

BOARD of SUPERVISORS



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MEMORANDUM

TO: Barbara A. Garcia, Director, Department of Public Health
Regina Dick-Endrizzi, Director, Office of Small Business Commission

FROM: Erica Major, Assistant Committee Clerk, Public Safety and Neighborhood
Services Committee, Board of Supervisors

DATE: November 24, 2015

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Public Safety and Neighborhood Services Committee has received the following proposed legislation, introduced by Supervisor Wiener on November 17, 2015:

File No. 151179

Ordinance amending the Health Code to prohibit tobacco retailers from selling tobacco products, including smokeless tobacco and electronic cigarettes, to persons aged 18, 19, or 20.

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:
Greg Wagner, Department of Public Health
Colleen Chawla, Department of Public Health

1 [Health Code - Banning the Sale of Tobacco Products to Persons Aged 18-20]

2
3 **Ordinance amending the Health Code to prohibit tobacco retailers from selling tobacco**
4 **products, including smokeless tobacco and electronic cigarettes, to persons aged 18,**
5 **19, or 20.**

6 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
7 **Additions to Codes** are in *single-underline italics Times New Roman font*.
8 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
9 **Board amendment additions** are in double-underlined Arial font.
10 **Board amendment deletions** are in ~~strikethrough Arial font~~.
11 **Asterisks (* * * *)** indicate the omission of unchanged Code
12 subsections or parts of tables.

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

14 Section 1. The Health Code is hereby amended by adding Section 19H.14-1, to read
15 as follows:

16 **SEC. 19H.14-1. CONDUCT VIOLATING HEALTH CODE ARTICLE 19P (PROHIBITING**
17 **THE SALE OF TOBACCO PRODUCTS TO PERSONS AGED 18, 19, OR 20).**

18 (a) Upon a decision by the Director that the Permittee or the Permittee's agent or employee
19 has engaged in any conduct that violates Health Code Section 19P.3 (Sale or Distribution of Tobacco
20 Products to Persons Aged 18, 19, or 20 Prohibited), the Director may suspend a Tobacco Sales permit
21 as set forth in Section 19H.19.

22 (b) Upon a decision by the Director that the Permittee or the Permittee's agent or employee
23 has engaged in any conduct that violates Health Code Section 19P.4 (Signage), the Director may
24 suspend a Tobacco Sales permit as set forth in Section 19H.19, impose administrative penalties as set
25 forth in Section 19H.20, or both suspend the permit and impose administrative penalties.

1 (c) The Director shall commence enforcement of this Section 19H.14-1 by serving either a
2 notice of correction under Section 19H.21 or a notice of initial determination under Section 19H.22 of
3 this Article 19H; provided, however, that for a first violation during the period July 1, 2016 through
4 June 30, 2017, the Director may serve only a notice of correction and may not serve a notice of initial
5 determination or impose a permit suspension or administrative penalty. For a second violation
6 occurring within the first twelve months, or a first violation occurring after the first twelve months, the
7 Director may serve either a notice of correction under Section 19H.21 or a notice of initial
8 determination under Section 19H.22, and may impose a permit suspension or administrative penalty in
9 accordance with subsections (a) and (b), above.

10
11 Section 2. The Health Code is hereby amended by adding Article 19P, consisting of
12 Sections 19P.1 through 19P.7, to read as follows:

13
14 **ARTICLE 19P: PROHIBITING THE SALE OF TOBACCO PRODUCTS TO**
15 **PERSONS AGED 18, 19, OR 20**

16
17 **SEC. 19P.1. FINDINGS.**

18 Tobacco use remains the leading cause of preventable death in the United States, killing more
19 than 480,000 people each year. It is known to cause cancer, heart disease, and respiratory diseases,
20 among other health disorders.

21 Each day, 700 children under the age of 18 become regular, daily smokers; and almost one-
22 third will eventually die from smoking. If current trends continue, 5.6 million of today's youth will die
23 prematurely from a smoking-related illness.

1 According to a 2014 Report by the United States Surgeon General, cigarette smoking today is
2 even more dangerous than previously thought. Cigarette smoking has been linked to disease of nearly
3 all organs of the body.

4 The adverse health effects of tobacco use are not limited to smoking. The National Cancer
5 Institute and the International Agency for Research on Cancer report that use of smokeless tobacco
6 causes oral, pancreatic, and esophageal cancer; and may also cause heart disease, gum disease, and
7 oral lesions other than cancer, such as leukoplakia (precancerous white patches in the mouth).

8 Further, electronic cigarettes (also known as e-cigarettes) also present significant health risks.
9 E-cigarettes contain nicotine, a highly addictive neurotoxin. Exposure to nicotine during adolescence
10 can harm brain development and predispose youth to future tobacco use. In addition, electronic
11 cigarette aerosol has been found to contain at least ten chemicals that are on California's Proposition
12 65 list of chemicals known to cause cancer, birth defects, or other reproductive harm.

13 In addition to the adverse health impacts of tobacco use, the treatment of tobacco-related
14 diseases adds tremendous costs, in the billions of dollars, to this country's health care system. A 2014
15 report by the University of California, San Francisco estimated that in 2009, the cost of smoking in San
16 Francisco amounted to over \$380 million, including direct health care costs and indirect costs from
17 lost productivity due to illness and premature death.

18 State law prohibits the sale of tobacco products to persons under the age of 18. In spite of the
19 ban on sales to minors, and numerous other tobacco control policies implemented at the federal, state,
20 and local levels, 63% of smokers in California start smoking by age 18. National data show that 95%
21 of adult smokers begin smoking before they turn 21.

22 In San Francisco, almost 2.7% of middle school and 9.1% of high school students smoke. The
23 highest rate of smoking is among San Francisco's young adults (ages 18-24), 15.8% of whom smoke.

24 State law also bans the sale of electronic cigarettes to minors. In spite of this ban, preliminary
25 data of more than 430,000 middle and high school students from the California Healthy Kids Survey

1 found that in 2013, 6.3% of 7th graders, 12.4% of 9th graders, and 14.3% of 11th graders had used e-
2 cigarettes in the past 30 days. Among young adults (18 to 29 years old), e-cigarette use tripled in only
3 one year, from 2.3% to 7.6%.

4 A 2005 study based on data from the California Tobacco Survey, a large, population-based
5 telephone survey, found that 82% of adolescents who had ever smoked obtained their cigarettes from
6 others, mostly friends. A substantial percentage (40.9%) of the people giving the cigarettes were 18
7 years or older, with most of them (31.3%) being 18, 19, or 20. Adolescents who were 16 or 17 were
8 especially likely to get their cigarettes from persons aged 18 through 20.

9 In 2015, the Institute of Medicine, a division of the National Academies of Sciences,
10 Engineering, and Medicine, concluded that raising the minimum legal sales age for tobacco products
11 nationwide would reduce tobacco initiation, particularly among adolescents aged 15 through 17,
12 improve health across the lifespan, and save lives; and that raising the minimum legal sales age for
13 tobacco products nationwide to 21 would, over time, lead to a 12% decrease in the overall smoking
14 rate.

15 The Institute of Medicine also has predicted that raising the minimum legal sales age for
16 tobacco products nationwide to 21 would result in 223,000 fewer premature deaths, 50,000 fewer
17 deaths from lung cancer, and 4.2 million fewer years of life lost for people born in the United States
18 between 2000 and 2019, and would result in near-immediate reductions in preterm births, low birth
19 weight babies, and sudden infant death syndrome.

20 Raising the minimum age to purchase tobacco products is likely to have a similar effect as has
21 raising the legal drinking age to 21, which has led to reduced alcohol use and dependence among
22 persons under 21. This Article 19P will likely result in less smoking and tobacco use among San
23 Franciscans under 18 and San Franciscans under 21, sparing people within both age groups from the
24 ravages that develop over time from harmful and highly addictive tobacco products.

1 **SEC. 19P.2. DEFINITIONS.**

2 For purposes of this Article 19P, the terms “Director,” “Establishment,” “Tobacco Product,”
3 and “Person” shall have the meanings set forth in Health Code Section 19H.2.

4
5 **SEC 19P.3. SALE OR DISTRIBUTION OF TOBACCO PRODUCTS TO PERSONS AGED**
6 **18, 19, OR 20 PROHIBITED.**

7 (a) The sale or distribution by an Establishment of any Tobacco Product to a Person aged
8 18, 19, or 20, is prohibited.

9 (b) The Director, or his or her designee, may enforce this Section 19P.3 pursuant to
10 Articles 19 et seq. of the Health Code, including but not limited to Article 19H.

11
12 **SEC. 19P.4. SIGNAGE.**

13 (a) Every Person to whom a permit shall have been granted pursuant to Health Code
14 Articles 19H or 19N shall post a sign or other notice in the Establishment, stating that in San Francisco
15 it is unlawful to sell Tobacco Products, including smokeless tobacco and electronic cigarettes, to
16 persons who are 18, 19, or 20 years of age. The sign or other notice shall be placed in a conspicuous
17 location in the Establishment, and the letters and numbers on the sign or notice shall be of sufficient
18 size that the message is readily visible to anyone within the Establishment who is considering buying a
19 Tobacco Product. Pursuant to Section 19P.5, the Director may adopt rules, regulations, or guidelines
20 regarding compliance with this Section 19P.4.

21 (b) The Director, or his or her designee, may enforce this Section 19P.4 pursuant to Articles
22 19 et seq. of the Health Code, including but not limited to Article 19H.

1 **SEC. 19P.5. ADMINISTRATIVE REGULATIONS.**

2 The Director may adopt rules, regulations, or guidelines for the implementation of this Article
3 19P.

4
5 **SEC 19P.6. NO CONFLICT WITH FEDERAL OR STATE LAW.**

6 Nothing in this Article 19.P shall be interpreted or applied so as to create any requirement,
7 power or duty that is preempted by federal or state law.

8
9 **SEC. 19P.7. SEVERABILITY.**

10 If any section, subsection, sentence, clause, phrase, or word of this Article 19P. or any
11 application thereof to any person or circumstance, is held to be invalid or unconstitutional by a court
12 of competent jurisdiction, such decision shall not affect the validity of the remaining portions or
13 applications of the Article. The Board of Supervisors hereby declares that it would have passed this
14 Article, and each section, subsection, sentence, clause, phrase, and word not declared invalid or
15 unconstitutional without regard to whether any other portion of this ordinance or application thereof
16 would be subsequently declared invalid or unconstitutional.

17
18 Section 3. Effective and Operative Dates.

19 (a) This ordinance shall become effective 30 days after enactment. Enactment
20 occurs when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or
21 does not sign the ordinance within ten days of receiving it, or the Board of Supervisors
22 overrides the Mayor's veto of the ordinance.

23 (b) This ordinance shall become operative on July 1, 2016.

1 Section 4. Definition of "Tobacco Product." It is and has been the intent of the Board
2 of Supervisors that the definition of "Tobacco Product" in Health Code Section 19H.2, as
3 stated in Ordinance No. 59-15, be operative as of January 1, 2016, and that, as of that date,
4 that definition supersede any earlier definition of "Tobacco Product" or "Tobacco Products" in
5 Section 19H.2. Accordingly, as of January 1, 2016, "Tobacco Product" is and shall be defined
6 in Health Code Section 19H.2, in accordance with Ordinance No. 59-15, as follows:

7 "Tobacco Product" means (1) any product containing, made, or derived from tobacco or
8 nicotine that is intended for human consumption, whether smoked, heated, chewed,
9 absorbed, dissolved, inhaled, snorted, or sniffed, or ingested by any other means, including,
10 but not limited to, cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, bidis or snuff;
11 (2) any device or component, part, or accessory that delivers nicotine alone or combined with
12 other substances to the person using the device including but not limited to electronic
13 cigarettes, cigars, or pipes, whether or not the device or component is sold separately.

14 "Tobacco Product" does not include any product that has been approved by the United States
15 Food and Drug Administration for use as a tobacco cessation product where such product is
16 marketed and sold solely for such an approved purpose.

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

20 By: 
21 Anne Pearson
22 Deputy City Attorney

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