operating in compliance with this Article 46, the rules and regulations adopted**
18 **pursuant to this Article, and conditions of the permit, and that the Permittee, Owner, or Other Person**
19 **has taken reasonable steps to prevent violations similar to the alleged violation, and has arranged for**
20 **the Director to re-inspect the Overdose Prevention Program to confirm such reasonable steps. Where**
21 **no such showing has been made, the Permittee, Owner, or Other Person served with a notice or order**
22 **by the Director setting forth the nature of the violation of this Article shall be presumed, in subsequent**
23 **administrative or civil proceedings, to have committed and not to have corrected such violation.**

24 **(c) If no request for a hearing is filed with the Director within the required period, or the**
25 **request for hearing does not include the information required by subsection (b)(4) of this Section 4611,**

1 the right to request a hearing shall be deemed waived, and the Director's determination shall become
2 final and effective 30 days after the Notice of Violation was mailed via U.S. mail or electronic mail.
3 The Director shall issue an order imposing the enforcement action and mail the order to the Permittee,
4 Owner, or Other Person served with the Notice of Violation. In subsequent civil proceedings, such
5 violations shall be presumed not to have been corrected. Where no hearing is timely requested, an
6 order suspending, revoking, or imposing additional conditions on a permit is final. The failure of the
7 Permittee, Owner, or Other Person on whom the Notice of Violation was served to request a hearing
8 shall constitute a failure to exhaust administrative remedies and shall preclude the Person from
9 obtaining judicial review of the validity of the enforcement action.

10 (d) Upon a timely request for a hearing that includes the information required by subsection
11 (b)(4) of this Section 4611, the Director shall, within 15 days of the request, notify the requester of the
12 date, time, and place of the hearing. The Director shall make available to the requester the evidence
13 obtained in support of the Notice of Violation as well as a copy of the report, if any, prepared by the
14 Director's designee to support the Notice of Violation. Such hearing shall be held no later than 60 days
15 after the Director receives the request, unless time is extended by mutual agreement of the requester
16 and the Director.

17 (e) The Director shall conduct the hearing, or may designate a hearing officer to conduct
18 the hearing, in which case the hearing officer shall have the same authority as the Director to hear and
19 decide the case and make any orders consistent with this Article 46. The Permittee, Owner, or Other
20 Person, as well as the Department, may present evidence for consideration, subject to any rules
21 adopted by the Director or hearing officer for the orderly conduct of the hearing. Within 30 days of the
22 conclusion of the hearing, the Director or hearing officer shall render a decision in the form of a
23 written order, which the Director shall promptly serve on the Permittee, Owner, or Other Person
24 charged in the Notice of Violation. The order shall state whether the Notice of Violation has been
25 upheld (in whole or in part), and, if so, the enforcement action taken against each party.

1 (f) If the order directs the Permittee, Owner, or Other Person to pay an administrative
2 penalty and/or enforcement costs, such amount shall be paid within ten days from the mailing of the
3 order, which shall inform the recipient of said deadline for payment.

4 (g) If the order suspends or revokes a permit, or imposes additional permit conditions, it
5 may be appealed to the Board of Appeals in the manner prescribed in Article 1 of the Business and Tax
6 Regulations Code; the order shall inform the recipient of such right to appeal.

7
8 **SEC. 4612. ADMINISTRATIVE PENALTIES AND ENFORCEMENT COSTS.**

9 (a) Any Person who violates this Article 46 (which term is deemed in the entirety of this
10 Section 4612 to include a violation of a permit condition and/or a violation of the rules and regulations
11 adopted pursuant to this Article), or state law regulating the operation of Overdose Prevention
12 Programs shall be subject to an administrative penalty imposed by order of the Director, not to exceed
13 \$1,000 for each violation.

14 (b) In setting the amount of the administrative penalty, the Director shall consider any one
15 or more of the relevant circumstances presented, including but not limited to the following: the nature
16 and seriousness of the misconduct giving rise to the violation, the number of violations, the persistence
17 of the misconduct, the length of time over which the misconduct occurred, the willfulness of the
18 responsible party's misconduct, and the responsible party's assets, liabilities, and net worth.

19
20 **SEC. 4613. PERMIT SUSPENSIONS AND REVOCATIONS.**

21 (a) The Director may revoke or suspend any Overdose Prevention Program permit if the
22 Director finds any of the following circumstances to exist:

23 (1) Facts sufficient to support the denial of such permit on any ground set forth in
24 Section 4607 of this Article 46;

1 (2) The Permittee has refused to permit an inspection of its operations under this
2 Article;

3 (3) The Permittee has engaged in any conduct in connection with the operation of
4 the Overdose Prevention Program that violates this Article 46 (which term is deemed in the entirety of
5 this Section 4613 to include a violation of a permit condition and/or a violation of the rules and
6 regulations adopted pursuant to this Article), or state law regulating the operation of Overdose
7 Prevention Programs;

8 (4) The Director determines that such Overdose Prevention Program is being
9 managed, conducted, or maintained in a way that threatens the health or safety of program
10 participants, employees or contractors of the Permittee, businesses or residents in the neighborhood, or
11 the public at large.

12 (b) The Director may not suspend or revoke an Overdose Prevention Program permit under
13 this Article 46 until the Director has issued a Notice of Violation and provided the Permittee an
14 opportunity to be heard and respond as provided in Section 4611 of this Article 46. A Permittee whose
15 permit has been suspended or revoked must cease operations of the Overdose Prevention Program
16 within 24 hours of the suspension or revocation order being final.

17 (c) Notwithstanding subsection (b) of this Section 4613, the Director may suspend
18 summarily any Overdose Prevention Program permit issued under this Article 46 when, in the
19 judgment of the Director, the public health or safety requires such summary suspension.

20 (1) A summary suspension shall take effect immediately upon its issuance, or at such
21 time as stated in the summary suspension.

22 (2) The Director shall provide written notice of such summary suspension including
23 the grounds supporting the suspension to the Permittee by hand delivery, registered mail, or electronic
24 mail.

1 (3) No more than three days after written notice of such summary suspension is
2 given, the Director shall issue a Notice of Violation identifying the alleged acts or failures to act that
3 constitute the basis for the summary suspension, and provide the Permittee an opportunity to be heard
4 and respond as provided in Section 4611 as to why the summary suspension should end. However, the
5 time for hearing and decision shall be accelerated as follows: Upon a timely request for a hearing on a
6 summary suspension that includes the information required by subsection (b)(4) of Section 4611, the
7 Director shall set any requested hearing within seven days, unless time is extended by mutual
8 agreement of the affected parties; and the Director, or a designated hearing officer who shall have the
9 same authority as the Director to hear and decide the case and make any orders consistent with this
10 Article 46 shall issue a decision on the summary suspension within seven days after hearing.

11 (4) If the Permittee appeals a decision by the Director or hearing officer upholding
12 a summary suspension to the Board of Appeals, the summary suspension shall remain in effect until a
13 final decision is issued by the Board of Appeals. Where a permit is revoked after a summary
14 suspension, the revocation shall be effective immediately and, if the Permittee appeals to the Board of
15 Appeals, shall remain in effect until a final decision is issued by the Board of Appeals.

16
17 **SEC. 4614. ADDITIONAL ADMINISTRATIVE ENFORCEMENT ORDERS.**

18 (a) Upon a determination by the Director that any Overdose Prevention Program is
19 operating without a valid, effective, and current permit required by this Article 46, the Director may
20 issue an Order to Cease Operations Without Permit, which shall be posted prominently on the premises
21 where an Overdose Prevention Program is operated, and mailed to the Person and/or Persons
22 operating said program. Such Order shall state:

23 (1) That the Overdose Prevention Program has 24 hours from the time of posting to
24 demonstrate to the Director's satisfaction that the program is operating under a valid, effective, and
25 current permit;

1 (2) If the Overdose Prevention Program has not made such demonstration within 24
2 hours of the time of posting, that the program must immediately cease operations until such time as it
3 demonstrates to the Director's satisfaction that it is operating under a valid, effective, and current
4 permit; and

5 (3) If the Overdose Prevention Program fails to cease operations as required by this
6 subsection (a), that the Director shall issue an Immediate Closure Order directing the closure of the
7 Premises where the program has been operating or the portion of the Premises the Director determines
8 should be closed.

9 (b) As set forth in subsection (b) of Section 4613, an Overdose Prevention Program whose
10 permit has been suspended or revoked must cease operations within 24 hours of the suspension or
11 revocation order being final. The Director is not required to issue an Order to Cease Operations
12 without a Permit to an Overdose Prevention Program whose permit is the subject of a final order of
13 suspension or revocation.

14 (c) The Director may issue an Immediate Closure Order ordering closure of an Overdose
15 Prevention Program under the following circumstances:

16 (1) If, by 72 hours after the issuance of an Order to Cease Operations Without
17 Permit, the Overdose Prevention Program has not demonstrated to the Director's satisfaction that the
18 program has the required permit, and the program nevertheless continues to operate;

19 (2) If, by 24 hours after the suspension or revocation of an Overdose Prevention
20 Program permit becomes final, the program continues to operate;

21 (3) Without delay, after issuance of a summary suspension.

22 (d) It is the duty of any person responsible for managing or otherwise operating an
23 Overdose Prevention Program, or owning the business under which the program operates, or owning
24 the real property where the program operates, to obey all orders issued under this Section 4614. To
25 enforce an Immediate Closure Order, the Director shall take such steps as the Director views as

1 necessary and appropriate to enforce said order, including but not limited to securing and barricading
2 the premises where the program has been operating. The Director is hereby authorized to call upon the
3 Police Department and other departments and bureaus to aid and assist the Director in such
4 enforcement, and it shall then be their duty to enforce the provisions of this Article 46 and to perform
5 such duties as may come within their respective jurisdictions.

6
7 **SEC. 4615. LAW ENFORCEMENT POLICY.**

8 It shall be the policy of the City and County of San Francisco to deprioritize enforcement of
9 laws prohibiting the possession of illegal drugs and drug paraphernalia against those individuals who
10 are presently accessing, intend to access, or have just accessed an Overdose Prevention Program.

11
12 **SEC. 4616. UNDERTAKING FOR THE GENERAL WELFARE.**

13 In enacting and implementing this Article 46, the City is assuming an undertaking only to
14 promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an
15 obligation for breach of which it is liable in money damages to any person who claims that such breach
16 proximately caused injury. To the fullest extent permitted by law, the City shall assume no liability
17 whatsoever, and expressly does not waive sovereign immunity, with respect to the permitting and
18 licensing provisions of this Article, or for the activities of any Overdose Prevention Program. To the
19 fullest extent permitted by law, any actions taken or not taken by a City officer or employee under the
20 provisions of this Article, or taken or not taken by a Permittee, shall not become a personal liability of
21 any City officer or employee.

22
23 **SEC. 4617. SEVERABILITY.**

24 If any section, subsection, sentence, clause, phrase, or word of this Article 46, or any
25 application thereof to any person or circumstance, is held to be invalid or unconstitutional by a

1 decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining
2 portions or applications of the Article. The Board of Supervisors hereby declares that it would have
3 passed this Article and each and every section, subsection, sentence, clause, phrase, and word not
4 declared invalid or unconstitutional without regard to whether any other portion of this ordinance or
5 application thereof would be subsequently declared invalid or unconstitutional.

6
7 Section 3. The Business and Tax Regulations Code is hereby amended by revising
8 Section 8, to read as follows:

9
10 **SEC. 8. METHOD OF APPEAL TO THE BOARD OF APPEALS.**

11 * * *

12 (e) Appeals shall be taken by filing a notice of appeal with the Board of Appeals and
13 paying to said Board at such time a filing fee as follows:

14 * * *

15 (9) **Additional Requirements.**

16 * * *

17 (E) Pending decision by the Board of Appeals, the action of such
18 department, board, commission, officer or other person from which an appeal is taken, shall
19 be suspended, except for: (i) actions of revocation or suspension of a permit by the Director of
20 Public Health when determined by the Director to be an extreme public health hazard; (ii)
21 actions by the Zoning Administrator or Director of the Department of Building Inspection
22 stopping work under or suspending an issued permit; (iii) actions of suspension or revocation
23 by the Entertainment Commission or the Director of the Entertainment Commission when the
24 suspending or revoking authority determines that ongoing operation of the activity during the
25 appeal to the Board of Appeals would pose a serious threat to public safety; (iv) actions of the

1 Director of the Office of Cannabis awarding a Temporary Cannabis Business Permit; *and* (v)
2 actions pursuant to a permit or determination of compliance by the Departments of Public
3 Works or Building Inspection regarding homeless shelters during a declared shelter crisis; *and*
4 (vi) actions of the Director of Public Health under Section 4613(c) of the Health Code summarily
5 suspending an Overdose Prevention Program permit or revoking such a permit after a summary
6 suspension.

7
8 Section 4. Effective Date. This ordinance shall become effective 30 days after
9 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
10 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
11 of Supervisors overrides the Mayor's veto of the ordinance.

12
13 Section 5. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
14 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
15 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
16 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
17 additions, and Board amendment deletions in accordance with the "Note" that appears under
18 the official title of the ordinance.

19
20 APPROVED AS TO FORM:
21 DENNIS J. HERRERA, City Attorney

22 By:



23 BRADLEY A. RUSSI
24 Deputy City Attorney

25 n:\legana\as2020\2000135\01430249.docx

LEGISLATIVE DIGEST

[Health, Business and Tax Regulations Codes - Overdose Prevention Programs]

Ordinance amending the Health Code to authorize overdose prevention programs (OPPs) by, among other things: requiring OPPs to obtain a permit from the Department of Public Health, establishing operating standards for OPPs; authorizing the imposition of fines and penalties for violation of local and state laws governing OPPs and establishing a process by which OPPs may appeal a fine or permit penalty; making it a City policy to deprioritize enforcement of laws prohibiting the possession of illegal drugs against individuals who have accepted referral to an OPP; amending the Business and Tax Regulations Code regarding appeals of certain OPP permit decisions; and affirming the Planning Department's determination under the California Environmental Quality Act.

Existing Law

City law does not authorize or regulate overdose prevention programs.

Amendments to Current Law

An overdose prevention program is an evidence-based harm reduction strategy that allows individuals to inject or consume illicit drugs in a hygienic environment under the supervision of trained staff, who are ready to intervene if the patient overdoses. The program also provides access and referrals to substance use disorder treatment services, medical services, mental health services, and other social services.

The proposed ordinance would authorize the Department of Public Health ("DPH") to issue regulatory permits to overdose prevention programs in the City. Any permit issued by DPH under the ordinance will not become operative until the State enacts a law that authorizes the City to approve overdose prevention program operators. The proposed ordinance sets application requirements, operational standards, and creates processes for permit suspension and revocation and for administrative enforcement against programs that do not have a permit and those that violate the ordinance or permit conditions.

The proposed ordinance also makes it City policy to deprioritize enforcement of criminal laws prohibiting possession of illegal drugs and drug paraphernalia against individuals who access an overdose prevention program.

Background Information

Currently pending in the California Legislature is a bill (AB-362) that would authorize the City to approve overdose prevention program operators and would provide immunity from state criminal and civil liability related to the approval and operation of a program permitted by the City. The proposed ordinance would implement the pending state legislation.

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OFFICE OF THE MAYOR
SAN FRANCISCO



LONDON N. BREED
MAYOR

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BY _____
2020 MAR -3 PM 4: 22
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SK

TO: Angela Calvillo, Clerk of the Board of Supervisors
FROM: Sophia Kittler
RE: Health, Business and Tax Regulations Codes - Overdose Prevention Programs
DATE: Tuesday, March 3, 2020

Ordinance amending the Health Code to authorize overdose prevention programs (“OPPs”) by, among other things: requiring OPPs to obtain a permit from the Department of Public Health (“DPH”), establishing operating standards for OPPs; authorizing the imposition of fines and penalties for violation of local and state laws governing OPPs and establishing a process by which OPPs may appeal a fine or permit penalty; making it City policy to deprioritize enforcement of laws prohibiting the possession of illegal drugs against individuals who have accepted referral to an OPP; amending the Business and Tax Regulations Code regarding appeals of certain OPP permit decisions; and affirming the Planning Department’s determination under the California Environmental Quality Act.

Please note that Supervisor Haney is a cosponsor of this item.

Should you have any questions, please contact Sophia Kittler at 415-554-6153.