



SMALL BUSINESS COMMISSION
OFFICE OF SMALL BUSINESS



CITY AND COUNTY OF SAN FRANCISCO
EDWIN M. LEE, MAYOR

June 15, 2015

Ms. Angela Calvillo, Clerk of the Board
Board of Supervisors
City Hall Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

File No. 150464 [Health Code - Enforcement of Service Station Bathroom Requirements and Fines]

Small Business Commission Recommendation: **Disapproval as Written.**

Dear Ms. Calvillo,

On June 8, 2015, the Small Business Commission voted unanimously to recommend that the Board of Supervisors disapprove BOS File No.150464 [Health Code - Enforcement of Service Station Bathroom Requirements and Fines] as written.

The Commission recognizes the need for service stations to provide clean and sanitary washrooms, but believes the legislation, while well intentioned, is ill-advised in its current state. Currently, the BOS is reviewing several initiatives that are concerned with streamlining unnecessary fees, licenses and permits for businesses. This legislation, however, is adding a regulatory burden where there does not appear to be a demonstrable need for administrative fines.

Specifically, the Commission's concerns are:

1. The Commission was unable to ascertain if there was in fact an existing problem, and if so, what exactly it was. Section 725 of the Health Code has been in place since 1986, and when asked if there had been a noted increase in the number of complaints lodged by service station patrons to spur on this particular legislation, neither the legislative sponsor nor DPH was able to communicate any data that supported the need for the addition of administrative fines. The Commission was unable to determine what was triggering this legislation now, and is concerned the legislation is an attempt to have facilities accessible to non-patrons.
2. The Commission recommends outreach to the Service Station community. When questioned, the legislative sponsor conceded that no outreach had been made to service station owners and franchisees. The Commission recommends seeking their expertise and first-hand knowledge in defining exactly what the issues are, attempting to establish guidelines to resolve any issues before legislating administrative fines, and to discuss with owners and franchisees any potential unintended consequences of the legislation that may not have been previously considered.
3. With the current code, DPH is instructed to inspect a proposed service station only at the request of the Fire Department. The legislation does not address responding directly to patron complaints at all. When questioned about responding to complaints, DPH stated that they would respond to 311 or other complaints. As currently written, DPH shall conduct an inspection at the request of the Fire Department, and then certify to the Fire Department that said station is in compliance.

4. The Commission believes that the legislation as written is difficult to enforce. For example, there was no consensus among the legislative sponsor and DPH on the definition of a patron. Is a patron defined exclusively as a person that purchases gasoline, or is a person that purchases chips from a convenience store within a service station also considered a patron?

Since the legislation does not define what a patron is, as DPH stated, levied fines could lead to administrative appeals that would ultimately require a clarified definition of patron. The Commission felt that this was an opportunity to proactively address shortcomings of previous legislation and avoid any vague terminology that could potentially lead to further avoidable issues in the future.

5. In the original legislation enacted in 1986, service stations were defined as operating for the sale and dispensing of gasoline, other motor fuels, or lubricating oil directly into motor vehicles or watercraft, and stated that they should provide a clean and sanitary bathroom for the use of patrons. The proposed legislation amends this to add that facilities must be available when the service station is open for business.

The Commission believes that certain nuances should be taken into consideration. Now many service stations also contain convenience stores, with bathrooms located inside the store. For patron's safety, in certain neighborhoods often service stations may close the convenience store at night, therefore blocking bathroom access in the process, while continuing to sell gas. Forcing these facilities to remain open may result in increased liability for owners and franchisees, and unintended consequences.

Additionally, it does not seem equitable to require a service station with a convenience store to provide restroom facilities to the public, while a corner, neighborhood convenience store is not required to provide facilities.

6. The Commission was unable to determine the rationale of the fine structure. DPH stated that some discussion was involved in making the fines significant enough to be meaningful, and that is how the amounts of the fines were derived. But as was stated, no quantitative data exists that illustrates a demonstrable need for enforcement let alone to initiate these significant administrative fines.

Generally, fee structures need to justify costs associated with administering those fees, but no projection of costs to DPH exists. The Commission noted the fines appeared to be arbitrary and punitive in nature, with no rationale behind them. Additionally, if there is no demonstrated need, the codification of a solution looking for a problem may not be the best allocation of limited DPH resources for enforcement purposes.

In summary, due to an unquantified problem, lack of outreach to and input from the service station community, ambiguous wording, difficulty of enforcement, potential unintended consequences, liability issues, questions regarding who makes a complaint to DPH and their enforcement, and the appearance of a punitive nature of administrative fines, The Commission disapproves the legislation as currently written.

Thank you for considering the Small Business Commission's comments. Please feel free to contact me should you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Regina Dick-Endrizzi". The signature is fluid and cursive, with the first name "Regina" being the most prominent.

Regina Dick-Endrizzi
Director, Office of Small Business

cc: Nicole Elliot, Mayor's Office
Derek Evans, Office of the Clerk of the Board
Sunny Angulo, Office of Supervisor Jane Kim