

File No. 201160

Committee Item No. 3

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

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Date: Dec. 10, 2020

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- Economic Mitigation Working Group Report – December 2, 2020
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Prepared by: John Carroll

Date: Dec. 4, 2020

Prepared by: John Carroll

Date: _____



CITY AND COUNTY OF SAN FRANCISCO
LONDON BREED, MAYOR

OFFICE OF SMALL BUSINESS
REGINA DICK-ENDRIZZI, DIRECTOR

December 2, 2020

Supervisor Norman Yee
President, Board of Supervisors
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

RE: Economic Mitigation Working Group – Findings and Recommendations

Honorable President Yee:

On June 24, 2019 the Small Business Commission (SBC) submitted a resolution to the Board of Supervisors and the Mayor's Office requesting that economic mitigation measures be administered in support of small businesses who may be adversely affected by City mandated tobacco control laws. Responsive to this, Supervisor Shamann Walton submitted a resolution that urged the Office of Small Business (OSB) to convene a Small Business Economic Mitigation Working Group and to develop recommendations for the Board of Supervisors to consider relative to economic challenges experienced by small businesses that are outside of their or the market's control.

Office of Small Business staff convened a Working Group in late 2019. Over the course of six months, the Working Group deliberately opined on a variety of topic areas that have a direct impact on tobacco retail sale permit holders. These areas included: The Tobacco Retail Permit Program; communications and outreach to small businesses; the Deemed Approved Uses Ordinance; regulatory fees including the Point of Sale system registration fee, the Cigarette Litter Abatement Fee, and Public Right of Way permit fees; economic development programs; and equity issues relating to the racial and ethnic makeup of tobacco retail permit holders and language access.

The attached memo outlines **15 recommended policy options** which may address programmatic, regulatory, and legislative challenges that this sector faces. These recommendations were thoughtfully composed with critical insight into the issues from community and civic partners.

These recommendations were presented to the Small Business Commission on November 9, 2020. The Commission voted (6-0, 1 absent) to support the recommendations and urges the Board to prioritize reforms to the Deemed Approved Uses Ordinance and evaluation of the Cigarette Litter Abatement Fee.

Thank you for considering the Working Group's recommendations. It was an honor for the Office of Small Business to convene the working group on behalf of the Board of Supervisors. We greatly appreciate the support and work from Supervisors Walton and Fewer and their staff along with members of the Working Group to establish the recommendations.



CITY AND COUNTY OF SAN FRANCISCO
LONDON BREED, MAYOR

OFFICE OF SMALL BUSINESS
REGINA DICK-ENDRIZZI, DIRECTOR

The submission of this report and recommendations officially concludes the convening of the Economic Mitigation Working Group. Please feel free to contact me should you have any questions.

Sincerely,

A handwritten signature in black ink, reading "Regina Dick-Endrizzi". The signature is written in a cursive, flowing style.

Regina Dick-Endrizzi
Director, Office of Small Business

cc: Shamann Walton, Member, Board of Supervisors
Catherine Stefani, Member, Board of Supervisors
Sandra Fewer, Member, Board of Supervisors
Sophia Kittler, Mayor's Liaison to the Board of Supervisors
Members, Small Business Commission
Joaquin Torres, Director, Office of Economic and Workforce Development
Patrick Fosdahl, Acting Director Environmental Health Branch, Department of Public Health
Cree Morgan, Sealer of Weights and Measures, Department of Public Health
Alaric Degrafinreid, Acting Director, San Francisco Public Works
Ben Rosenfield, Controller City County San Francisco
Jeffrey Tumlin, Director, San Francisco Municipal Transportation Agency
Rich Hillis, Director, San Francisco Planning Department
Deborah Rafael, Director, San Francisco Department of the Environment
John Carroll Clerk, Public Safety and Neighborhood Services Committee

Economic Mitigation Working Group Consolidated Summary of Recommendations

Recommendation 1: Tobacco Retail Sales Permit Reform. Amend Section 19.H.6(c) of the Health Code to allow for transfers to family members, *generally*, i.e. to grandchildren, nieces, nephews, cousins, or in-laws. (Pages 2-4)

Recommendation 2: Interagency Coordination. The Board of Supervisors should issue a resolution which would urge the Department of Public Health, the Office of Economic and Workforce Development, and the Office of Small Business to develop an interagency working group whose focus is public education and outreach to vulnerable small businesses. (Pages 2-4)

Recommendation 3: Mandatory Training Requirements. The Board of Supervisors should require local enforcement agencies, including but not limited to the Department of Public Health, San Francisco Police Department, the San Francisco Planning Department, the San Francisco Fire Department, the Department of Building Inspection, and Public Works to complete a cultural sensitivity training. And, State enforcement agencies should also be urged to implement such a training. (Pages 2-4)

Recommendation 4: Elimination of the DAO. Where the majority of tobacco retail license holders are also subject to paying the DAO fee, where there have been historically high compliance rates with the DAO's performance standards, and where the performance standards are largely duplicative of State requirements, the Working Group concurred that the DAO fee should be fully eliminated. As such, Chapter 26 of the Administrative Code should be repealed. This would be a legislative change and would require action by the Board of Supervisors. (Pages 5-7)

Recommendation 5: Public Right of Way Permit Fee Reform. Articles 5.2 and 5.3 of the Public Works Code were codified ~27 years ago and established requirements for the use of the public right of way, specifically for café tables and chairs and displaying merchandise, respectively. Small grocers and corner stores adversely impacted by tobacco control laws would benefit greatly from a permanent waiver for costs related to obtaining Café Tables and Chairs and Display Merchandise permits. This would be a legislative change and would require action by the Board of Supervisors. (Page 7)

Recommendation 6: Point of Sale Fee Reform. Per Section 115.4 of the Administrative Code, the Board of Supervisors is authorized to, by resolution, ratify changes to the POS registration fee schedule. The BOS should evaluate how equitably the POS fee is applied across industries in San Francisco and should contemplate the utility of the fee and fee schedule relative to administrative costs, while ensuring compliance with State law. At minimum, microbusinesses utilizing fewer than three POS systems should be made eligible for a POS fee waiver. (Pages 7-8)

Recommendation 7: Cigarette Litter Abatement Fee Reform. The Working Group recommends that the Board of Supervisors call a special hearing to contemplate the utility of the CLA fee; to evaluate how CLA fee increases have been justified since its inception; and, to explore why funds have not been utilized as legislatively intended for public education and outreach. The Board of Supervisors should ensure that the CLA fee is not increased on December 1, 2020 until an updated study on tobacco product litter is provided. (Pages 8-9)

Recommendation 8: Enhance the SF Shines Program. The SF Shines Program should be expanded with additional staff and grant funds to equip it to provide tailored services to small grocers and corner stores citywide who can establish that they have been adversely impacted by local tobacco control laws. (Pages 9-10)

Recommendation 9: Enhance the Healthy Retail SF Program. It is recommended that the Healthy Retail SF program's budget be expanded in order to support more corner stores and small grocers through a modified Healthy Retail SF Corner Store Pilot Program. (Pages 9-10)

Recommendation 10: Streamline the Color Curb Program. Although the Working Group was not able to discuss this matter with the SFMTA, it is nonetheless recommended that this subject be further evaluated and that the process for requesting colored curbs be streamlined for small businesses. This may be best addressed via the SFMTA small business advisory group. (Pages -910)

Recommendation 11: Adopt Bulk Purchasing Best Practices. The local emergency has led City Departments to innovate and employ novel solutions to emerging challenges. One such solution was to bulk purchase Personal Protective Equipment and then distribute to vulnerable small businesses¹. It is recommended that this be further contemplated by OEWD in collaboration with neighborhood economic development partners. (Pages 9-10)

Recommendation 12: Provide Specialized Technical Assistance to Small Businesses. Via resolution, the Board of Supervisors should urge OEWD, OSB, and SF Planning to convene an interagency working group and to develop a practical guide to leveraging the City's flexible land use policies access for small businesses, particularly small grocers and corner stores. (Pages 10-11)

Recommendation 13: Amend the CP3P Program. The CB3P program should include small grocers and corner stores. This would require a legislative amendment by the Board of Supervisors. (Pages 10-11)

Recommendation 14: Ensure Language Access. It is recommended that City Departments be required to issue guidance, rules, and forms in languages other than English at the time they are released or published in order to provide equitable access to this information. The Board of Supervisors can require this through legislation. (Page 11)

Recommendation 15: Tech Literacy. It is recommended that OEWD coordinate with neighborhood economic development organizations to facilitate trainings that would improve tech literacy among store owners in this sector. Funding required for such a novel program may be authorized via budget ad-backs by the Board of Supervisors. (Page 11)

¹ <https://oewd.org/free-ppe-available>

Economic Mitigation Working Group Summary of Findings December 2, 2020

EXECUTIVE SUMMARY

On June 24, 2019 the Small Business Commission (SBC) submitted a resolution to the Board of Supervisors and the Mayor's Office requesting that economic mitigation measures be administered in support of small businesses who may be adversely affected by City mandated tobacco control laws. Responsive to this, Supervisor Shamann Walton of District 10 submitted a resolution that urged the Office of Small Business (OSB) to convene a Small Business Economic Mitigation Working Group and to develop recommendations for the Board of Supervisors to consider relative to economic challenges experienced by small businesses that are outside of their or the market's control.

A Working Group was subsequently convened by the OSB in late 2019 and included: Rwhi Zeiden, Operator, Discount Cigarettes; Masood Samerie, President, Castro District Merchants and Vice-President of the Council of District Merchants; Jorge Rivas with the Office of Economic and Workforce Development, Angel Cardoz, Director, Small Business Development Center; Miriam Zouzounis, Commissioner, Small Business Commission; Amelia Linde, Manager of Small Business Initiatives and Engagement, San Francisco Chamber of Commerce; Regina Dick-Endrizzi, Director, Office of Small Business; and, legislative aides from the offices of Supervisor Walton and Supervisor Fewer. The Working Group was managed by Dominica Donovan, Senior Policy Analyst, Office of Small Business.

Over the course of six months, the Working Group deliberately opined on a variety of topic areas that have a direct impact on tobacco retail sale permit holders. These areas included: The Tobacco Retail Permit Program; communications and outreach to small businesses; the Deemed Approved Uses Ordinance; regulatory fees including the Point of Sale system registration fee, the Cigarette Litter Abatement Fee, and Public Right of Way permit fees; economic development programs; and equity issues relating to the racial and ethnic makeup of tobacco retail permit holders and language access.

This memo outlines **15 recommended policy options** which may address programmatic, regulatory, and legislative challenges that this sector faces. These recommendations were thoughtfully composed with critical insight into the issues from community and civic partners. These recommendations seek to cultivate a more equitable regulatory landscape for small businesses that have been adversely impacted by local tobacco control laws. These recommendations also provide a pathway for small businesses to more nimbly adapt to local regulatory measures without compromising local public health goals. Programmatic recommendations, if adopted, would also provide the economic development and technical assistance support that small businesses need in order to cope with abrupt revenue losses that correlate with local regulations.

The Working Group is optimistic that the recommended policy options will be recognized as both pragmatic and constructive. And, the Working Group is hopeful that this endeavor will prove to be of value to the Board of Supervisors and duplicated in the future as we continue to explore ways of creatively, economically, and efficiently supporting small business in San Francisco.

BACKGROUND

On June 24, 2019 the Small Business Commission (SBC) submitted Resolution No. 002-2019-SBC to the Board of Supervisors and the Mayor's Office requesting that economic mitigation measures be administered in support of small business retailers who may be adversely affected by City mandated tobacco control laws¹. Responsive to this, Supervisor Shamann Walton of District 10 submitted Resolution No. 359-19 which urged the Office of Small Business (OSB) to convene a Small Business Economic Mitigation Working Group².

Supervisor Walton's Resolution called for the Working Group to outline possible economic mitigation measures for small businesses such as grocery stores, "mom and pop" shops, corner stores, and stores with 10 or less employees who may be the most adversely impacted by the City's ban on flavored tobacco and e-cigarette products. The Resolution also directed that the economic mitigation measures be developed in partnership and with representation from merchants, small business owners, community stakeholders, the Office of Small Business, the Office of Economic and Workforce Development (OEWD), the Small Business Development Center (SBDC), the Controller's Office, the City Attorney's Office, and the Board of Supervisors.

A Working Group was subsequently convened by the OSB and included: a representative from the Castro Merchants and the San Francisco Council of District Merchants Association; a tobacco retailer; a representative from the San Francisco Chamber of Commerce; the Small Business Development Center; the Office of Economic and Workforce Development; a representative from the SBC; a representative from the OSB; and, legislative aides from Supervisors Walton and Fewer's offices. The Working Group first met on October 16, 2019 and met twice monthly thereafter. Their last meeting was on March 4, 2020. While they were scheduled to meet through April 2020, the last two meetings were cancelled due to the local emergency.

The Working Group's primary objective was to develop recommendations for the Board of Supervisors to consider relative to economic challenges experienced by small businesses that are outside of their or the market's control. They primarily contemplated these challenges through lens of corner stores and small grocers, and also considered vape/e-cigarette shops, traditional smoke shops, and ethnic import stores.

FINDINGS and RECOMMENDATIONS

The Working Group received several presentations from City agencies on programs that relate to this sector and evaluated existing policies that specifically impact tobacco retail permit holders. The Department of Public Health (DPH) provided presentations on the City's tobacco sales permit program and related tobacco control regulations³. They also presented on the Deemed Approved Uses Ordinance (DAO)⁴. Representatives from OEWD provided presentations on the Healthy Retail SF⁵ program and the SF Shines Program⁶. Additionally, the Working Group contemplated policies that affect tobacco retail permit holders specifically, including various regulatory fees administered through DPH and Public Works, the Cigarette Litter Abatement fee, land use policies, language access, and racial equity.

The Tobacco Retail Permit Program

¹ <https://sfgov.legistar.com/View.ashx?M=F&ID=7531991&GUID=460CE94E-22B7-4F76-BE52-CB3996D62916>

² <https://sfgov.legistar.com/View.ashx?M=F&ID=7572535&GUID=E8E18713-7106-4BCC-9478-C9A6BD919727>

³ <https://www.sfdph.org/dph/EH/tobacco/default.asp#:~:text=Tobacco%20Sales%20Permit%20Program&text=Our%20program%3A, persons%20under%2021%20years%20old.>

⁴ <https://www.sfdph.org/dph/comupg/oprograms/CHEP/alcoholOrdInfo/DAO.asp>

⁵ <http://www.healthyretailsf.org/>

⁶ <https://oewd.org/sf-shines>

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Article 19 of the San Francisco Health Code regulates tobacco sales and tobacco use. The DPH's Environmental Health Branch is responsible for administering Section 19H - Permits for the Sale of Tobacco. The annual cost of the retail tobacco permit for fiscal year 20/21 is \$421⁷. This cost has remained *relatively* stable and has only increased 38% since FY 16/17⁸.

Additionally, per Ordinance 259-14 which went into effect in early 2015, the City allows up to 45 retail tobacco permits per Supervisorial District⁹. As such, new retail tobacco permits may not be issued in Supervisorial Districts that are already home to 45 or more retail tobacco permits. If more than 45 retail tobacco permits had been legally issued to businesses in any one of the Supervisorial Districts prior to the effective date of Ordinance 259-14, those businesses have been allowed to retain their permit and renew them annually. As of July 23, 2020, seven Districts currently have 45 or more retail tobacco permits¹⁰.

Generally, once the tobacco sales permit is obtained, it may not be sold or transferred. If the tobacco sales permit owner sells their establishment, they must report the sale to DPH. The new owner then must apply for their own tobacco retail sales permit within 30 days of the change of ownership. If the establishment operates in a District with more than 45 tobacco retail permits, then the new owner will not be granted a tobacco retail sales permit. Few exceptions are made, however, with respect to when a tobacco sales permit may be transferred¹¹.

With respect to permit transfers, the Working Group honed in on an exception that allows a tobacco retail sales permit holder to transfer their permit to their child on a one-time basis¹². This allowance, contemplated in Health Code Section 19.H.6(c), has proven to be limiting for many tobacco retail sales permit holders, particularly those from non-white racial and ethnic groups and immigrant communities. While the exception provides that a permit may be transferred to the child of a permittee, it neglects to consider other diverse family living arrangements. According to Pew Research Center, non-white racial and ethnic groups are most likely to live in multi-generational households. In San Francisco, this finding can also be observed in Arab-American households. Additionally, Pew reports that foreign-born Americans are more likely than those born in the U.S. to live in multi-generational households. Pew defines a multi-generational household as having two or more adult generations, or, including grandparents and grandchildren under 25 years of age. Per U.S. Census Data from 2010, there were ~9,700 multigenerational households in San Francisco. The US Census differs from

⁷ https://www.sfdph.org/dph/files/EHSdocs/ehsFees/SF_EHB_Fees.pdf

⁸ <https://sfcontroller.org/sites/default/files/Documents/Budget/FY%202016-17%20%26%20FY%202017-18%20Fee%20Reviews%20%26%20Schedules.pdf>

⁹ <https://www.sfbos.org/ftp/uploadedfiles/bdsupvrs/ordinances14/o0259-14.pdf>

¹⁰ <https://www.sfdph.org/dph/EH/Tobacco/permits.asp>

¹¹ DPH may authorize the issuance of a Tobacco Sales Permit on a one-time basis in the following limited circumstances: 1) to a new buyer of a retail food store or tobacco shop, if the current tobacco sales permit owner: was in business between January 18, 2010 and January 18, 2015; held the Tobacco Sales Permit five (5) consecutive years prior to the date of the new buyer's application for a Tobacco Sales Permit; is in direct negotiations with the new buyer, AND is connected to a retail food market or tobacco shop; 2) to a subsequent buyer of a retail food store or tobacco shop if a retail food store establishment or tobacco shop new buyer held a valid Tobacco Sales Permit for at least ten (10) years; (3) to a child of a retail food store establishment or tobacco shop permittee may apply for a tobacco sales permit for their parent's establishment if their parent holds a tobacco sales permit as of January 18, 2015, and the child applying for a new tobacco sales permit must have a 100% ownership interest in the establishment; (4) A spouse or domestic partner may acquire the ownership from the Permittee of an Establishment through the death or divorce, and the spouse or domestic partner applying for a new tobacco sales permit must have a 100% ownership interest in the establishment; (5) A new buyer of a tavern if the tavern had been a permittee since January 18, 2010, and seeks to demonstrate previous compliance with Section 1009.23(d) of Article 19F of SFHC (prohibition against smoking in enclosed areas); (6) A subsequent Buyer of a tavern if a new buyer of a tavern held a valid Tobacco Sales Permit for at least ten (10) years; and, (7) If a retail food store establishment or tobacco shop permittee as of January 18, 2015, which must relocate from their Establishment due to seismic retrofitting under Chapter 34B of the Building Code may apply for a Tobacco Sales Permit for their Establishment. - https://www.sfdph.org/dph/EH/Tobacco/tobacco_permit_application.asp

¹² *Ibid.*

Pew in that it defines multigenerational households as three or more generations. Following U.S. trends, over the past 10 years this number has likely grown.

This exception creates an inherent inequity in how it can be applied and who may take advantage of it. It would be more equitably applied if the allowance were amended to allow for a transfer to *any* family member of a permittee. And to ensure that this exception is not improperly utilized, to only allow such transfers on a time limited basis, i.e., once every five years.

Recommendation 1: Tobacco Retail Sales Permit Reform. Amend Section 19.H.6(c) of the Health Code to allow for transfers to family members, *generally*, i.e. to grandchildren, nieces, nephews, cousins, or in-laws.

The Working Group also came to a better understanding of DPH's compliance focused approach to enforcement with respect to the Tobacco Retail Permit program, and they were familiarized with the minor decoy program. DPH shared that overall, very high compliance rates are observed by tobacco retail sales permit holders. With respect to outreach, however, the Working group agreed that increased coordination between DPH, OEWD, and OSB would be prudent—particularly for immigrant communities and non-native English-speaking business owners. Small businesses are supported via numerous programs managed by the Office of Economic and Workforce Development. And, they receive individually tailored guidance for their unique needs by the OSB. The Working Group also highlighted the need for ensuring that guidance and compliance materials be available in languages other than English and for targeted and culturally competent outreach. This sector would benefit from increased communication and coordination between the named agencies.

Recommendation 2: Interagency Coordination. The Board of Supervisors should issue a resolution which would urge the Department of Public Health, the Office of Economic and Workforce Development, and the Office of Small Business to develop an interagency working group whose focus is public education and outreach to vulnerable small businesses.

Relative to enforcement, the Working Group learned that tobacco retail sales permit holders are often visited by local, State, and federal representatives through their respective minor decoy programs. Where many tobacco retail sales permit holders are often from immigrant communities, the Working Group discussed how such checks from multiple enforcement agencies can often feel intimidating and threatening. These feelings are exacerbated by near constant threats from the nation's top immigration officials¹³. Unfortunately, such fear can often lead to a lack of trust between small business owners from immigrant communities and local and State leaders. Positive working relationships with local and State official are critical to ensuring small business success.

Recommendation 3: Mandatory Training Requirements. The Board of Supervisors should require local enforcement agencies, including but not limited to the Department of Public Health, San Francisco Police Department, the San Francisco Planning Department, the San Francisco Fire Department, the Department of Building Inspection, and Public Works to complete a cultural sensitivity training. And, State enforcement agencies should also be urged to implement such a training.

Prohibiting the Sale of Flavored Tobacco Products and Prohibiting the Sale of Electronic Cigarettes Lacking Food and Drug Administration Pre-Market Approval

The prohibitions on the sale of flavored tobacco products¹⁴ and the sale of electronic cigarettes¹⁵ were discussed at length by the Working Group. While significant revenue losses were highlighted as the greatest challenge, the Working

¹³ <https://www.nytimes.com/2018/02/27/nyregion/sanctuary-cities-immigrants-ice.html>

¹⁴ <https://www.sfdph.org/dph/EH/tobacco/flavoredtobacco.asp>

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Group honed in on how the effects of those losses were and continue to be exacerbated by numerous cost-recovery and other fees imposed by the City. The Working Group also discussed challenges related to a business's ability to pivot in order to recoup those revenue losses. Many of these challenges stem from a local regulatory environment that expressly prohibits businesses from being able to quickly adjust to ever-evolving and novel local laws. The Working Group also discussed the need for advanced planning in relationship to local regulation that will have a significant and adverse impact on small businesses, particularly mom and pop shops.

Fees discussed included the Deemed Approved Uses Fee, the Cigarette Litter Abatement fee, Use of the Public Right of Way permit fees, and the Point of Sale system fee. Other local regulations contemplated include land use policies administered via the Planning Code. Recommendations are further outlined below.

Deemed Approved Uses Ordinance

Chapter 26 of the Administrative Code codifies nuisance regulations for the Deemed Approved Off-Street Alcohol Use established via Ordinance No. 43-06¹⁶. DPH provided the Working Group with a presentation on the Deemed Approved Uses Ordinance (DAO), its legislative history, its current administration, and program outcomes to date. Enacted in 2006, the DAO fee was intended to be utilized to ensure that alcohol sales occur in a manner that protects the health, safety, and welfare of San Francisco residents¹⁷. Per the Ordinance, a fee must be paid to the City by Type 20 and Type 21 off sale Alcohol Beverage Control Board (ABC) license holders in order to abate nuisance activities¹⁸. In 2006, the fee was set at \$264, today the fee is set at \$272, increasing only by 3%¹⁹.

Through the DAO, the DPH requires that businesses adhere to certain performance standards, including: complying with local, state, and federal regulations related to the consumption of alcohol; ensuring that the owner, the employees, or agents do not participate in, or assist persons participating in, illegal activities within the premises or within the boundaries of the premises' property line, including, but not limited to, disturbance of the peace, illegal drug activity, illegal sale of firearms, public drunkenness, drinking in public, harassment of passersby, gambling, prostitution, sale of receipt of stolen goods, or theft, assaults or batteries; and, ensuring that nuisance activities such as litter, graffiti, and unruly behavior often associated with public consumption of alcoholic beverages within the premises or in close proximity of the premises be resolved for the best interests of the community²⁰. These standards mirror Retail Operating Standards²¹ that are set by the ABC and enforced through their Alcohol Policing Partnership (APP) and the IMPACT (Informed Merchants Preventing Alcohol-Related Crime Tendencies) program²². Importantly, the ABC State requirements were implemented and administered *after* the DAO was implemented in San Francisco.

Additionally, a provision for a fee waiver was also codified when the Deemed Approved Uses Ordinance became effective. In order to be eligible for the fee waiver, certain conditions must be met, including: that the Deemed Approved Off-Sale Alcohol Use has been under the same ownership for not less than the previous three years; that the annual fee for the Deemed Approved Off-Sale Alcohol Use has been paid in a timely manner for not less than the previous three years; that the Deemed Approved Off-Sale Alcohol Use has not been the subject of a City Department-referred complaint or any administrative penalties or conditions imposed by a Hearing Officer, Board of Appeals, or Board of Supervisors under the provisions of Administrative Code, Chapter 26. The first fee waiver request was not

¹⁵ <https://www.sfdph.org/dph/EH/tobacco/ecigarettes.asp>

¹⁶ <https://sfgov.legistar.com/View.ashx?M=F&ID=2593361&GUID=9383C0A9-7656-403C-A6EB-4D0BB38B21AF>

¹⁷ <https://www.sfdph.org/dph/comupg/oprograms/CHEP/alcoholOrdInfo/DAO.asp>

¹⁸ <https://sfgov.legistar.com/View.ashx?M=F&ID=2593361&GUID=9383C0A9-7656-403C-A6EB-4D0BB38B21AF>

¹⁹ https://sftreasurer.org/sites/default/files/2019-07/BT_Regulatory%20License%20Info%20Rate%20Table%202019_2020_07.01.19.pdf

²⁰ <https://www.sfdph.org/dph/comupg/oprograms/CHEP/alcoholOrdInfo/DAO.asp>

²¹ <https://www.abc.ca.gov/education/merchant-education/off-sale-licensee-informational-guide/retail-operating-standards-2/>

²² <https://www.abc.ca.gov/enforcement/alcohol-policing-partnership/>

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submitted to DPH until 2013. Since then, only 19 businesses have applied for the waiver, with 17 waivers being granted, one waiver application was still being reviewed at the time of DPH's presentation in November 2019, one waiver application was denied because the business had only been under that particular owner for less than three years.

675 businesses currently hold DAO certifications and boast a 95.7% with a rate of compliance with the DAO's performance standards. Presumably, most businesses operating in compliance with the DAO's performance standards have not been subject of a City Department-referred complaint or any administrative penalties or conditions imposed by a Hearing Officer, Board of Appeals, or Board of Supervisors under the under the provisions of Administrative Code, Chapter 26. **This means, there are ~646 businesses that are potentially eligible for a DAO fee waiver²³.**

The Working Group discussed this at length and expressed a particular concern that a critical mass of businesses otherwise eligible for a fee waiver were not applying for it. Additionally, according to data retrieved from DataSF, approximately 61% of tobacco retail permit holders are also subject to paying the DAO fee.

Recommendation 4: Elimination of the DAO. Where the majority of tobacco retail license holders are also subject to paying the DAO fee, where there have been historically high compliance rates with the DAO's performance standards, and where the performance standards are largely duplicative of State requirements, the Working Group concurred that the DAO fee should be fully eliminated. As such, Chapter 26 of the Administrative Code should be repealed. This would be a legislative change and would require action by the Board of Supervisors.

Note: Responsive to concerns relayed to Supervisor Fewer's staff as outlined above, a special Committee hearing was called by the Supervisor to examine the utility of the DAO fee²⁴. The special hearing was held on February 27, 2020 and the Committee received presentations from DPH, the San Francisco Police Department, and OSB staff. DPH reported that at the time of the hearing, 27 retailers had applied for the waiver and 26 had been approved. DPH shared that it was only recently that outreach to businesses has focused on the fee waiver opportunity. In their presentation, DPH affirmed that the DAO program requirements effectively mirror those established by the ABC.

Representatives from the SFPD added that the DAO program was instituted in 2006 and was responsive to high crime rates in and around areas adjacent to corner stores and small grocers. They also noted that since then, additional programs like Healthy Retail SF, have been implemented in harder hit communities and have had a noticeable positive impact. SFPD shared that annually, ~\$100k in funds received from ABC support 250 compliance visits per year, and that ~19k in DAO funds support 50 visits per year. SFPD emphasized that they focus on compliance-oriented outreach rather than issuing citations. SFPD offered that there have not been DAO violations that have resulted in action by the City Attorney. SFPD also shared that crime trends have not been analyzed in relationship to the DAO. Additionally, SFPD also affirmed that ABC requirements largely mirror the DAO's and may even be more comprehensive than what the DAO requires.

Regina Dick-Endrizzi, Director of the Office of Small Business, added that the small business community have long advocated for DAO reform. And, that since the DAO's inception, numerous programs that serve to abate nuisance activities and improve commercial corridors have been implemented. These include Invest in Neighborhoods, SF Shines, and Healthy Retail SF.

Central to the conversation was the utility of the fee collected as it relates to the intended outcomes. The Committee contemplated whether this is an essential activity for City to administer and whether it should be funded by this fee.

²³ <https://www.sfdph.org/dph/files/CHPPdocs/DAOdocs/Reports/BOS%20-%20DAO%20report%202018%20-19%20FINAL%2009.30.19.pdf>

²⁴ <https://sfgov.legistar.com/LegislationDetail.aspx?ID=4320097&GUID=B2513297-D834-4E96-AA6B-1C8F63104852&Options=ID|Text|&Search=deemed+approved>

Additionally, the Committee discussed the inequity in the fee's administration- particularly where mom and pop shops pay the same fee as larger, formula retailers. Ultimately, Supervisor Fewer expressed support for eliminating the fee and possibly reforming the DAO program. The Committee agreed to continue the discussion around DAO reform.

Regulatory Fees

The Working Group discussed other regulatory fees that grocery stores, “mom and pop” shops, and corner stores find prohibitive. One such fee is for a Café Tables and Chairs permit administered through Public Works. This permit allows a business to utilize the public right of way (sidewalks) for customer seating. While this has the protentional to benefit businesses who would like to recoup revenue loss associated with tobacco control laws, **the application process can take two to six months** and includes an onerous public noticing requirement²⁵. Moreover, the cost for the permit and the renewal is equally prohibitive with a base cost of \$148 plus \$8 per square foot of sidewalk space used. For businesses experiencing a sudden loss of revenue, time and the ability to pivot their business model is of the essence for survival.

Note: Due to the local emergency, this fee has been waived for businesses for a period of two years²⁶.

The Display Merchandise permit is also managed by Public Works. The permit allows businesses to display their merchandise on a portion of the sidewalk, typically produce. Like with the Café Tables and Chairs permit, **the permit application process is onerous and takes two to six months to process**. The cost is equally prohibitive with a base of \$160 plus \$11/square foot per year. Again, for businesses experiencing a sudden loss of revenue, time and the ability to pivot their business model is of the essence for survival.

Note: Due to the local emergency, this fee has been waived for businesses for a period of two years²⁷.

Recommendation 5: Public Right of Way Permit Fee Reform. Articles 5.2 and 5.3 of the Public Works Code were codified ~27 years ago and established requirements for the use of the public right of way, specifically for café tables and chairs and displaying merchandise, respectively. Small grocers and corner stores adversely impacted by tobacco control laws would benefit greatly from a permanent waiver for costs related to obtaining Café Tables and Chairs and Display Merchandise permits. This would be a legislative change and would require action by the Board of Supervisors.

The DPH also houses the Weights and Measures Program which protects consumer rights by ensuring the accuracy of scales, taximeters, and other measuring devices²⁸. Passed in 2010 in order to comply with State law, Ordinance No. 195-10 established a requirement for businesses to register Point of Sale (POS) systems and established a related cost recovery fee. Chapter 115 of the Administrative Code codifies these requirements. DPH is charged with inspecting all POS stations in the City. In 2010, the registration fee was set at \$75 per POS system, \$14 for each additional system, and is capped at \$773. Meaning, larger retailers with 50 or more POS stations pay a maximum of \$773 for each business location. This fee schedule has not been adjusted since 2010.

While, this fee may seem nominal, when stacked with additional financial obligations paid to the City, this too proves to be burdensome. The Working Group found that this fee is prohibitive for small grocers and corner stores, particularly those with less than 10 employees. These proprietors more than likely utilize fewer than three POS systems. These microbusinesses would benefit significantly from a POS system fee waiver. Additionally, where the POS system fee is

²⁵ <https://www.sfpublicworks.org/services/permits/cafe-tables-and-chairs>

²⁶ <https://sfgov.legistar.com/View.ashx?M=F&ID=8862479&GUID=5CC1FA84-9C81-4CA0-BED3-3D24B8BBC857>

²⁷ *Ibid.*

²⁸ <https://www.sfdph.org/dph/EH/WeightsMeasures/default.asp>

capped at \$773, the Working Group found that larger retailers, or those with 50 or more POS systems, do not pay their fair share relative to the administrative costs for inspection and registration.

Further, businesses are also not allowed to transfer a registration between business locations. With local seismic retrofitting requirements, and commercial property owners who unwilling to renegotiate lease agreements, small businesses often find themselves in a position where they may need to move locations with little notice. This may be especially prevalent in light of economic challenges related to the local emergency.

Recommendation 6: Point of Sale Fee Reform. Per Section 115.4 of the Administrative Code, the Board of Supervisors is authorized to, by resolution, ratify changes to the POS registration fee schedule. The BOS should evaluate how equitably the POS fee is applied across industries in San Francisco and should contemplate the utility of the fee and fee schedule relative to administrative costs, while ensuring compliance with State law. At minimum, microbusinesses utilizing fewer than three POS systems should be made eligible for a POS fee waiver.

The Cigarette Litter Abatement Fee

Sponsored by then Mayor Gavin Newsom in June of 2009, the Cigarette Litter Abatement (CLA) Fee was proposed after a City audit found that cigarette litter accounted for 25% of all trash in the City's public spaces. Mayor Newsom also noted that the fee could generate ~\$11 million in revenue which, would be enough to keep street sweepers employed in light of the Great Recession²⁹. Notably, the CLA fee was not only intended to be used in order to offset costs of street cleaning, but also for public education and outreach to curb improper cigarette litter disposal³⁰.

The fee itself, although charged to the customer, is collected by permitted tobacco retailers and remitted back to the City³¹. In 2009, the fee was set at \$0.20 per pack of cigarettes. As outlined in Section 105.3(f) of the Administrative Code, the Controller is charged with making future determinations regarding the cost of the fee based on the most recent data available concerning tobacco litter and costs associated with street cleaning and public educations and outreach. The Controller's office relies on data provided by the Tax and Treasurers Office with respect to how many packs of cigarettes are sold. And, the Controller has historically relied on data provided by Public Works with respect to tobacco litter. However, per Administrative Code Section 105.3(f)(1), the Controller "...shall periodically procure updated data concerning the percentage of [tobacco product] litter..." - there no requirement for the Controller to rely on data from Public Works.

The Working Group was not able to receive a presentation on the matter but, nonetheless discussed challenges related to this fee. In particular, that most if not all funds generated from the fee have been used *only* for street cleaning, and not for public education and outreach as legislatively intended and codified in Section 105.3(e)(4) of the Administrative Code. In 2017, the San Francisco chapter of the Surfrider Foundation found that **a lack of education and lack of receptacles largely contributed to the amount of tobacco product litter in the City**³². In a 2018 BOS Committee hearing on the matter, the Surfrider Foundation recommended that the City invest in installing ashcans, providing pocket ashtrays to smokers, and educating smokers about proper disposal³³. This recommendation was born from a pilot program administered in 2018 in the Western neighborhoods where a **92% reduction in tobacco product litter** was observed³⁴. The funds have, however, have almost exclusively continued to be used by Public Works for street cleaning. The Working Group concurred that funds should be utilized as legislatively intended for public outreach and education in

²⁹ <https://www.nytimes.com/2009/05/19/us/19smoke.html>

³⁰ <https://sfgov.legistar.com/View.ashx?M=F&ID=1052555&GUID=4BB28337-F338-4523-9382-F3276F36B535>

³¹ <https://sfgov.legistar.com/View.ashx?M=F&ID=714074&GUID=0860107E-98A3-49A6-9B70-B8926C21F046>

³² https://drive.google.com/file/d/0B8a-_EAZC68mS1FrLU5RSzQ4SHc/view

³³ <https://sfgov.legistar.com/LegislationDetail.aspx?ID=3333654&GUID=AF6AD20D-ACC9-4B3A-86BB-3B172146F598>

³⁴ <https://www.sfweekly.com/news/pilot-program-to-clean-up-s-f-s-dirty-butts-deemed-successful/>

addition to street cleaning. Clean streets benefit everyone, including and especially small grocers and corner store owners.

The Working Group also found that there is limited data available regarding tobacco litter. As noted, the Controller is charged with adjusting the cost of the CLA fee. In the past 11 years, the CLA fee has increased from \$0.20 to \$1.00 per pack sold, a **400% increase**. From information obtained from the Department of Public Works, the largest jump occurred in fiscal years 2015-2016, when the fee doubled from \$0.20 per pack sold to \$0.40 per pack sold. **Subsequent fee increases for the past six years have been based on tobacco product litter data reported in 2014.** When asked in early calendar year 2020, Public Works staff informed OSB staff that tobacco product litter would *not* be included in a litter study that they had recently contracted. The Controller is charged with adjusting the CLA fee December 1 of each calendar year. Fee adjustments do not require approved by the Board of Supervisors.

Recommendation 7: Cigarette Litter Abatement Fee Reform. The Working Group recommends that the Board of Supervisors call a special hearing to contemplate the utility of the CLA fee; to evaluate how CLA fee increases have been justified since its inception; and, to explore why funds have not been utilized as legislatively intended for public education and outreach. The Board of Supervisors should ensure that the CLA fee is not increased on December 1, 2020 until an updated study on tobacco product litter is provided.

City Programs

The Working Group received presentations on the SF Shines and Healthy Retail SF programs from the Office of Economic and Workforce Development. They also discussed the Color Curb program managed by the San Francisco MTA, and briefly contemplated a Collective Buying Program.

The SF Shines Program is housed within OEWD and is intended to help small businesses improve their storefronts and improve the vibrancy of the City's commercial corridors³⁵. Since 2009, 117 storefronts have been improved and \$3.5 million in grants issued. Eligible small businesses include those that operate on the Invest in Neighborhood Commercial Corridors: Bayview, Calle24, Central Market/Tenderloin, Chinatown; Excelsior, and lower Fillmore. Businesses are also required to have at least three years remaining on their lease. Typically, projects take ~nine months to complete and the average award amount is \$20,000. In addition to SF Shines, OEWD also manages an SF Shines Express program where smaller scale projects may be awarded a maximum grant of \$10,000 for storefront improvements. There is also an SF Shines Window Display opportunity which pairs artists and designers with businesses in order to create inviting and attractive window displays. Recently, in response to the local emergency, the program launched SF Shines for Reopening which provides grants of \$2,000 or \$5,000 for health and safety upgrades to storefronts to ensure compliance with COVID-19 directives and guidelines³⁶. For small grocers and corner stores, participation in the SF Shines program can be extremely valuable. Particularly where small grocers and corner store storefronts are often saturated with window advertisements from vendors of unhealthy products.

Recommendation 8: Enhance the SF Shines Program. The SF Shines Program should be expanded with additional staff and grant funds to equip it to provide tailored services to small grocers and corner stores citywide who can establish that they have been adversely impacted by local tobacco control laws.

The Healthy Retail SF program began in 2013 and is staffed by OEWD and the DPH³⁷. The program aims to help convert corner stores and small grocers to become "Healthy Retailers" with the ultimate goal of ensuring that tobacco and

³⁵ <https://oewd.org/grants-and-loans-programs>

³⁶ <https://sf.gov/sf-shines>

³⁷ <https://www.sfbos.org/ftp/uploadedfiles/bdsupvrs/ordinances13/o0193-13.pdf>

alcohol products occupy less than 20% of shelf space³⁸. Participating small businesses work with a team of experts to develop a plan to redesign their stores and carry healthier products. Through stacking available economic development programs and a high-touch approach, this program has proven to help small businesses increase their revenues and improve the sustainability of their business. Although the program has been successful for most participants, Healthy Retail SF demands significant staff time and, is expensive to administer. At present funding levels, Healthy Retail SF is only able to serve 2-3 businesses per year. The Working Group contemplated how the program may be expanded to serve a greater number of corner stores and small grocers, particularly those adversely impacted by tobacco control laws.

Recommendation 9: Enhance the Healthy Retail SF Program. It is recommended that the Healthy Retail SF program's budget be expanded in order to support more corner stores and small grocers through a modified Healthy Retail SF Corner Store Pilot Program.

Curb space for retail was also briefly discussed by the Working Group. Specifically, that the process for requesting colored curbs- green, white, and yellow is onerous and costly. Particularly, requests for yellow zones that allow deliveries, require a public hearing and a subsequent fee³⁹.

Recommendation 10: Streamline the Color Curb Program. Although the Working Group was not able to discuss this matter with the SFMTA, it is nonetheless recommended that this subject be further evaluated and that the process for requesting colored curbs be streamlined for small businesses. This may be best addressed via the SFMTA small business advisory group.

Small grocers and corner stores have long been competitively disadvantaged as compared to their formula retail competitors in that they are not able to buy in bulk and therefore sell their goods at a lower cost. The Working Group contemplated this but, were not able to have a fully and robust conversation due to time constraints related to the local emergency.

Recommendation 11: Adopt Bulk Purchasing Best Practices. The local emergency has led City Departments to innovate and employ novel solutions to emerging challenges. One such solution was to bulk purchase Personal Protective Equipment and then distribute to vulnerable small businesses⁴⁰. It is recommended that this be further contemplated by OEWD in collaboration with neighborhood economic development partners.

Business Permitting

Business permitting through the SF Planning Department, DPH, and other permitting agencies was discussed by the Working Group. Central to the conversation was how corner stores and small businesses may employ flexible use policies and, how land use designations support and/or hinder small businesses when they are compelled to transform their business models. Being able to be agile and pivot without delay, as we've observed through the local emergency, is critical for small businesses in need of economic adjustment assistance.

The Working Group also contemplated fast tracked permitting programs, like the Community Business Priority Processing Program (CB3P). And, discussed providing access to the CB3P program for corner stores and small grocers. The CB3P program was recently codified into law by the Board of Supervisors. Tobacco paraphernalia establishments are

³⁸ <http://www.healthyretailsf.org/programs>

³⁹ https://www.sfmta.com/sites/default/files/reports-and-documents/2017/09/colorcurb brochure_2017_eng_0.pdf

⁴⁰ <https://oewd.org/free-ppe-available>

expressly excluded.

Recommendation 12: Provide Specialized Technical Assistance to Small Businesses. Via resolution, the Board of Supervisors should urge OEWD, OSB, and SF Planning to convene an interagency working group and to develop a practical guide to leveraging the City's flexible land use policies access for small businesses, particularly small grocers and corner stores.

Recommendation 13: Amend the CP3P Program. The CB3P program should include small grocers and corner stores. This would require a legislative amendment by the Board of Supervisors.

Racial Equity Considerations

The Working Group also discussed equity as it relates to support for corner stores and small grocers. Many, if not the majority of small grocer and corner store owners are observed to be non-white, non-native English speakers, and/or are from immigrant communities. Relative to this, challenges relating to communications from regulatory and permitting agencies (DPH, Public Works, Planning, the Department Building Inspection, SFMTA), were discussed. Specifically, that guidance, forms, and other documents relating to the rules and regulations administered by those Departments, are not always made available in languages other than English in a timely manner, if at all.

Recommendation 14: Ensure Language Access. It is recommended that City Departments be required to issue guidance, rules, and forms in languages other than English at the time they are released or published in order to provide equitable access to this information. The Board of Supervisors can require this through legislation.

Additionally, while many guidance documents, forms, rules, regulations, and other requirements are available online and in languages other than English, many corner store owners and small grocers are not able to adequately access them. This is largely due to low-tech literacy rates among store owners in this sector.

Recommendation 15: Tech Literacy. It is recommended that OEWD coordinate with neighborhood economic development organizations to facilitate trainings that would improve tech literacy among store owners in this sector. Funding required for such a novel program may be authorized via budget ad-backs by the Board of Supervisors.

BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

MEMORANDUM

TO: Regina Dick-Endrizzi, Director, Office of Small Business
Joaquin Torres, Director, Office of Economic and Workforce Development
Ben Rosenfield, City Controller
Anne Pearson, Deputy City Attorney, Office of the City Attorney
Dr. Grant Colfax, Director, Department of Public Health

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

DATE: October 14, 2020

SUBJECT: HEARING MATTER INTRODUCED

The San Francisco Board of Supervisors' Public Safety and Neighborhood Services Committee has received the following hearing request, introduced by Supervisor Walton on October 6, 2020:

File No. 201160

Hearing on the findings and recommendations from the Economic Mitigation Working Group through the Office of Small Business; and requesting the Office of Economic and Workforce Development, Small Business Development Center, Office of the Controller, Office of the City Attorney, and the Tobacco Retail Permit Program of the Department of Public Health to report.

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:

- Office of Chair Mandelman
- Office of Supervisor Walton
- Dominica Donovan, Office of Small Business
- J'Wel Vaughan, Office of Economic and Workforce Development
- Anne Taupier, Office of Economic and Workforce Development
- Lisa Pagan, Office of Economic and Workforce Development
- Todd Rydstrom, Office of the Controller
- Peg Stevenson, Office of the Controller
- Dr. Naveena Bobba, Department of Public Health
- Greg Wagner, Department of Public Health
- Sneha Patil, Department of Public Health

Introduction Form

By a Member of the Board of Supervisors or Mayor

Time stamp
or meeting date

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee. (An Ordinance, Resolution, Motion or Charter Amendment).
- 2. Request for next printed agenda Without Reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning : "Supervisor inquiries"
- 5. City Attorney Request.
- 6. Call File No. from Committee.
- 7. Budget Analyst request (attached written motion).
- 8. Substitute Legislation File No.
- 9. Reactivate File No.
- 10. Topic submitted for Mayoral Appearance before the BOS on

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission
- Youth Commission
- Ethics Commission
- Planning Commission
- Building Inspection Commission

Note: For the Imperative Agenda (a resolution not on the printed agenda), use the Imperative Form.

Sponsor(s):

Walton, Fewer

Subject:

Economic Mitigation Working Group Finding and Recommendations Report

The text is listed:

Hearing to report the findings and recommendations from the Economic Mitigation Working Group through the Office of Small Business. Requesting the presence of the Office of Economic and Workforce Development, the Small Business Development Center, the Controller's Office, the City Attorney's Office, and the Tobacco Retail Permit Program of the Department of Public Health.

Signature of Sponsoring Supervisor: /s/ Shamann Walton

For Clerk's Use Only