



TOBACCO LAW ENFORCEMENT GRANT PROGRAM PROPOSAL 2018-2020

I. SUMMARY

San Francisco is a city consisting of over 800,000 residents. The composition of San Francisco residents is 41.7% White, 33.1% Asian, 15.2% Latino, 5.6% Black/African-American, and 3.3% multiracial. Unfortunately, San Francisco is home to one of the nation’s highest density of off-sale alcohol outlets, which often double as tobacco retailers. These tobacco retailers are disproportionately concentrated in low-income neighborhoods in San Francisco, such as Chinatown, the Mission, and the Tenderloin as highlighted in the graph below:

District Number and Name	Number Retail Tobacco Stores	Median Household Income
1 Richmond	52	\$74,668
2 Marina	48	\$105,509
3 Chinatown/North Beach	152	\$45,513
4 Outer Sunset	45	\$77,376
5 Western Addition/Haight	83	\$67,331
6 Tenderloin/SOMA	136	\$37,431
7 Inner Sunset	28	\$94,121
8 Twin Peaks	64	\$95,930
9 Mission/Castro	101	\$67,989
10 Bayview	57	\$55,487
11 Outer Mission	49	\$71,504

In these low income districts with high density of tobacco retailers, residents also contend with a greater perceived neighborhood disorder issues (e.g. graffiti, litter); as well as issues relating to low educational attainment; higher rates of at risk minors and young adults; homelessness; mental illness; veterans; LGBT; and formerly incarcerated residents.

The San Francisco Department of Public Health (Department) is the largest employer in the City and County of San Francisco (City) with a combined workforce of over 8,000 employees. Traditional and innovative public health activities primarily fall under the Population Health Division (PHD) of the Department. Within PHD, the Environmental Health and the Community Health Equity & Promotion Branches work collaboratively to control tobacco use in the City. However, Environmental Health, being the largest Branch within PHD with over 140 employees, is the enforcement arm of the Department and is responsible for issuing permits, conducting compliance inspections, and enforcing over 40 state and local laws, codes, and regulations.

For the permitting, compliance, and enforcement of Articles 19H and 19N of the San Francisco Health Code for the sales of tobacco products, including electronic smoking devices, the Department funds only one full-time employee (FTE) Senior Health Inspector and 0.50 FTE Public Health Trainee to oversee tobacco-related activities for approximately 815 tobacco establishments.

One of the Department’s strategic priorities is to reduce the adult smoking rate by eliminating the access of tobacco products to minors and young adults. To accomplish this goal, over the years,

the Department, through the empowerment of community groups and the use of evidence-based data, continues to strengthen San Francisco's tobacco control laws. Additionally, taking enforcement action against retailers that sell tobacco products to minors sends a strong message of the City's non tolerance to youth accessing these products. In order to improve our work and expand our goals, the Department is requesting a budget of \$61,924 for FY 2017-2018; \$911,454 for FY 2018-2019; and \$922,189 for FY 2019-2020. The budget's primary use will be for staff and expanding our work with consultants to improve the problematic areas.

II. PROBLEM STATEMENT

San Francisco has been a leader in implementing strong and progressive policies to discourage smoking, protect individuals from second hand smoke, and to eliminate youth access to tobacco products. These efforts have reduced smoking in the City from 20% in 1990 to 12-14% in the 2000's. Compared nationally, San Francisco's average annual decrease in adult smoking between 1996 and 2012 has been among the highest in the country for both men and women, at about 3%. However, since 2003, the rate of adult smoking has remained relatively unchanged, around 13%, which is higher than most of our neighboring counties in the Bay Area. To further drive down the adult smoking rate, the Department's *most important* strategies have been to continue to enforce and support policy and regulations that reduce exposure to secondhand tobacco smoke and reduce youth access/persons under 21 years of age to tobacco products. However, to further support the Department's goals, Environmental Health has identified and commits to improving the following problematic areas:

- A. Changes in Federal, State, and Local Tobacco Control Laws Cause Confusion for Retailers**
Since 2014, there has been numerous legislative changes at the federal, state, and local level. Departmental surveys and interviews conducted with retailers have revealed that city government agencies poorly communicate the changes in laws and fees that are required of them. The retailers want more fact-to-face interactions with the regulators. They also want to see materials in a manner that is readily available to them.
- B. Implementation and Verification of Tobacco 21 Law through SFPD Decoy Operations**
Currently, the Department has a signed Memorandum of Understanding (MOU) with San Francisco Police Department (SFPD) to conduct 10 decoy operations per year, resulting in 200 site visits, which is only a quarter of the total tobacco permitted retailer inventory. Furthermore, although the current MOU allows SFPD to investigate single cigarette sales and to revisit retailers that sold to the minors within a year; SFPD is unable to accomplish these two objectives at the current funding level.
- C. Illegal Sales of Tobacco Products by Unpermitted Retailers**
In order to sell tobacco products in San Francisco, a retailer must obtain a California tobacco license and the Department's tobacco permit. Currently, there are almost 100 retailers without the dual state tobacco license and Department permit. To complicate matters, the City's tobacco permit density law allows new tobacco permits under very strict criteria. Many of these retailers may not be able to obtain a valid Department permit.
- D. The Increase of Hookah Lounges/Bars Alleging the Use Non-Tobacco and Non-Nicotine Consumption Products**
From 2010 to 2013, the Department closed over 25 restaurants operating hookah lounges and bar in violation of local indoor smoking and retail tobacco permit requirements. In 2014, a few hookah lounges replaced hookah tobacco with "steaming stones", a product containing porous rocks soaked in flavored infused glycerin; and by definition does not violate any local or state laws. However, since 2014, the number of reports of the use of hookah tobaccos by retailers without the dual state tobacco license and Department permit

has significantly increased. To complicate matters, Department staff documented consumption products in unlabeled containers. Without the ability to analyze the unknown products used by the hookah lounge/bar, the Department will not be able to build a strong enforcement case.

E. Support and Sustainability of the Enforcement Process.

Currently, there is a backlog of enforcement work due to changing program priorities. The allotment of 1.5 FTE for tobacco enforcement work is unsustainable. Each enforcement case may take up to 40 hours or more of administrative time to ensure due process is given to the retailer, including, but not limited to, an abatement conference, director's hearing, and, possibly, working with our City Attorney, if the case is heard at the Board of Appeals. We estimate there are 100 enforcement cases that need attention.

III. PROJECT DESCRIPTION

The enforcement grant will allow SFDPH to strengthen and increase the Department's capacity to outreach and improve education efforts for the existing tobacco retailers; expand the San Francisco Police Department's decoy operations; eliminate the illegal sales of tobacco products by unpermitted retailers; develop and implement a protocol to investigate and sample consumption products at hookah lounges and/or bars; and to share data and knowledge with other City agencies, jurisdictions, or interested parties. Over the contract period, the Department will complete the following goals and objectives:

A. Improvement of Education Material and Increase Outreach Efforts

- Conduct outreach, education, and compliance checks for about 400 retailers per fiscal year (FY)
- Provide the California and San Francisco Tobacco 21 signage and San Francisco's "No Smoking or Vaping" signs free of charge for up to 400 retailers per FY

B. Expand SFPD Under 21 Decoy Operations

- By June 30, 2018, the Department and San Francisco Police Department will sign an updated MOU to increase decoy operations with up to 20 additional operations per FY beginning July 1, 2018
- Conduct investigation and implement enforcement action plan within 3 months of Department receiving a report with a California penal code citation for the sales of tobacco products to anyone under 21 years old
- Maintain a record of all tobacco permit suspension period when appropriate (for example, after the Permit Holder exhausts their appeal process)

C. Elimination of Illegal Sales of Tobacco Products by Unpermitted Retailers

- Conduct investigation of up to 50 retailers that allegedly sell tobacco products without a valid State of California tobacco license or the Department's tobacco permit per FY

D. Develop and Implement Protocols to Investigate and Sample Consumption Products at Hookah Lounges/Bars

- Phase 1 – Within 6 months of grant funding, contract laboratory and develop protocols and procedures for sampling consumption products used by hookah lounges/bars; develop enforcement process plan; identify hookah lounges/bars that allegedly use non-tobacco and non-nicotine consumption products
- Phase 2 – Within 6 -12 months of grant funding, develop and issue educational material to hookah lounges/bars before implementation of any sampling and enforcement action plan
- Phase 3 – After 12 months (FY 2019-2020), investigate and implement enforcement action plan, as needed

- Phase 4 – Within 18 – 24 months of grant funding, improve educational material, sampling and/or analytical protocols, and enforcement action plan, if necessary

E. Sustainability of an Increase Enforcement Workload

- Within 6 months of the grant funding, the Department will issue a request for qualifications (RFQ) and contract the services of an administrative law judge to precede over a second monthly administrative hearing process. The grant funded 9910 – Public Health Trainees will assist with, along with other Department staff, the coordination and scheduling for the additional administrative hearing.

F. Share Data and Knowledge

- Phase 1 – During FY 2019-2020, Department’s tobacco compliance and enforcement team will develop a 4-hour training to share their knowledge around any of the Department’s enforcement activities
- Phase 2 – Within 24 months of grant funding, up to 4 staff covered by this grant activities will conduct the following trainings at an agreed upon location:
 - One presentation at the California Conference of Directors’ of Environmental Health (CCDEH) to announce the free enforcement training
 - One 4-hour training at any national or state conference
 - Two 4-hour trainings for a rural Northern California jurisdiction

IV. PROJECT PERSONNEL

Currently, the Department funds 1.0 full time employee (FTE) 6122 – Senior Health Inspector to conduct the current compliance and enforcement work through the local tobacco license fee. Furthermore, the Department funds the education, cessation, administration and data support, and the management of SFDP decoy operations contract through San Francisco’s Proposition A – Master Settlement Agreement (MSA). However, over the past few years, the MSA funding has been reduced by more than 50% and the Department is extremely limited by the type of work that may be funded by the MSA. The grant funding will be used to increase the Department’s capacity to expand the compliance, outreach, and enforcement with the addition of the following personnel:

- A. One-tenth (0.10) FTE 6124 – Principal Inspector: The tobacco team’s Principal Inspector provides support and direction, as needed, to ensure that the Department’s staff meets both the Department and contract goals and objectives. With the projected increase in enforcement work, the grant will support the participation of the Principal Inspector in the Department’s enforcement process. As part of the enforcement process, the Principal Inspector approves the senior staff enforcement action. During the administrative hearing process, the Principal Inspector summarizes Environmental Health’s investigation and recommends the administrative fine and/or permit suspension period. For appeals, the Principal Inspector represents the Department.
- B. One (1.0) FTE 6122 – Senior Health Inspector: The senior staff supported by this grant will have the responsibility of managing the grant and ensuring that the Department meets the proposed objectives and goals. This senior inspector will join the existing senior inspector to oversee and conduct the enforcement operations, including the investigation of illegal sales of tobacco products by San Francisco retailers, as well as, the hookah lounge/bar consumption products. Both senior staff will provide field and enforcement training and supervise the two non-senior field staff assigned to the tobacco enforcement program. The senior staff will also coordinate and lead any joint City agency inspections that involve retailers selling tobacco products.

- C. Two at 1.0 FTE 9910 – Public Health Trainees: Within 4 months of the signed MOU, the Department will hire two 9910s to conduct outreach and education, compliance checks, and to support the senior staff with the enforcement process. Additionally, the 9910 will provide assistance with the tobacco permit application review process, receive training in other Environmental Health programs, and to support the Department’s administrative hearing process.
- D. Half (0.5) FTE 1406 – Senior Clerk: The Senior Clerk will be responsible for the completion of administrative tasks for the tobacco program, which includes processing applications and internal forms; managing tobacco control related service requests alleging illegal tobacco sales, sales to any person under 21 years old, or single cigarette sales; triaging customer calls about San Francisco’s tobacco permitting process; and serving as the liaison between the Department’s tobacco program and San Francisco Tax Collector’s Office.
- E. 9924 – Public Service Aid: For the issuance of new tobacco permits, the Department must provide San Francisco Planning Department with GIS coordinates of active tobacco permits and school (K-12 both public and private) locations. With the grant funds, the Department will assign a Public Service Aid to dedicate 500 hours per year to maintain and validate GIS tobacco retailers and school data, develop GIS reports for Department and City staff upon request, and make available to the public requested GIS data or report in accordance with state or local public records law.
- F. Memorandum of Understanding (MOU) with San Francisco Police, Alcohol Liaison Unit (SFPD) Decoy Operations
Currently, the Department funds SFPD decoy operations to provide oversight, training, planning, management, and enforcement of decoys under the age of 20 conducting up to 200 site visits per year. Beginning in FY 2018, the Department will use the grant to expand the SFPD decoy operations to conduct an additional 400 visits per year.
- G. Contracted Services
 - a. Administrative Law Judge: The Department currently funds a monthly administrative hearing which is at capacity and may not be able to sustain an increase of too many additional caseloads. The grant funds will allow the Department to contract an administrative law judge to serve a second monthly hearing. The administrative law judge contract will also include an 8-hour enforcement training for the tobacco team and Department staff that serves at the administrative hearing.
 - b. Laboratory: In order to legally determine the contents of consumption products used at hookah bar lounges, the grant provide the funding to contract laboratory services that will include development of sampling and testing protocols, test and submit analytical reports, and validate data that will strengthen Department staff enforcement cases.

V. BUDGET

The Department commits to continue the current funding level for the enforcement of San Francisco’s tobacco control laws through the license fees and MSA. However, the Department’s resources are stretched and there is not sufficient funding to address the problems identified in this proposal. The grant funding will be used to increase the current staffing and complete the expanded goals and objectives as described earlier in this proposal. The complete project budget is detailed in Appendix A.